



C-570-027  
Investigation  
**Public Document**  
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**DATE:** May 24, 2016

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Determination in  
the Countervailing Duty Investigation of Certain Corrosion-  
Resistant Steel Products from the People's Republic of China

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## I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain corrosion-resistant steel products (corrosion-resistant steel) from the People's Republic of China (PRC), within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act).<sup>1</sup> Below is the complete list of issues in this investigation for which we received comments from interested parties.

### Issues:

- Comment 1: Whether Respondent's Producers of Inputs Are "Authorities"
- Comment 2: Whether Inputs for LTAR Are Specific
- Comment 3: Whether to Use a Tier One Benchmark to Determine the Adequacy of Remuneration for Inputs for LTAR
- Comment 4: Whether the Provision of Electricity for LTAR Is Countervailable
- Comment 5: Whether the GOC Provided Policy Loans to YPC during the POI
- Comment 6: Whether the Export Buyer's Credit Program Was Used by Respondent
- Comment 7: Correcting VAT in the Hot-Rolled Steel and Primary Aluminum Benchmarks
- Comment 8: Whether to Apply AFA to YCL's Sales from Other PRC Producers of Corrosion-Resistant Steel

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<sup>1</sup> See also section 701(f) of the Act.



## II. BACKGROUND

### A. Case History

The sole cooperating mandatory company respondent in this proceeding is Yieh Phui (China) Technomaterial Co., Ltd. (YPC). YPC provided a countervailing duty (CVD) questionnaire response on behalf of itself and its affiliate, Yieh Corporation Limited (YCL). On November 6, 2015, the Department published the *Preliminary Determination* in this proceeding.<sup>2</sup> In the *Preliminary Determination*, we stated that the remaining mandatory respondents, Angang Group Hong Kong Company Ltd. (Angang), Duferco S.A. (Duferco), Handan Iron & Steel Group (Handan), Baoshan Iron & Steel Co., Ltd. (Baoshan), and Changshu Everbright Material Technology (Everbright), all either withdrew from, or did not participate in, the investigation, and thus assigned them a subsidy rate relying on adverse facts available (AFA).<sup>3</sup>

Between November 18 and 20, 2015, we conducted verification of the questionnaire responses submitted by the YPC, YCL and the Government of the PRC (GOC).<sup>4</sup> Interested parties submitted case and rebuttal briefs, including scope briefs, between February 22 and February 29, 2016.

### B. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2014, through December 31, 2014.

## III. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

The Department preliminarily found that importers, exporters, and producers had reason to believe at some time prior to the filing of the petition that a proceeding was likely. Specifically, the Department concluded that the factual information provided by Petitioners<sup>5</sup> indicates that by March 2015, importers, exporters, and producers had reason to believe that proceedings were likely.<sup>6</sup> The Department preliminarily determined that critical circumstances existed for Angang, Duferco, Handan, Baoshan, and Everbright, but not for YPC or for all other producers or exporters.<sup>7</sup>

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<sup>2</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Preliminary Affirmative Determination*, 80 FR 68843 (November 6, 2015) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>3</sup> See PDM at 10-15.

<sup>4</sup> See Memorandum, "Verification of the Questionnaire Responses Submitted by Yieh Phui (China) Technomaterial Co., Ltd.," January 20, 2016 (YPC Verification Report).

<sup>5</sup> Collectively, United States Steel Corporation, Nucor Corporation, ArcelorMittal USA, AK Steel Corporation, Steel Dynamics, Inc., and California Steel Industries, Inc.

<sup>6</sup> See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015) (*Preliminary Critical Circumstances Determination*). See also Memorandum, "Calculations for Preliminary Determination of Critical Circumstances in the Countervailing Duty Investigation of Corrosion-Resistant Steel Products from the People's Republic of China," October 29, 2015.

<sup>7</sup> See *Preliminary Critical Circumstances Determination*, 80 FR at 68507.

Based on the shipping data placed on the record by YPC after the *Preliminary Determination*, as requested by the Department, we examined whether the increase in imports was massive by comparing shipments over the period of July 2014 through February 2015, with the period March 2015 through October 2015.<sup>8</sup> For this final determination, the Department continues to find that critical circumstances do not exist for YPC or for all other producers or exporters, but, as AFA, do exist for Angang, Duferco, Handan, Baoshan, and Everbright.<sup>9</sup>

#### IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and
- (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or

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<sup>8</sup> See Memorandum, “Monthly Shipment Quantity and Value Analysis for Critical Circumstances Final Determination,” May 24, 2016 (Final Critical Circumstances Memorandum). Because the preliminary determination was published November 6 (the beginning of November), we are using data through October in determining critical circumstances for YPC. For all other producers and exporters, our critical circumstances determination continues to be based on data through August, the latest month for which GTA data is on the record.

<sup>9</sup> See Final Critical Circumstances Memorandum.

- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”)) steels and high strength low alloy (“HSLA”) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and

- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.<sup>10</sup>

## **V. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM THE PRC**

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.<sup>11</sup> In *CFS from the PRC*, the Department found that:

... given the substantial differences between the Soviet-style economies and China’s economy in recent years, the Department’s previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.<sup>12</sup>

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.<sup>13</sup> Furthermore, on March 13, 2012, Public Law 112-99 was enacted, which confirms that the Department has authority to apply the CVD law to countries designated as non-

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<sup>10</sup> As noted in the corresponding *Federal Register* notice, for a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, see Memorandum, “Scope Comments Decision Memorandum for the Final Determinations,” May 24, 2016.

<sup>11</sup> See *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), an accompanying Issues and Decision Memorandum (IDM) at Comment 6.

<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and accompanying IDM at Comment 1.

market economies under section 771(18) of the Act, such as the PRC.<sup>14</sup> The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.<sup>15</sup>

Additionally, for the reasons stated in *CWP from the PRC*, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this CVD investigation.<sup>16</sup>

## **VI. SUBSIDIES VALUATION INFORMATION**

### **A. Allocation Period**

The Department has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for this final determination, *see the Preliminary Determination*.<sup>17</sup>

### **B. Attribution of Subsidies**

The Department has made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies and no issues were raised by interested parties in case briefs regarding the attribution of subsidies.<sup>18</sup> For descriptions of the methodologies used for this final determination, *see the Preliminary Determination*.<sup>19</sup>

### **C. Denominators**

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Final Analysis Memorandum," prepared for this final determination.<sup>20</sup> As a result of verification, we have revised the 2014 total sales value for YPC to incorporate the corrected 2014 free on board (FOB) domestic sales, and to calculate the subsidy rates in this final determination.

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<sup>14</sup> Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

<sup>15</sup> *See* Public Law 112-99, 126 Stat. 265 §1(b).

<sup>16</sup> *See CWP from the PRC*, and accompanying IDM at Comment 2.

<sup>17</sup> *See* PDM at 13.

<sup>18</sup> *Id.*, at 25.

<sup>19</sup> *Id.*

<sup>20</sup> *See* Memorandum, "Final Determination Analysis for Yieh Phui (China) Technomaterial Co., Ltd.," May 24, 2016 (Final Analysis Memorandum).

## VII. BENCHMARKS AND DISCOUNT RATES

The Department has made one change to the hot-rolled steel and primary aluminum benchmarks based on a comment from interested parties raised in case briefs,<sup>21</sup> and no changes to the discount rates used in the *Preliminary Determination*. For a description of the benchmarks and discount rates used for this final determination, see the *Preliminary Determination* and the Final Analysis Memorandum.

## VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

The Department relied on “facts otherwise available,” including AFA, for several findings in the *Preliminary Determination*. With one exception, the Department has not made any changes to its use of facts otherwise available and AFA from the *Preliminary Determination*. For a description of these decisions, see the *Preliminary Determination*.<sup>22</sup> In the single change from the *Preliminary Determination*, we are now relying on AFA in finding that YPC used and benefited from Export Buyer’s Credits (discussed below).

### *Export Buyer’s Credit from State-Owned Banks Program*

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.<sup>23</sup>

Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse rate from among the possible sources of information, the Department’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents

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<sup>21</sup> See Comment 8.

<sup>22</sup> See Attachment for the subsidy rates used to calculate the AFA rate for non-cooperating companies.

<sup>23</sup> On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this investigation.

to provide the Department with complete and accurate information in a timely manner.”<sup>24</sup> The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperating fully.”<sup>25</sup>

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>26</sup> The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.<sup>27</sup> In analyzing whether information has probative value, it is the Department’s practice to examine the reliability and relevance of the information to be used.<sup>28</sup> However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.<sup>29</sup>

Finally, under the new section 776(d) of the Act, the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>30</sup>

Consistent with section 776(d) of the Act and our established practice, we selected the highest calculated rate for the same or similar program as AFA.<sup>31</sup> When selecting rates, we first

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<sup>24</sup> See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>25</sup> Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA), at 870.

<sup>26</sup> *Id.*, at 870.

<sup>27</sup> *Id.*

<sup>28</sup> See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

<sup>29</sup> See SAA at 869-870.

<sup>30</sup> See section 776(d)(3) of the Act.

<sup>31</sup> See, e.g., *Certain Frozen Warmwater Shrimp From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from the PRC*), and accompanying IDM at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding “hierarchical methodology for selecting an AFA rate”).

determine if there is an identical program in the investigation and use the highest calculated rate for the identical program (excluding zero rates). If there is no identical program above zero in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding rates that are *de minimis*). If no identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated rate for the similar/comparable program. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program in a CVD case involving the same country, but we do not use a rate from a program if the industry in the proceeding cannot use that program.<sup>32</sup>

The Department has determined that the use of AFA is warranted in determining the countervailability of Export Buyer's Credits from State-Owned Banks program. As discussed below in response to Comment 6, the GOC did not provide the requested information needed to allow the Department to verify this program. Pursuant to sections 776(a)(2)(C) and (2)(D) of the Act, when an interested party significantly impedes a proceeding and/or does not provide information that can be verified, the Department uses facts otherwise available. Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its actions at verification as described in Comment 6, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted. Relying on AFA, we find, as discussed below under Comment 6, that YPC used and benefited from this program. We are using an AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in a prior PRC proceeding, as the rate for YPC.<sup>33</sup> Additionally, in the absence of information provided by the GOC, we find that current record information provides additional bases to infer, as AFA, that this program constitutes a financial contribution and meets the specificity requirements of the Act.<sup>34</sup>

With regard to the reliability aspect of corroboration, we note that the rate on which we are relying is a subsidy rate calculated in another PRC CVD proceeding. Further, the calculated rate was based on information about the same or similar programs. Moreover, no information has been presented that calls into question the reliability of the calculated rate that we are applying as AFA for this program. Finally, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of

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<sup>32</sup> See *Shrimp from the PRC*, and accompanying IDM at 13-14.

<sup>33</sup> See *New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Review*, 75 FR 64268 (October 19, 2010) (*Off-the-Road Tires from the PRC CVD Review Preliminary Results*), unchanged in the final determination, *New Pneumatic Off-the-Road Tires From the People's Republic of China Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) (*Off-the-Road Tires from the PRC CVD Review*).

<sup>34</sup> See Memorandum, "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Analysis of July 20, 2015, New Subsidy Allegations," August 11, 2015.

information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.<sup>35</sup>

As discussed below, due to the failure of the GOC to cooperate to the best of its ability, the Department relied on information concerning PRC subsidy programs from other proceedings. In light of the above, the Department corroborated the rate it selected to use as AFA for this program to the extent practicable for this final determination. Because this rate reflects the actual behavior of the GOC with respect to similar subsidy programs, and lacking adequate verified information from the GOC and YPC demonstrating otherwise, the Department corroborated the rate that it selected to the extent practicable.

## **IX. ANALYSIS OF PROGRAMS**

### **A. Programs Determined To Be Countervailable and Used by YPC**

The Department made no changes to its *Preliminary Determination* with regard to the methodology used to calculate the subsidy rates for the following programs. For the descriptions, analyses, and calculation methodologies of these programs, *see* the *Preliminary Determination*. Except where noted, no issues were raised by interested parties in case briefs regarding these programs. Therefore, the only change in the final company-specific program rates from the *Preliminary Determination* for each of the following programs is the incorporation of YPC's corrected denominator.<sup>36</sup> The final YPC program rates are as follows.

#### **1. Policy Loans to the Corrosion-Resistant Steel Industry**

The GOC submitted comments in its case brief regarding this program.<sup>37</sup> As explained below, the Department has not changed its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.

YPC: 0.86 percent *ad valorem*

#### **2. Provision of Inputs for Less than Adequate Remuneration (LTAR)**

##### **a. Provision of Hot-Rolled Steel, Cold-Rolled Steel, Zinc, and Primary Aluminum for LTAR**

The GOC submitted comments in its case brief regarding this program.<sup>38</sup> As explained below, the Department has not changed its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.

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<sup>35</sup> *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

<sup>36</sup> *See* Final Analysis Memorandum.

<sup>37</sup> *See* Comment 5.

<sup>38</sup> *See* Comment 1-3 and 7.

YPC: 23.74 percent *ad valorem* for hot-rolled steel; 2.11 percent *ad valorem* for cold-rolled steel; 0.22 percent *ad valorem* for zinc; and 0.06 percent *ad valorem* for primary aluminum.

b. Provision of Electricity for LTAR

The GOC submitted comments in its case brief regarding this program.<sup>39</sup> As explained below, the Department has not changed its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.

YPC: 0.58 percent *ad valorem*

c. Provision of Land-Use Rights for LTAR in Jiangsu Province

YPC: 0.36 percent *ad valorem*

3. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

YPC: 0.56 percent *ad valorem*

4. Reported Grants

YPC: 0.02 percent *ad valorem*

The Department made changes to its *Preliminary Determination* decision with regard to the following program based on comments submitted in the case and rebuttal briefs regarding this program.<sup>40</sup>

5. Export Buyer's Credits from State-Owned Banks

Through this program, state-owned banks, such as the China Export Import Bank (Ex-Im Bank), provide loans at preferential rates for the purchase of exported goods from the PRC. The Department found that this program was not used by the company respondent in the *Preliminary Determination*.<sup>41</sup> However, the Department was not able to verify the reported non-use of export buyer's credits during verification with the GOC.<sup>42</sup>

As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are determining, relying upon AFA, that YPC used this program during the POI. We also determine, based upon AFA, that the program provides a financial

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<sup>39</sup> See Comment 4.

<sup>40</sup> See Comment 6.

<sup>41</sup> See PDM at 41.

<sup>42</sup> See Memorandum, "Verification of the Questionnaire Responses Submitted by the Government of China," January 20, 2016 (GOC's Verification Report), at 2-6.

contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. Our determination regarding the countervailability of this program, our reliance on AFA, and our selection of the appropriate rate to apply to this program are explained in further detail under Comment 6, below.

On this basis, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for YPC.

**B. Programs Determined to Be Not Used by, or to Not Confer a Measurable Benefit to, YPC during the POI**

1. Programs to Rebate Antidumping Duty (AD) Legal Fees
2. Export Loans
3. Treasury Bond Loans
4. Preferential Loans for SOEs
5. Preferential Loans for Key Projects and Technologies
6. Preferential Lending to Corrosion-Resistant Steel Producers and Exporters Classified as “Honorable Enterprises”
7. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
8. Debt-to-Equity Swaps
9. Equity Infusions
10. Exemptions for SOEs from Distributing Dividends to the State
11. Loans and Interest Forgiveness for SOEs
12. Preferential Income Tax Program for HNTEs
13. Preferential Income Tax Program for HNTEs in Designated Zones
14. Preferential Deduction of R&D Expenses for HNTEs
15. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment
16. Preferential Income Tax Policy for Enterprises in the Northeast Region
17. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
18. Reduction in or Exception from Fixed Assets Investment Orientation Regulatory Tax
19. Preferential Income Tax Subsidies for FIEs – ‘Productive’ FIEs
20. Preferential Income Tax Subsidies for FIEs – HNTE FIEs
21. Preferential Income Tax Subsidies for FIEs – Export Oriented FIEs
22. Income Tax Benefits for Domestically-Owned Enterprises Engaged in R&D
23. Stamp Exemption on Share Transfer Under Non-Tradeable Share Reform
24. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund
25. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
26. Provision of Land to SOEs for LTAR
27. Provision of Iron Ore for LTAR
28. Provision of Steam Coal for LTAR
29. Provision of Coking Coal for LTAR
30. State Key Technology Project Fund

31. Foreign Trade Development Fund Grants
32. Export Assistance Grants
33. Subsidies for Development of Famous Export Brands and China World Top Brands
34. Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands
35. Grants to Loss-Making SOEs
36. Export Interest Subsidies
37. Grants for Energy Conservation and Emission Reduction
38. Grants for the Retirement of Capacity
39. Grants for Relocating Production Facilities
40. Export Seller's Credits from State-Owned Bank
41. Export Credit Insurance Subsidies
42. Export Credit Guarantees

## X. ANALYSIS OF COMMENTS

### Comment 1: Whether Respondent's Producers of Inputs Are "Authorities"

#### *GOC's Comments:*

- The input producers are not government "authorities" within the meaning of section 771(5)(B) of the Act simply for being majority state owned enterprises (SOEs).
- The Appellate Body has noted "{T}he mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with 'government authority.'"<sup>43</sup>
- There is no evidence on the record showing that producers are government authorities.
- Evidence on the record shows that SOE input producers are not government authorities, including the *Company Law of China* (which ensures that input producers are independent business entities, operating on commercial bases because it requires an SOE to maximize profits and act in the best interest in the company) and the *PRC Law on State-Owned Assets* (which states the state shareholders cannot interfere with the normal business operations of SOEs).
- SOEs make independent, day-to-day commercial decisions, and decisions regarding mergers and acquisitions are made independently by the Board of Directors.
- The affiliations between company officials and the Chinese Communist Party (CCP) do not make the company a "government authority."
- The CCP is not a "government authority." CCP officials are not eligible under PRC law to be an owner or company official of the input producers. Although the Department found in *PC Strand* that CCP officials "can, in fact, serve as owners, members or the board or directors, or senior managers of companies," the GOC states that the finding in *PC Strand* concerned *membership* in the CCP and National Party Conference (NPC), not

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<sup>43</sup> See, e.g., Appellate Body Report, United States – *Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011) (*US-CVD I WTO AB Decision*), para. 318.

whether CCP *officials* could serve on boards of directors.<sup>44</sup> Furthermore, the Department found that membership in the CCP or NPC is insufficient to establish government control.

- Under the *Company Law of China*, shareholders hold the ultimate responsibility to the shareholders of the company.
- The Department has determined (in AD proceedings) that the *Company Law of China* establishes an absence of *de jure* control over privately-owned companies in the PRC.
- The Department’s analysis with regard to CCP officials creates an impossibly difficult task for the GOC and respondents to complete. The GOC responded to the best of its ability to questions relating to ownership and CCP’s involvement in the input provider companies and provided sufficient evidence showing input suppliers were not government authorities.
- The Department provides no evidence specific to this case supporting its assertion that CCP affiliations or activities are relevant to its “government authorities” analysis. The Public Bodies Memorandum cited by the Department provides little analysis as to the conclusion that CCP officials or committees influence non-state-owned entities.

*United States Steel Corporation (U.S. Steel) Rebuttal Comments:*

- AFA is warranted because the GOC has not acted to the best of its ability to provide necessary information about whether suppliers are “authorities.”
- The GOC waited for respondents to declare that they were not cooperating and then failed to meet the deadline. The GOC only responded with a letter on the questionnaire due date stating it was “impossible and premature” for the GOC to respond at that time, but the GOC had in its possession the relevant subsidy information at all times but did not respond to the questionnaire until October 21, 2015, after four extensions of time.
- The GOC has provided no new information or argument that would require the Department to deviate from its *Preliminary Determination* by not applying AFA to find that input supplies are “authorities.”
  - The GOC failed to provide information concerning the involvement and presence of CCP officials within the input suppliers.
  - The GOC failed to provide information regarding the CCP’s structure and policy implementation roles within the corrosion-resistant steel industry.
- The Department has shown that its determinations that SOEs are “authorities” are based on more than just state-ownership. Specifically, the Department has shown in its Public Bodies Memorandum that SOEs in the PRC “possess, exercise, or are vested with governmental authority” and that the GOC “exercis{es} meaningful control over these entities.”<sup>45</sup>
- When the GOC cites the *Company Law of China* to show that input producers are not “authorities” it ignored the Department’s questions regarding the SOEs role in setting and implementing government policy and otherwise acting as government authorities.

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<sup>44</sup> See *Pre-Stressed Concrete Steel Wire Strand from China, Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) (*PC Strand*), and accompanying IDM at Comment 8.

<sup>45</sup> See, e.g., Memorandum, “Additional Documents and Benchmark Information for Preliminary Determination,” November 2, 2015 (Additional Documents Memorandum), at Attachments I (CCP Memorandum) and II (Public Body Memorandum) at 8-9, 27.

**Department’s Position:** The Department continues to find that the companies producing the hot-rolled steel, cold-rolled steel, zinc, and primary aluminum purchased by YPC are “authorities” within the meaning of section 771(5)(B) of the Act, and the goods provided by them are financial contributions within the meaning of section 771(5)(D)(iii) of the Act.<sup>46</sup> In the *Preliminary Determination* we determined that several producers identified by the GOC as SOEs were “authorities” because, as explained in the Public Body Memorandum, majority SOEs in the PRC possess, exercise, or are vested with governmental authority. Furthermore, as described below, because the GOC failed to cooperate to the best of its ability in responding to our requests for information, the Department determined, using AFA, that the remaining producers are also “authorities” within the meaning of section 771(5)(B) of the Act.

As explained in the *Preliminary Determination*, we sought information from the GOC regarding the specific companies that produced hot-rolled steel, cold-rolled steel, zinc and primary aluminum that the respondent purchased during the POI that would allow us to do a complete analysis of whether the input producers are “authorities” within the meaning of section 771(5)(B) of the Act.<sup>47</sup> We also explicitly sought information regarding the role that CCP officials may have played in any of the input suppliers’ operations.<sup>48</sup> To the extent that the owners, managers, or directors of a producer are CCP officials or are otherwise influenced by certain state-affiliated entities, the Department inquired into the means by which the GOC may exercise control over company operations and other CCP-related information.<sup>49</sup> The Department has explained to the GOC its understanding of the CCP’s involvement in the PRC’s economic and political structure in prior PRC CVD proceedings,<sup>50</sup> and has explained why it considers the information regarding the CCP’s involvement in the PRC’s economic and political structure to be relevant.<sup>51</sup>

Despite the importance of the information requested in the Input Producer Appendix, the GOC provided none of the requested information with regard to CCP officials and CCP primary organizations. In the *Preliminary Determination*, relying on AFA, we concluded that the producers of hot-rolled steel, cold-rolled steel, zinc, and primary aluminum whom the GOC claimed to be privately held are “authorities” within the meaning of section 771(5)(B) of the Act, because the GOC failed to provide all requested information in the input producer appendix and failed to report whether board members, owners or senior managers were government or CCP officials.<sup>52</sup> In particular, we found in the *Preliminary Determination*, pursuant to sections 776(a)(2)(A) and (B) of the Act, that the GOC withheld the necessary information that was requested of it and failed to provide information in the form and manner requested. Specifically,

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<sup>46</sup> See PDM at 16 – 17.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*; see also Letter to the GOC, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Countervailing Duty Questionnaire,” July 21, 2015 (Initial Questionnaire), at II-8 – II-11, II-23 – II-27.

<sup>49</sup> See, e.g., Initial Questionnaire at II-8 – II-11, II-23 – II-27.

<sup>50</sup> See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*), and accompanying IDM at Comment 6.

<sup>51</sup> *Id.*

<sup>52</sup> See PDM at 16-17.

the GOC failed to explain the efforts it undertook to try and obtain the requested information, it failed to provide capital verification reports, articles of association, by-laws, and annual reports for the input producers, and it declined to answer questions about the CCP's structure and functions. The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act.<sup>53</sup> Furthermore, because the GOC failed to cooperate to the best of its ability in responding to our requests for information, the Department determined that an adverse inference was warranted in selecting from among the facts available.

Contrary to the GOC's assertions and objections to our questions, it is the prerogative of the Department, not the GOC, to determine what information is relevant to our analysis.<sup>54</sup> As noted, the Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be essential because public information demonstrates that the CCP may exert significant control over activities in the PRC.<sup>55</sup> The CCP Memorandum and Public Body Memorandum support the Department's determination that CCP membership is relevant to companies—including private companies—in the PRC.<sup>56</sup> Specifically, the Department has determined that "available information and record evidence indicates that the CCP meets the definition of the term 'government' for the limited purpose of applying the U.S. CVD law to China."<sup>57</sup> Further, publicly available information indicates that PRC law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in the company's affairs.<sup>58</sup> The GOC failed to rebut the substantive concerns described above with anything other than unsupported assertions.

Taking into account the information that the CCP in the PRC meets the definition of "authorities" for U.S. CVD law, the observation that certain company officials were members and not officials of the CCP and NPC in *PC Strand* does not diminish the Department's position that complete information related to whether any senior company officials were government or CCP officials and to the role of any CCP committee within the companies is essential to determine whether hot-rolled steel, cold-rolled steel, zinc, and primary aluminum producers are "authorities" within the meaning of section 771(5)(B) of the Act.<sup>59</sup>

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<sup>53</sup> See Additional Documents Memorandum.

<sup>54</sup> See *NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); see also *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (stating that "[i]t is Commerce, not the respondent, that determines what information is to be provided").

<sup>55</sup> See Additional Documents Memorandum.

<sup>56</sup> See CCP Memorandum; see also Public Body Memorandum; see also *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission in Part; 2012 – 2013*, 80 FR 69638 (November 10, 2015), and accompanying IDM at Comment 1.

<sup>57</sup> See CCP Memorandum at 33.

<sup>58</sup> See Public Body Memorandum at 35–36, and sources cited therein.

<sup>59</sup> See *PC Strand*, and accompanying IDM at Comment 8.

We disagree with the GOC's assertion that it has responded to the Department's Initial Questionnaire to the best of its ability. In the 2012 administrative review of *Citric Acid from the PRC*, the Department rejected the GOC's assertion that it cannot obtain information on CCP officials and CCP organizations.<sup>60</sup> In this case, despite the fact that on several occasions the Department provided additional time for the GOC to respond to its questionnaire, the GOC simply refused to answer necessary questions regarding the CCP's structure and functions and failed to provide requested documents. The Department first granted additional time for the GOC to respond because of the addition of new mandatory respondents, even though the identity of mandatory respondents is not relevant to questions about the CCP's structure, functions, or its involvement with input producers.<sup>61</sup> The Department then granted another extension of time for the GOC to file its responses to these questions.<sup>62</sup>

Because in this proceeding the GOC did not provide the information we requested regarding the issue of CCP officials' involvement, we have no basis to revise the Department's preliminary AFA finding that certain hot-rolled steel, cold-rolled steel, zinc, and primary aluminum producers are "authorities" within the meaning of section 771(5)(B) of the Act. Similarly, the Department's evaluation of the *Company Law of China* in the context of separate rate analyses in AD proceedings does not evince a lack of state control here. As explained in *Aluminum Extrusions from the PRC*, AD PRC proceedings are separate and distinct from CVD PRC proceedings with the application of different analyses and methodologies.<sup>63</sup> As such, the Department's finding in an AD review is not germane to this investigation.

Finally, we disagree with the GOC's assertion that our "authorities" analysis for the majority government-owned producers and SOE producers was based solely on state ownership. Rather, as explained in the Public Body Memorandum, we found that majority-owned SOEs in the PRC possess, exercise, or are vested with governmental authority.<sup>64</sup> Our finding is based on the GOC exercising meaningful control over these entities and using them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.<sup>65</sup> The GOC has not placed information on the record that contradicts our findings in the Public Body Memorandum. Moreover, the Department's determination here is consistent with U.S. law, which in turn is consistent with U.S. WTO obligations.

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<sup>60</sup> See *Citric Acid and Certain Citrate Salts: Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 36012 (June 25, 2014) (*Citric Acid from the PRC 2012 AR*), and accompanying IDM at 5, and 23-24. See also *id.* at 18 (discussing the GOC's disclosure of the political positions held by the chairman of the board of a producer).

<sup>61</sup> See Letter to the GOC; "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Countervailing Duty Questionnaire," September 11, 2015.

<sup>62</sup> See Letter to the GOC; "Certain Corrosion-Resistant Steel Products from the People's Republic of China: Countervailing Duty Questionnaire Extension Request," September 24, 2015.

<sup>63</sup> See *Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (December 31, 2014) and accompanying IDM at 63-64; Comment 8.

<sup>64</sup> See Public Bodies Memorandum at 11 – 37.

<sup>65</sup> *Id.*

Therefore, for reasons described above, we continue to determine that the companies producing the hot-rolled steel, cold-rolled steel, zinc, and primary aluminum purchased by YPC are “authorities” within the meaning of section 771(5)(B) of the Act, and that YPC received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

## **Comment 2: Whether Inputs for LTAR Are Specific**

### *GOC’s Comments:*

- The hot-rolled steel, cold-rolled steel, zinc and primary aluminum industries are not specific because they are not limited in number within the meaning of section 771 (5A)(D)(iii)(I) of the Act because the inputs are used in a variety of industries.
- The GOC provided information regarding the manufacturing and uses of the inputs in its National Economy Industry Classification, as well as the United Nations’ “International Standard Industrial Classification for All Economic Activities” (ISIC). The GOC also provided a chart comparing the two standards.<sup>66</sup>
- Information on the record shows “broad and diverse uses of these inputs” such as information showing input applications of hot-rolled steel in “virtually all sectors of industry,” and cold-rolled steel in “domestic application, automotive application, lighting fixtures, electrical components (stators, rotors) and various kinds of sections roofing applications, profiled sheets, wall elements, etc.”<sup>67</sup> The GOC also provided information showing zinc is “one of the most widely used metals in the world” and the “industries that use primary aluminum are literally too numerous to mention.”<sup>68</sup>
- The Department should thus find, consistent with *Chlorinated Isos from the PRC*, that inputs of hot-rolled steel, cold-rolled steel, zinc, and primary aluminum are used too broadly to be considered specific.<sup>69</sup>

### *U.S. Steel’s Rebuttal Comments:*

- The Department should find, as it did in the *Preliminary Determination* that the GOC did not act to the best of its ability in providing information regarding the purchasing of inputs by the industry in question.
- The Department should continue to apply AFA because the GOC provided no new information that would require the Department to deviate from the *Preliminary Determination*.
- The GOC did not provide necessary consumption information for iron and steel inputs.
- The number of applications or uses of a good is irrelevant; what is relevant is the volume and value of the input used by the industries in question.

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<sup>66</sup> See Letter from the GOC, “Certain Corrosion-Resistant Steel Products from China; CVD Investigation GOC Initial Response to The Requested Information Due by October 7, 2015,” October 7, 2015 (GOC’s Initial QR) at 29, and Exhibit II.E.2.

<sup>67</sup> See GOC’s Initial QR at 25, 37 and Exhibit II.E.2

<sup>68</sup> *Id.* at 49, 60.

<sup>69</sup> See *Chlorinated Isocyanurates From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*; 2012, 79 FR 56560 (September 22, 2014) (*Chlorinated Isos from the PRC*).

**Department’s Position:** The Department explained in the *Preliminary Determination* that, with respect to the specificity of the provision of hot-rolled steel, cold-rolled steel, zinc, and primary aluminum, the GOC “did not *adequately* answer the questions posed by the Department, nor did the GOC ask for additional time to gather and provide such information.”<sup>70</sup> As a result, we found that the GOC withheld requested information and that this amounted to a failure of the GOC to act to the best of its ability, within the meaning of sections 776(a) and (b) of the Act. Consequently, we determined that an adverse inference was warranted in the application of facts available. In drawing an adverse inference, we found that the purchasers of hot-rolled steel, cold-rolled steel, zinc, and primary aluminum provided for LTAR are limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act. Thus, the *Preliminary Determination* did not claim that the GOC provided no information whatsoever. However, the information provided, which the GOC now references in its brief is, as the Department preliminarily found, inadequate.

The incomplete information on the record does not undermine the Department’s findings, or otherwise establish that recipients of the subsidies in question are not limited in number. The information provided by the GOC consists of inadequately supported lists of “sectors of industry” that have applications using the inputs.<sup>71</sup> In the case of hot-rolled steel and, cold-rolled steel, the lists are supported by a four-page printout from the website of worldsteel.org, which happens to list a number of “sectors” and products that use hot-rolled steel and cold-rolled steel. Besides not being specific to the economy of the PRC, this supporting documentation from worldsteel.org provides no data at all indicating how much hot-rolled steel or cold-rolled steel is used by each sector, industry, application, product, *etc.* It is also far from clear how the information included in the chart is supposed to be interpreted. It includes a matrix comparing a list of sectors using steel products with 15 steel products used in those sectors. How exactly the chart indicates which of the 15 steel products are used in which of the sectors is not obvious, however. In the case of zinc and primary aluminum, the GOC provided no supporting documentation whatsoever for the lists of uses included in its narrative response. The GOC also provided industry catalogs and coding systems that list all industries in the PRC economy. These documents do not provide any information regarding usage of steel, zinc, or primary aluminum.

Even assuming *arguendo* that the information included in the worldsteel.org printout is an accurate representation of users in the PRC, the information does not indicate that users are unlimited or expansive in number. The Department’s best reading of the chart is that hot-rolled steel is used in “profiles,” “structural parts,” “cladding,” “chimney ducts,” “construction components {sic},” “stairs,” “floor components,” and “tubes.”<sup>72</sup> The chart appears to indicate that cold-rolled steel is used in “profiles.” The industries in the hot-rolled steel list appear to be concentrated heavily in the “construction sector,” while the sole industry listed for cold-rolled steel is in the “framework sector.”<sup>73</sup> By comparison, the industry catalogs and coding systems the GOC provided, which are specific to the PRC, indicate a much broader economy that is not addressed in the worldsteel.org information, including sectors such as agriculture and forestry,

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<sup>70</sup> See PDM at 18 (emphasis added); *see also* Initial Questionnaire at II-10.

<sup>71</sup> See GOC’s Initial QR at Exhibit II.E.2.1.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

mining, manufacturing, wholesale and retail, communications and transportation, hospitality, information technology, finance, real estate, business services, science and technology, water and public facilities, residential services, education, healthcare, entertainment, public administration, and “international organization.”<sup>74</sup>

Thus, the Department continues to find that the GOC has withheld information requested of it, within the meaning of section 776(a)(2)(A) of the Act, and that the Department must rely on facts available in making a specificity determination. Additionally, we continue to find that an adverse inference is warranted in selecting from among the facts available because the GOC did not adequately answer the questions posed by the Department, nor did the GOC ask for additional time to gather and provide some information. As AFA we find that the inputs are provided to a limited number of users and are thus specific under section 771(5A)(D)(iii)(I) of the Act.

Finally, we note that the Department’s *de facto* specificity analysis is not limited simply to whether users are limited in number. Instead, sections 771(5A)(D)(iii)(II)-(III) of the Act provides that a subsidy is also *de facto* specific if an enterprise or industry is a predominant user of the subsidy or receives a disproportionately large amount of the benefit. Therefore, even if the GOC had presented information establishing use by a limited number of users, it still did not provide requested data that would have allowed the Department to determine the usage of the subsidy by corrosion-resistant steel producers versus usage by other industries (as contemplated by sections 771(5A)(D)(iii)(II)-(III) of the Act). Therefore, the facts of this investigation are not similar to *Chlorinated Isos from the PRC*, in which the Department was provided with the data necessary for the complete *de facto* specificity analysis.<sup>75</sup>

### **Comment 3: Whether to Use a Tier One Benchmark to Determine the Adequacy of Remuneration for Inputs for LTAR**

#### *GOC’s Comments:*

- The Department must use a PRC benchmark to determine the adequacy of remuneration for inputs for LTAR.
- Evidence of an SOE is not in itself sufficient to show that an in-country benchmark is too distorted to be reliable.
- The PRC prices of hot-rolled steel, cold-rolled steel, zinc and primary aluminum reflect market forces.
- The Department’s finding in the *Preliminary Determination* that use of an in-country benchmark was inappropriate is not supported by the record and is inconsistent with U.S. international obligations under the WTO.

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<sup>74</sup> *Id.* at Exhibit II.E.2.m.

<sup>75</sup> See *Chlorinated Isos from the PRC*, and accompanying IDM at 23 and 38-41 (finding the provision of urea not specific based on the “overarching fact that a large number of diverse industrial sectors in the PRC use urea *and that the industry producing subject merchandise is not the predominant or disproportionate user of urea*”) (emphasis added).

*U.S. Steel's Rebuttal Comments:*

- The GOC failed to provide information regarding the PRC's domestic consumption and production, total volume and value of imports of the input and other relevant information. Thus, AFA is warranted.
- The Petition showed that prices in the PRC for hot-rolled steel, cold-rolled steel, zinc, and primary aluminum are distorted.
- The record shows there were many price and export controls of inputs, including a 15 percent tax on exports of primary aluminum, and exports of primary aluminum were reduced resulting in a surplus in the PRC.

**Department's Position:** In response to questions regarding the structure of the hot-rolled steel, cold-rolled steel, zinc, and primary aluminum industries in the POI and prior two years, the GOC stated that it "has not obtained all information within the limited amount of time provided by the Department. The GOC will provide relevant information once they are available."<sup>76</sup> The Department noted that the requested information was due no later than the relevant due date of the Initial Questionnaire, and by answering the question in the manner stated above, the GOC "was effectively granting itself an indefinite extension to file the information in the future without specifying when or to what extent it would be able to provide the information."<sup>77</sup> Furthermore, the GOC ultimately did not provide any of this requested information in its final October 21, 2015 submission, or any time thereafter.

The GOC's reference to information on the record indicating the absence of formal, express price controls, production quotas, or export controls is irrelevant. The Department's benchmark analysis has focused on the presence of the government in the PRC market, not on direct evidence that the government has manipulated prices. The requested information that the GOC did not provide is necessary to that inquiry. Moreover, the GOC's focus on price controls misses the point of the Department's analysis. The Department's examination focuses not on whether prices are fixed, but whether they are distorted by the government's presence in the market pursuant to broader government objectives and policies. Prices might indeed fluctuate, but they fluctuate within the context of such objectives and policies, rather than market principles. Therefore, the GOC's references to a lack of evidence of formal, express controls over the market does not contradict the Department's adverse inference that the GOC dominates the four markets at issue and the conclusion that the markets are distorted.

Finally, the Department's determination is consistent with U.S. law, which in turn is consistent with U.S. WTO obligations.

**Comment 4: Whether the Provision of Electricity for LTAR Is Countervailable**

*GOC's Comments:*

- The Department did not provide sufficient information showing the National Development and Reform Commission (NDRC) of the PRC stipulates or alters the electricity price schedules and electricity proposals from provincial governments.

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<sup>76</sup> See, e.g., GOC's Initial QR at 21.

<sup>77</sup> See PDM at 19.

- Provincial governments set electricity prices based on market supply and demand principles.
- Further, electricity prices are classified by end user categories, and within each category for each province, electricity prices are equally applied to all end users. Accordingly, there is no specificity with regard to electricity.
- The GOC's provision of electricity to corrosion-resistant steel producers in this case is general infrastructure and, thus, not a financial contribution. The Department should follow its practice of not countervailing general infrastructure.

*U.S. Steel's Rebuttal Comments:*

- The GOC failed to provide relevant and necessary information about the establishment of electricity rates in the PRC.
- The GOC failed to provide or point out new information regarding the Department's decision to apply AFA.
- The Department has continued to state that the provision of electricity is not general infrastructure.<sup>78</sup>
- The GOC failed to provide information necessary to determine whether electricity rates reflect market-determined prices that could be used as benchmarks.

**Department's Position:** In continuing to find this program countervailable, we rely on our findings in the *Preliminary Determination* that the GOC's provision of electricity confers a financial contribution, under section 771(5)(D) of the Act, and is specific, under section 771(5A) of the Act.<sup>79</sup> This determination was based in part on AFA as a result of the GOC's failure to provide certain information regarding electricity costs, labor costs, and electricity price proposals requested by the Department.<sup>80</sup> The GOC has identified no new evidence or information that warrants reconsideration of those findings.

Additionally, the GOC's arguments regarding specificity are irrelevant to the Department's finding. The GOC argues that its electricity tariffs are not specific because the same price is charged to each type of end user within a province. However, the Department's analysis and its specificity determination are not based on a conclusion that different users within a province are treated differently or that preferential rates otherwise exist within the province. Rather, we have

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<sup>78</sup> See, e.g., *Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 21, 2015) and accompanying IDM at Comment VIII; *Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 49475 (August 14, 2013) (*OCTG from the PRC 2011 AR*), and accompanying IDM at Comment 5; *Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*OCTG from the PRC Final Determination*), and accompanying IDM at Comment 30; *Final Affirmative Countervailing Duty Determination Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001) (*Hot-Rolled Carbon from Thailand*), and accompanying IDM at Comment 10 (concluding that the provision of electricity does not constitute general infrastructure and is countervailable), sustained by *Royal Thai Government v. United States*, 441 F. Supp. 2d 1350, 1354-58 (CIT 2006).

<sup>79</sup> See PDM at 20-22.

<sup>80</sup> As we did in the *Preliminary Determination*, we are using the respondent's reported electricity usage data, as verified by the Department, in calculating the benefit.

focused on the GOC's failure to explain why rates differ among provinces, not within provinces. The GOC has failed to explain these differences in this and previous cases, claiming without support that the provincial governments set the rates for each province in accordance with "market principles." Because the GOC has never effectively addressed our questions related to this claim, we have determined as AFA that different electricity rates among provinces constitutes a regionally-specific subsidy. It is not our responsibility, as the GOC claims in its brief, to "prove" that the central government stipulates electricity tariffs or alters the proposals provided by the provincial governments to create these varying rates when the GOC fails to provide the requested information necessary for such analysis.

Finally, regarding the GOC's claim that the provision of electricity is not countervailable because it is general infrastructure, we disagree. The GOC refers to the Department's analysis in *Wire Rod from Saudi Arabia* of certain benefits such as roads and ports as potential general infrastructure benefits,<sup>81</sup> and argues that the Department should apply the same analysis to the provision of electricity in this case. We note that the *Wire Rod from Saudi Arabia* decision was issued in 1986, and the Department has since revised its approach to assessing whether a particular financial contribution constitutes general infrastructure.<sup>82</sup> Similarly, the GOC's cite to *Bethlehem Steel*<sup>83</sup> is inapposite, because record evidence in that case showed that the Korean producer under review did not receive a countervailable benefit from infrastructure subsidies; we do not have similar record support here. Moreover, the Department has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.<sup>84</sup> Also, the Department's regulations explicitly categorize electricity within the provision of countervailable goods and services.<sup>85</sup> Therefore, we continue to find that electricity for LTAR provides a financial contribution through the provision of a good or service.

#### **Comment 5: Whether the GOC Provided Policy Loans to YPC during the POI**

##### *GOC's Comments:*

- No loans were issued to respondents linked to the alleged government policy to encourage the corrosion-resistant steel industry.
- PRC commercial banks, including PRC policy banks and state-owned commercial banks (SOCBs), are not government authorities.

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<sup>81</sup> See *Carbon Steel Wire Rod from Saudi Arabia*, 51 FR 4206 (February 3, 1986) (*Wire Rod from Saudi Arabia*).

<sup>82</sup> See, e.g., *Hot-Rolled Carbon from Thailand*, and accompanying IDM at Comment 10 ("Furthermore, the electricity at issue here is not general infrastructure, but a good that is bought and sold in the marketplace. In the Department's view, the term infrastructure refers to the types of goods and services described in the Preamble to the regulations, including schools, interstate highways, health care facilities and police protection. According to our regulations, if we find that these types of infrastructure were provided for the broad societal welfare, they would be considered general infrastructure."); see also *Certain Steel Wheels from the People's Republic from China: Final Affirmative Countervailing Duty Determination, Final Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012) (*Steel Wheels from the PRC*), and accompanying IDM at 64, Comment 20 ("The Department disagrees with the GOC's position that electricity is categorized as 'general infrastructure.' The Department has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.").

<sup>83</sup> See *Bethlehem Steel Corp. v. United States*, 223 F. Supp. 2d 1372 (CIT 2002) (*Bethlehem Steel*).

<sup>84</sup> See, e.g., *Steel Wheels from the PRC*, and accompanying IDM at 64, Comment 20 ("The Department has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.").

<sup>85</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998).

- The Department did not provide an analysis of the issue of whether these banks are government authorities within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act. The Department wrongly assumes that government ownership in itself indicates that an entity is a government entity and this assumption violates the U.S.’s WTO obligations.
- All commercial banks in the PRC operate on commercial principles.
- The *Capital Rules for Commercial Banks* and *Interim Measures for the Administration of Working Capital Loans* (provisional) (*Capital Rules*) have resulted in substantial changes in commercial banking law in the PRC. Furthermore, the *Capital Rules* eliminate industrial policies as a consideration, stipulate due diligence on the part of banks, and provide that loans be made on the basis of factors such as specified use, continuing operations, credit, scale, business characteristics, working capital, cash flow, and capital turnover.
- The *Capital Rules*, in effect during the POI, demonstrate that commercial loans to businesses in the PRC are regulated under applicable PRC law and result in substantial changes in the PRC’s commercial banking sector. Contrary to the *Preliminary Determination*, there is no evidence that banks act inconsistently with these rules.
- The Department’s use of external interest rates as benchmarks was arbitrary, unsupported by the record and unlawful. The record does not provide evidence showing loans were made on non-commercial terms. New laws and rules regarding loan management, capital adequacy and floor interest rates ensure loans are being made on commercial terms.
- The Department’s calculation of an external benchmark rate using a regression analysis based on World Bank indicators and International Monetary Fund (IMF) rates was flawed, illogical and arbitrary and does not construct an accurate third-country basket benchmark interest rate for the PRC.

#### *U.S. Steel’s Rebuttal Comments*

- The policy loans made were specific within the meaning of section 771(5A)(D)(i) of the Act.
- The Department should continue to find that the *Steel and Iron Industry Development Policy*, the *Iron and Steel Industry 12th Five Year Plan*, and other GOC policies show that the GOC pursues a policy of preferential lending to the corrosion-resistant steel industry.
- The Department has found in *Wind Towers from the PRC* that PRC bank lending laws require PRC banks to “carry out their loan business under the guidance of the State industrial policies.”<sup>86</sup>
- The relevant industrial policies call for preferential lending to support industries.
- The *Capital Rules* does not show that the PRC does not issue loans pursuant to policy objectives. The Department has found that the *Capital Rules* do not “call into question the Department’s prior findings regarding the Chinese banking sector.”<sup>87</sup>

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<sup>86</sup> See, e.g., *Utility Scale Wind Towers From the People’s Republic of China: Final Affirmative Countervailing Duty Determination from the PRC*, 77 FR 75978 (December 26, 2012) (*Wind Towers from the PRC*), and accompanying IDM at Comment 3; see also *OCTG from the PRC 2011 AR* and accompanying IDM at Comment 8; see also *OCTG from the PRC Final Determination*, and accompanying IDM at Comment 21.

- The Department has also stated that the GOC has failed to provide evidence showing that the *Capital Rules* have altered or changed the GOC’s preferential loan practices, the roles of institutional banks in the PRC banking sector, or the relationship between the state and commercial banks.<sup>88</sup>
- The loans are a financial contribution because SOCBs are “government authorities.”<sup>89</sup>
- The Department’s use of an external benchmark rate was lawful. In prior cases, the Department has considered and rejected the claim that its refusal to use PRC interest rates to measure the benefit from the policy loans is unlawful.
- Specifically, the Department stated that its practice of using an external benchmark interest rate “appropriately reflects conditions of lending in China, accounts for changes in China’s level of economic development in recent years, and excludes negative interest rates that do not reflect interest rates for commercial loans.”<sup>90</sup>

**Department’s Position:** We continue to find that lending from SOCBs – beyond just the “Big Four” banks – constitutes a financial contribution, pursuant to sections 771(5)(B) and 771(5)(D)(i) of the Act, that the PRC lending market is distorted, and that external benchmarks should be used to determine any benefits from this program. Additionally, we continue to find that loans provided to the respondent are specific within the meaning of section 771(5A)(D)(i) of the Act.

In the current investigation, the GOC indicated that the *Capital Rules*, as enacted by the China Banking Regulatory Commission, went into effect on January 1, 2013. According to the GOC, these *Capital Rules* establish tight disciplines on loan management. According to the GOC, these changes, combined with deregulation of floor interest rates by commercial banks, demonstrate substantial changes in the PRC’s commercial banking sector. We find that these changes do not call into question the Department’s prior findings regarding the PRC’s banking sector. The GOC has cited certain specific regulatory initiatives concerning bank loan management and lending rate floors that the GOC has recently undertaken. However, as we have explained previously, there is often a distinction between *de jure* reforms of the PRC’s banking sector and *de facto* banking practices.<sup>91</sup> *De jure* reform does not always translate into *de facto* reform. Regarding the most recent round of *de jure* modifications, insufficient time has

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<sup>87</sup> See, e.g., *Aluminum Extrusions From the People’s Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015) (*Aluminum Extrusions from the PRC*) and accompanying IDM at Comment 3.

<sup>88</sup> *Id.*

<sup>89</sup> See, e.g., *Wind Towers from the PRC*, and accompanying IDM at Comment 4; *Stressed Concrete Steel Wire Strand from the People’s Republic of China*, 75 FR 28557 (May 21, 2010), and accompanying IDM at Comment 21; *OCTG from the PRC Final Determination*, and accompanying IDM at 9-13, Comment 20; *Citric Acid from the PRC 2012 AR*, and accompanying IDM at Comment 2; *Lightweight Thermal Paper from the People’s Republic of China*, 73 FR 57323 (October 2, 2008), and accompanying IDM at Comment 6; *Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China*, 73 FR 40480 (July 15, 2008), and accompanying IDM at Comment E.2; *CFS from the PRC*, and accompanying IDM at Comment 8.

<sup>90</sup> See *Certain Oil Country Tubular Goods From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014), and accompanying IDM at 66-68, Comment 3; see also *Aluminum Extrusions from the PRC*, and accompanying IDM at 8, Comment 4; *Wind Towers from the PRC*, and accompanying IDM at Comment 6.

<sup>91</sup> See, e.g., *OCTG from the PRC Final Determination*, and accompanying IDM at 97.

elapsed to see clearly the definitive, *de facto* results of these incremental reforms and regulatory initiatives, nor does the record contain any such evidence. More importantly, even under the assumption that sufficient time might have elapsed, the GOC has offered no demonstration or evidence of how these incremental reforms and regulatory initiatives have fundamentally changed, or relate to fundamental changes in (i) core features of the state commercial bank relationship, and (ii) the economic and institutional roles of banks and the banking sector in the PRC. The Department noted these features and roles in its analysis in *CFS from the PRC*.<sup>92</sup> In the absence of any argument or evidence of such changes, the Department sees no basis at this time to depart from its analysis of the PRC's banking sector.

Furthermore, the GOC cites the *Capital Rules* as sufficient information on the record showing the lending market has significantly changed. However, the *Capital Rules* only address capital adequacy and loan management standards.<sup>93</sup> The rules do not address the use of policy considerations or the role of government in the financial system. The record, therefore, contains no evidence that contradicts our findings in *CFS from the PRC* that the PRC's banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the financial system and the government's use of banks to effectuate policy objectives.

In fact, the record of this investigation indicates that policy considerations continue to be a significant factor in lending decisions. As noted in the *Preliminary Determination*, among the GOC's efforts to develop the corrosion-resistant steel industry is Article 25 of the Steel and Iron Industry Development Policy, Order No. 35 of the National Reform and Development Commission (*Steel Plan*),<sup>94</sup> which specifically encourages financial institutions to "comply with development policies for the iron and steel industry," including steel smelting and steel rolling (*i.e.*, producers of corrosion-resistant steel). As we also noted in the *Preliminary Determination*, the updated *Iron and Steel Industry 12<sup>th</sup> Five-Year Plan*,<sup>95</sup> which covers 2011 through 2015, requires that government entities coordinate "finance policy," among other policy tools, towards the development of the cold-rolled and corrosion-resistant steel industry.

Likewise, we continue to find, consistent with our determination in *CFS from the PRC* regarding the PRC's banking sector, that state-owned or controlled banks outside the "Big Four" SOCBs are "authorities" within the meaning of section 771(5)(B) of the Act.<sup>96</sup> The Department has repeatedly affirmed these findings in proceedings following *CFS from the PRC*. In *OCTG from the PRC*, for example, we noted that:

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<sup>92</sup> See *CFS from the PRC*, and accompanying IDM.

<sup>93</sup> See GOC's Initial QR at Exhibit II.A.1.h, at *Capital Rules* at Chapter 1, Article 1 ("The *Capital Rules* for *Commercial Banks* are formulated . . . with a view to strengthening the commercial banks' capital regulation, thereby ensuring the soundness and stability of the banking system and protecting the interests of depositors.").

<sup>94</sup> See Letter from the GOC, "Certain Corrosion-Resistant Steel Products from China; CVD Investigation GOC Supplemental Questionnaire Response," October 21, 2016, at Exhibit S1-A ("Steel and Iron Industry Development Policy, Order No. 35 of the National Reform and Development Commission" (*Steel Plan*) (GOC First SQR at Exhibit S1-A)).

<sup>95</sup> See GOC First SQR at Exhibit S1-B.

<sup>96</sup> See *Aluminum Extrusions from the PRC*, and accompanying IDM at Comment 7, citing *Coated Paper from the PRC*, and accompanying IDM at Comment 10.

{T}he GOC has failed to provide evidence that the government has divested itself of ownership in Chinese banks. The GOC has failed to address the issue of real risk assessment within the Chinese banking sector. The GOC has failed to address interest rate and deposit rate ceilings and floors set by the government. The GOC has failed to address both *de jure* and *de facto* reforms within the Chinese banking sector. The GOC has failed to address the elimination of policy based lending within the Chinese banking sector. Therefore, the GOC has failed to provide the information that would warrant a reconsideration of the Department’s determination in {the *CFS from the PRC* investigation}.<sup>97</sup>

In a more recent investigation, *Aluminum Extrusions from the PRC*, we also noted that the banking system continues to be affected by the legacy of government policy objectives, which continue to undermine the ability of the “Big Four” and the rest of the domestic banking sector to act on a commercial basis, and allows continued government involvement in the allocation of credit in pursuit of those objectives.<sup>98</sup> Thus our treatment of SOCBs as authorities turns on more than the existence of government ownership.

The GOC argues that no loans were issued to respondents pursuant to the policy lending program because the program does not exist. It argues that the Department should not have relied on the *Steel Plan* in the *Preliminary Determination* to conclude that these government plans and directives encourage and support the growth and development of the corrosion-resistant steel industry because the *Steel Plan* is not legally binding on the corrosion-resistant steel industry or the financial sector. This argument ignores the Department’s previous findings that commercial banks in the PRC should follow the “guidance” of central planning authorities. Specifically, the Department has found that “Article 34 of Law of the People’s Republic of China on Commercial Banks (Banking Law) states that banks should carry out their loan business ‘under the guidance of the state industrial policies.’ . . . {Therefore} the Banking Law, in some measure, stipulates that lending procedures be based on the guidance of government industrial policy.”<sup>99</sup> Thus, contrary to the GOC’s arguments, there exists a link between the GOC’s industrial policies and lending. We referred to several laws and directives of the GOC discussed above and in the *Preliminary Determination*, which indicate that it has targeted the corrosion-resistant steel industry for development and preferential policy lending. As such, for this final determination, we continue to find that the loans provided to corrosion-resistant steel producers were made pursuant to government directive.

Furthermore, the GOC’s argument is inconsistent with the Department’s practice of determining whether a program is specific. The Department finds that policy lending is specific to an

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<sup>97</sup> See *OCTG from the PRC Final Determination*, and accompanying IDM at Comment 20; see also *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products From the PRC*), and accompanying IDM at Comment 9.

<sup>98</sup> See, e.g., *Aluminum Extrusions from the PRC*, and accompanying IDM at Comment 7.

<sup>99</sup> See *Solar Cells from the PRC*, and accompanying IDM at 48; *Steel Wheels from the PRC*, and accompanying IDM at 67; *OCTG from the PRC Final Determination*, and accompanying IDM at Comment 21; *Aluminum Extrusions from the PRC*, 2012 AR, and accompanying IDM at 52; *Wind Towers from the PRC*, and accompanying IDM at .5.

industry when the industry is listed in certain GOC policies and catalogues (such as the *Steel Plan*) that direct the use of loans to promote targeted industries.<sup>100</sup> Petitioners have submitted numerous GOC policies, plans and catalogues demonstrating the use of loans to promote the corrosion-resistant steel industry.<sup>101</sup> Because the record shows that the GOC is directing loans to the corrosion-resistant steel industry, we continue to find this program is specific, regardless of whether YPC’s actual loan documents mention a specific policy, because the company is part of the corrosion-resistant steel industry. As we noted in the *Preliminary Determination* “Article 25 of the Steel Plan specifically encouraged financial institutions to ‘comply with development policies for the iron and steel industry.’”<sup>102</sup>

The record of this investigation demonstrates that not only are producers of corrosion-resistant steel targeted for economic development through policy lending, but that such policy lending is widespread, despite purported *de jure* reforms such as the *Capital Rules*. As explained in the *Preliminary Determination*, the record includes evidence that the GOC has sought to encourage certain industries through financing since at least the period of the Eleventh Five-Year Plan.<sup>103</sup> The record indicates such developmental policy financing is still ongoing, despite the *Capital Rules*. Specifically, the annual report of the People’s Bank of China (PBC) (the PRC’s central bank and the chief regulator of commercial lending in the PRC) contains numerous references to facilitating lending to key and encouraged industries. For example, in a section of the report entitled “Credit Policy,” under the heading “Strengthening the coordination and cooperation between credit policy and industrial policy to promote economic restructuring, transformation and upgrading,” the PBC explains:

The PBC earnestly followed the national industrial policy and the requirements of macro-economic management, and oversaw and guided financial institutions in improving credit management mechanism and optimizing credit structure *to push forward the strategic industrial restructuring, transformation and upgrading*.<sup>104</sup> (Emphasis added.)

Earlier in the report, in the prologue entitled, “Governor’s Address,” under the heading “Continuing to enrich the macroeconomic management toolkit,” the PBC states that “{t}he assessment of the effectiveness of credit policy guidance was improved *to guide financial institutions to enhance financial support to key sectors and emerging industries . . .*”<sup>105</sup> (Emphasis added.) Thus it seems clear that policy considerations continue to guide lending decisions in the PRC.

Because the Department is continuing to find that the policy lending market is distorted, we are also continuing to rely on external benchmarks to determine the benefit from this program. The

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<sup>100</sup> See, e.g., *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014), and accompanying IDM at 23-25.

<sup>101</sup> See, e.g., Petition at Vol. III, pp. 4-29, 33-51.

<sup>102</sup> See PDM at 31

<sup>103</sup> *Id.*

<sup>104</sup> See GOC’s Initial QR, at Exhibit I.A, “Credit Policy.”

<sup>105</sup> *Id.*

Department has previously fully addressed the arguments raised by the GOC regarding the calculation of the Department's benchmark interest rate, including the use of certain rates published by the IMF,<sup>106</sup> the Department's practice with respect to certain negative inflation-adjusted rates,<sup>107</sup> its regression analysis based on a composite governance factor,<sup>108</sup> and adjustment of rates based on the spread between U.S. short and long-term "BB" bond rates.<sup>109</sup> Because the GOC offers no more here than bare restatements of these previously rejected arguments, we find the GOC has not presented new arguments or information sufficient to warrant reconsideration of the Department's prior findings.

#### **Comment 6: Whether the Export Buyer's Credit Program Was Used by Respondent**

##### *GOC's Comments:*

- The Department should continue to find, as it did in the *Preliminary Determination*, that the Export Buyer's Credit Program was not used by the respondent during the POI.
- Facts placed on the record by the GOC demonstrate that neither YPC, nor YPC's customers in the United States used the program during the POI. Those facts were confirmed by the Department during verification.
- The rules for operating the program set forth in the *Administrative Measures for Export Buyer's Credit (Administrative Measures)* and the *Implementing Rules for the Export Buyer's Credit of the Export-Import Bank of China (Implementing Rules)* show that non-use of the program by the respondent and its customers is verifiable.
- During verification, the GOC took the extraordinary step of permitting Department officials access, in the Ex-Im Bank offices, to Ex-Im Bank internal computer database records. These records confirmed non-use.
- Furthermore, because YPC would have known if any of its U.S. importer customers applied for or benefitted from the program, the Department also confirmed at YPC's verification that none of YPC's customers/importers used the Export Buyer's Credit Program.

**Department's Position:** The Department determines that the application of AFA is warranted in finding that this program provides a financial contribution, is specific, and has been used by YPC. In prior proceedings in which we have examined this program, we have found that the Ex-Im Bank is the primary entity that possesses the supporting records that the Department needs

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<sup>106</sup> See, e.g., *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid Final Determination*), and accompanying IDM at Comment 10; see also *Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (August 25, 2014) (*OCTG From China*), and the accompanying IDM at Comments 24 and 26.

<sup>107</sup> See, e.g., *Solar Cells from the PRC*, and accompanying IDM at Comment 16.

<sup>108</sup> See, e.g., *Citric Acid Final Determination*, and accompanying IDM at Comment 12, *Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at Comment 8; *OCTG From China*, and accompanying IDM at Comment 23.

<sup>109</sup> See, e.g., *Citric Acid Final Determination*, and accompanying IDM at Comment 13; *OCTG From China*, and accompanying IDM at Comment 27.

to verify the accuracy of the claimed non-use of the program, because it is the lender.<sup>110</sup> In notifying the GOC that we intended to verify non-use at the Ex-Im Bank, our verification outline stated that we would need to review application and approval documents, among other records, and that we would need to query relevant electronic databases if relevant records were maintained electronically. We stated clearly the purpose of such procedures was to ensure the accuracy of the GOC's response to the Department's questions that the respondent, or its customers, had not received export buyer's credits.<sup>111</sup> The GOC did not indicate prior to or at the outset of verification that it had any concerns with the clear requests in the verification outline. At the verification of the GOC at the Ex-Im Bank, officials stated that none of YPC's U.S. customers used the program during the POI, reiterating information on the record.<sup>112</sup> The Ex-Im Bank officials stated that the bank maintains records of all loans to buyers and that they searched those records and found no entry of YPC's U.S. customers.<sup>113</sup>

Furthermore, during verification, the Ex-Im Bank reiterated its statements in the questionnaire response that the bank provides the principal of the buyer's credit program directly to the PRC producers while the foreign importers, *i.e.*, foreign buyers, repay the interest to the Ex-Im Bank.<sup>114</sup> When Department officials requested to see sample contracts and documentation to assist in understanding the disbursement of funds, the Ex-Im Bank officials denied the verifiers' request.<sup>115</sup> Again, the GOC did not indicate prior to or at the outset of verification that it had any concerns with the clear requests for the above-noted documentation in the verification outline. It did not express any objection to these requests until the moment the Department sat down with Ex-Im Bank officials to begin this portion of the verification.

Thus, and notwithstanding the non-use claims of the GOC, we find that the GOC's refusal to allow the verifiers to independently review relevant databases and examine sample export contracts, application documents, approval documents (*e.g.*, letters of intent), and other documents in order to obtain a clear, substantiated understanding of the process for the disbursement of funds warrants a finding by the Department that it could not verify the GOC's reported non-use claims. Consistent with other cases where the Department has examined the Export Buyer's Credit Program, we continue to find that the Department's ability to determine its non-use by the respondent (and its customers) hinges on the ability to examine, not just usage records in the possession of the GOC, but all documents needed to illustrate and understand the operation of the program.<sup>116</sup>

The GOC asserts that the Department conclusively verified non-use of the program at YPC's offices and that the GOC took the "extraordinary step" of allowing the Department to access the Ex-Im Bank's offices and internal computer database records. The Department disagrees. In the

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<sup>110</sup> See, *e.g.*, *Solar Products From the PRC*, and accompanying IDM at Comment 16; *Citric Acid from the PRC 2012*, and accompanying IDM at Comment 6.

<sup>111</sup> See Letter to the GOC, "Verification Agenda for the Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China," November 5, 2015, at 4.

<sup>112</sup> See GOC NSA Response, at 6; see also GOC's Verification Report, at 6.

<sup>113</sup> *Id.*, at 6-7.

<sup>114</sup> *Id.*, at 2-3.

<sup>115</sup> *Id.*, at 3.

<sup>116</sup> See, *e.g.*, *Solar Cells from the PRC*, and accompanying IDM at Comment 18.

Department's view, holding verification on site at the agency responsible for responding to the Department's questionnaire and allowing the Department to access that agency's records – including electronic records – is not “extraordinary,” but rather a normal and fundamental part of verification. Conducting verification on site and allowing access to the documents and records used to compile the questionnaire response is a necessary part of the verification process, but it is not in and of itself, wholly satisfactory. It is simply a starting point, and reflective of our long-standing practice.

In this case, while the Department was allowed to meet at the Ex-Im Bank's offices, the Department was denied access to sample documentation at the GOC verification needed to fully understand the application process and how the funds from the Export Buyer's Credit Program are distributed. The GOC's short description of the application process provided a basic overview of how an exporter might be involved in the provision of export buyer's credits, how it might have knowledge of such export credits, and how such export credits might be reflected in a company's books and records. However, this description largely mirrored that provided by the GOC in its narrative responses. Verification is not about recitation of what has already been relayed through the narrative portion of questionnaire responses. Instead, the purpose of verification is to discuss the programs addressed in the *Preliminary Determination*, to corroborate the information provided in the GOC's questionnaire responses, and to clarify certain information for the final determination by examining source records and other documentation.<sup>117</sup> In this case, the GOC provided no such corroboration or illustration, instead referring to exhibits already on the record.

The information and documentation the Department finds to be most probative for this program are loan applications, bank approval letters, and loan agreements because such documentation would provide a “road map” for the Department to follow in verifying non-use at the companies. This information would document how the program actually works in the Ex-Im Bank's records and system, instead of providing a general overview, and would allow the Department to actually see how the document flow would work, and which accounts would be used, and therefore provide a path to verify the usage of this program at the companies. As it stands, without such information, the Department is left to guess which steps it should take when verifying non-use at the company respondent or when selecting names to query in the Ex-Im Bank's database and to rely on uncorroborated explanations regarding the program's operation. The GOC refused to provide even this most basic, aforementioned information and did not propose alternative information (*e.g.*, blank forms, or forms completed with hypothetical information).<sup>118</sup>

Thus, in this investigation, the Department was not able to definitively verify non-use at the company, as the GOC asserts. Consistent with our finding in *Solar Products from the PRC*, we find in this instant investigation that the lack of supporting documentation from the GOC regarding the application and disbursement of buyer's credits under this program deprived the Department of a basis for assessing how to verify claims that YPC's U.S. customers had not used this program. Although, as described above, the GOC provided a short description of the

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<sup>117</sup> See, *e.g.*, Letter to the GOC, “Verification Agenda for the Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China,” November 5, 2015.

<sup>118</sup> *Id.*, at 4-7.

application process, the GOC was unable to corroborate this narrative, which is the essential goal of verification. Such corroborative and illustrative information would help to clarify ambiguities in the explanations provided. For example, the GOC maintains that only an “importer” can receive buyer’s credits. However, while the *Administrative Measures* governing the Ex-Im Bank’s buyer’s credit program provide that the export buyer’s credit is “used for importers making payment at sight for goods to Chinese exporters,” there is no definition of “importers” contained within the document.<sup>119</sup> Moreover, there is no indication that importers are the exclusive beneficiaries under the program. To the contrary, Article 6 defines borrowers as “an importer *or* a bank accredited by {the Ex-Im Bank}, *or* an entity authorized by ministry of finance of importing country or government.”<sup>120</sup> Furthermore, Article 14 expressly distinguishes “importers” from “borrowers,” by requiring that all borrowers provide “the credit materials and related supporting documents of the *borrower*, guarantor, *importer*, exporter, and financial statement of the borrower and guarantor.”<sup>121</sup> The GOC’s questionnaire responses are similarly ambiguous, as the responses refer repeatedly to “U.S. customers” and “buyers” of the respondents, not importers.<sup>122</sup> The requested documentation could possibly have alleviated such ambiguities regarding the exact beneficiaries under the program and allowed the Department to take meaningful steps towards verifying non-use, but no such documentation was provided.

Accordingly, we find that necessary information is not available on the record, that the GOC significantly impeded this proceeding by failing to comply with the Department’s requests at verification, and that the GOC provided information that could not be verified as provided in section 782(i) of the Act. Thus, we find that the use of the facts available is warranted under sections 776(a)(2)(C) and (2)(D) of the Act. We further find that by not providing the requested information at verification, the GOC failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information within the meaning of section 776(b) of the Act. The GOC cannot now insist that we should make our decision based on evidence compiled from incomplete sources, such as the company respondent’s records. Absent a well-documented understanding of how an exporter would be involved in the application of its customer for an export buyer’s credit and what records the exporter might retain, we would have no way of knowing whether the records we review at a company verification necessarily include any applications or compliance records that an exporter might have from its participation in the provision of export credits to its buyers.

Consistent with section 776(d) of the Act and our established practice, we selected the highest calculated rate for the same or similar program as AFA.<sup>123</sup> Specifically, for programs other than those involving income tax exemptions and reductions, we will apply the highest calculated rate above zero for the identical program in the same proceeding if another responding company used

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<sup>119</sup> See Letter from the GOC, “Certain Corrosion-Resistant Steel Products from China; CVD Investigation GOC New Subsidy Allegations Questionnaire Response,” October 21, 2015 (GOC NSA Response), at Exhibit NSA-1.

<sup>120</sup> *Id.* (emphasis added).

<sup>121</sup> *Id.* (emphasis added).

<sup>122</sup> See GOC NSA Response at 1-5.

<sup>123</sup> See, e.g., *Shrimp from the PRC*, and accompanying IDM at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding “hierarchical methodology for selecting an AFA rate”).

the identical program.<sup>124</sup> If no other company used the identical program within the proceeding, we will use the rate calculated from the identical program in another CVD proceeding involving the country under investigation, unless the rate is *de minimis*. If there is no identical program match in any CVD proceeding involving the country under investigation, we will use the highest rate calculated for a similar program in another CVD proceeding involving the same country. Because the Department has not calculated a rate for the Export Buyer's Credits program in this investigation, and has not calculated a rate for this program in another CVD PRC proceeding, we are using the highest rate calculated for a similar program in another CVD PRC proceeding. Consistent with *Solar Products From the PRC*, we are applying an AFA rate of 10.54 percent.<sup>125</sup>

We have corroborated that rate to the extent practicable, as described in the section above entitled "Use of Facts Otherwise Available and Adverse Inferences." In particular, in this case, the preferential policy lending rate of 10.54 percent is an appropriate rate to apply because it is a rate calculated in a CVD PRC final determination for a similar program based on the treatment of the benefit. Because the available record information regarding this subsidy could not be verified, the rate calculated in another proceeding provides the most reliable and relevant information about the government's practices regarding these kinds of programs. Many factors go into the calculation of a rate in any proceeding. For lending programs these may include, among other things, the size of the loan, the interest rate on the loan, the term of the loan, the benchmark interest rate selected, and the size of the company's sales. When selecting an AFA rate, the Department must rely on the facts otherwise available about the impact of such factors in the case at hand given the unverified record evidence regarding the program. In the absence of verified information to control for a comparison of such factors between another case and the case at hand, the Department corroborated the rate selected to the extent practicable, *i.e.*, by relying on a rate calculated for a similar program in a prior proceeding pertaining to the PRC.<sup>126</sup>

#### **Comment 7: Correcting VAT in the Hot-Rolled Steel and Primary Aluminum Benchmarks**

*U.S. Steel's Comments:*

- The Department should use the 17 percent VAT rates reported by the GOC for hot-rolled steel and primary aluminum when adjusting the respective benchmarks to account for VAT.

**Department's Position:** The Department inadvertently used the wrong VAT rate for hot-rolled steel and primary aluminum when constructing the benchmark for these inputs. In the GOC's

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<sup>124</sup> See, e.g., *Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012), and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences."

<sup>125</sup> See *Solar Products From the PRC*, and accompanying IDM at 16 and Comment 7 (citing to *Off-the-Road Tires from the PRC CVD Review Preliminary Results*, unchanged in the final determination, *Off-the-Road Tires from the PRC CVD Review*).

<sup>126</sup> Because the Department has not calculated a rate for the Export Buyer's Credits program in this investigation, and has not calculated a rate for this program in another CVD PRC proceeding, we are using the highest rate calculated for a similar program in another CVD PRC proceeding. We are relying on a rate of 10.54 percent calculated for a similar program in *Off-the-Road Tires from the PRC CVD Review*.

initial questionnaire response, hot-rolled steel and primary aluminum were each reported to have a 17 percent VAT rate.<sup>127</sup> We have corrected the benchmarks for hot-rolled steel and primary aluminum using the correct, 17 percent VAT rate.<sup>128</sup>

### **Comment 8: Whether to Apply AFA to YCL's Sales from Other PRC Producers of Corrosion-Resistant Steel**

#### *U.S. Steel's Comments:*

- YCL reported during verification that it had exported corrosion-resistant steel produced in the PRC by companies other than YPC to third countries.
- The Department has no information regarding any possible subsidies received by these other corrosion-resistant steel companies that provided the goods to YCL. This information was relevant because under 19 CFR 351.525(c), benefits from subsidies provided to a trading company that exports subject merchandise are cumulated with benefits received by the firm producing that subject merchandise.
- By withholding this sales information, YCL impeded the Department's investigation, warranting the application of AFA. YCL should be assigned the AFA rate applied to the non-cooperating respondents in the *Preliminary Determination*.

#### *YPC's Rebuttal Comments:*

- YCL reported in its initial questionnaire response, which the Department verified, that it did not receive any benefits from any of the alleged subsidy programs.
- The Department accepted, as a minor correction, YCL's correction with respect to the existence of YCL's sales of subject merchandise produced by non-YPC suppliers in the PRC.
- The Department should find the YCL has cooperated fully with this investigation and that AFA is not warranted in this situation.
- The Department's practice is not to examine subsidies received by producers of merchandise not exported to the United States by the trading company. Thus, even if YCL had correctly reported in its questionnaire responses its sales of subject merchandise that had been produced by non-YPC suppliers in the PRC, the Department should exercise its discretion by not examining those producers pursuant to its normal practice.
- If the Department relies on the "all-others" rate in calculating the benefits received by YCL from the non-YPC suppliers in the PRC, at the same time, the Department should also include YCL's sales in the denominator when calculating the *ad valorem* subsidy rate for YPC. The exclusion of YCL's sales from the denominator would result in a distortion which unfairly inflates the *ad valorem* subsidy rate of a respondent which has been cooperative throughout the proceeding.

**Department's Position:** The Department is not assigning an AFA rate to YCL, because we do not find that necessary information is missing from the record, nor do we find that YCL withheld information requested of it, failed to comply with deadlines, significantly impeded the

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<sup>127</sup> See GOC's Initial QR at 24 and 59.

<sup>128</sup> See Final Analysis Memorandum.

proceeding, or provided information that could not be verified within the meaning of section 776(a)(1)-(2) of the Act. Accordingly, the Department finds no legal basis for reaching a final determination using facts otherwise available, let alone applying an adverse inference in selecting from among those facts.

We selected YPC as a mandatory respondent. YPC then provided a questionnaire response on behalf of YCL because YCL is an affiliate and the trading company responsible for exporting some of YPC's subject merchandise to the United States.<sup>129</sup> We stated in the *Preliminary Determination* that YCL did not report receiving any PRC government subsidies, and thus we preliminarily found that there were no subsidy benefits attributable from YCL to YPC under the trading company attribution rule at 19 CFR 351.525(c).<sup>130</sup> We accepted at verification, as a minor correction, information from YCL showing that YCL sold corrosion-resistant steel to third countries produced in the PRC by companies other than YPC.<sup>131</sup>

The regulations state that, “[b]enefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated.”<sup>132</sup> According to the regulations, YCL's benefits, if any, would be cumulated and assigned to the producer of subject merchandise, regardless of affiliation. Thus, YCL's relevance to this investigation stems from the possibility that it received subsidy benefits that would be cumulated with the benefits received by YPC or other mandatory respondent producers. However, as explained above, we have determined that YCL received no subsidies; thus there is nothing to cumulate with subsidies received by the mandatory respondents.

Section 351.525(c) of the regulations does not, as U.S. Steel suggests, provide a mechanism for the Department to cumulate subsidies received by the PRC producers identified in the minor corrections with YCL's subsidies, and *then* cumulate those subsidies with YPC's subsidies. Furthermore, even if the regulation did function as U.S. Steel suggests, the evidence on the record shows that the minor corrections relate to corrosion-resistant steel produced in the PRC and exported by YCL *to third countries*;<sup>133</sup> these were, thus, not exports of “subject merchandise.” Benefits from subsidies received by YCL – if there were any – would only be cumulated with benefits provided to producers of merchandise it resold to the United States (*i.e.*, YCL's role as a trading company is only relevant to this investigation insofar as it resells subject merchandise to the United States). Therefore, YCL's failure to report the fact that some of its third country sales are sourced from PRC producers other than YPC is immaterial to the outcome of this investigation.<sup>134</sup>

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<sup>129</sup> See Letter from YCL, “Corrosion-Resistant Steel Products from China; Countervailing Duty Questionnaire Response,” August 27, 2015.

<sup>130</sup> See PDM at 25.

<sup>131</sup> See Letter from YPC, “Corrosion-Resistant Steel Products from China; Verification Minor Corrections,” November 18, 2015 (Minor Corrections Submission), at Exhibits 1 and 2.

<sup>132</sup> See 19 CFR 351.525(c).

<sup>133</sup> See Minor Corrections Submission, at Exhibits 1 and 2

<sup>134</sup> While the exact details are business-proprietary, in the Department's estimation, the percentage of sales at issue (measured against YCL's total sales) is small. See YPC Verification Report at Exhibit 1.

Finally, we note that the rates we are assigning to the mandatory respondents and to all other producers and exporters are not specific to any distribution chain. Thus, if YCL were to resell subject merchandise to the United States manufactured by a PRC producer, including one of the several uncooperative producers under investigation, that producer's rate will apply, regardless of YCL's involvement as a reseller/trading company.

## XI. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

Agree                       Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
For Enforcement and Compliance

24 MAY 2016  
\_\_\_\_\_  
Date

*Attachment*

## Attachment

### AFA Subsidy Rate Calculation

Program Name		AFA Rate
1	Policy Loans to the Corrosion-Resistant Steel Industry	0.86%
2	Preferential Loans for SOEs	
3	Export Loans	4.25%
4	Treasury Bond Loans	10.54%
5	Preferential Loans for Key Projects and Technologies	10.54%
6	Preferential Lending to Corrosion-Resistant Steel Producers and Exporters Classified as "Honorable Enterprises"	10.54%
7	Loans and Interest Subsidies Provided Pursuant to Northeast Revitalization Program	10.54%
8	Debt-to-Equity Swaps	0.58%
9	Equity Infusions	0.58%
10	Exemptions for SOEs from Distributing Dividends to the State	0.58%
11	Loans and Interest Forgiveness for SOEs	2.32%
12	Provision of Land-Use Rights for LTAR in Jiangsu Province	0.36%
13	Provision of Land-Use Rights to SOEs for LTAR	13.36%
14	Provision of Hot-Rolled Steel for LTAR	23.74%
15	Provision of Cold-Rolled Steel for LTAR	2.11%
16	Provision of Iron Ore for LTAR	22.32%
17	Provision of Steam Coal for LTAR	3.17%
18	Provision of Zinc for LTAR	0.22%
19	Provision of Primary Aluminum for LTAR	0.06%
20	Provision of Coking Coal for LTAR	5.51%
21	Provision of Electricity for LTAR	0.58%
22	Preferential Income Tax Program for HNTEs	25.00%
23	Preferential Income Tax Program for HNTEs in Designated Zones	
24	Preferential Deduction of R&D Expenses for HNTEs	
25	Preferential Income Tax Subsidies for FIEs – “Productive” FIEs	
26	Preferential Income Tax Subsidies for FIEs – High or New Technology FIEs	
27	Preferential Income Tax Subsidies for FIEs – Export Oriented FIEs	
28	Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment	1.68%
29	Preferential Income Tax Policy for Enterprises in the Northeast Region	9.71%

30	Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China	0.51%
31	Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax	9.71%
32	Income Tax Benefits for Domestically-Owned Enterprises Engaging in R&D	9.71%
33	Stamp Exemption on Share Transfer Under Non-Tradable Share Reform	9.71%
34	VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund	9.71%
35	Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries	0.56%
36	Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring	9.71%
37	State Key Technology Renovation Project Fund	0.58%
38	Foreign Trade Development Fund Grants	0.58%
39	Export Assistance Grants	0.58%
40	Programs to Rebate AD Legal Fees	0.58%
41	Subsidies for Development of Famous Export Brands and China World Top Brands	0.58%
42	Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands	0.58%
43	Grants to Loss Making SOEs	0.58%
44	Export Interest Subsidies	0.58%
45	Grants for Energy Conservation and Emission Reduction	0.58%
46	Grants for Retirement of Capacity	0.58%
47	Grants for Relocating Production Facilities	0.58%
48	Export Buyer's Credits	10.54%
49	Export Seller's Credits from State-Owned Bank	4.25%
50	Export Credit Insurance Subsidies	0.58%
51	Export Credit Guarantees	10.54%
Total AFA Rate:		241.06%