

June 3, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Countervailing Duty Investigation: Wire Decking from the
People's Republic of China

SUBJECT: Issues and Decision Memorandum for Final Determination

I. Summary

On November 9, 2009, the Department of Commerce (the Department) published the Preliminary Determination in the above-mentioned countervailing duty (CVD) investigation. See Wire Decking From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 74 FR 57629 (November 9, 2009) (Preliminary Determination). The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate benefits from these programs. Additionally, we have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which contains the Department's response to the issues raised in the briefs. Based on the comments received and our verification findings,¹ we have made certain modifications to the Preliminary Determination. We recommend that you approve the positions described in this memorandum.

Below is a complete list of the issues in this investigation for which we received case brief and rebuttal comments from interested parties:

Comment 1: Whether the Department May Apply the CVD Law to an NME Country

¹ From January 25 through January 27, 2010, we conducted verification of the questionnaire responses submitted by Dalian Huameilong Metal Products Co., Ltd. (DHMP). On January 27 and January 29, 2010, we conducted verification of the questionnaire responses submitted by the Government of the People's Republic of China (the GOC). From February 1 through February 4, 2010, we conducted verification of the questionnaire responses submitted by Dalian Eastfound Metal Products Co., Ltd. (Eastfound Metal) and Dalian Eastfound Material Handling Products Co., Ltd (Eastfound Material) (collectively the Eastfound Companies). We issued the verification reports starting on February 17 through February 25, 2010. Copies of the verification reports are on file on the public record located in the Department's Central Records Unit (CRU), room 1117.

- Comment 2:** Whether Producer A Constitutes a GOC Authority Capable of Providing a Financial Contribution As Defined by the Act
- Comment 3:** Whether Producer B Constitutes a GOC Authority Capable of Providing a Financial Contribution As Defined by the Act
- Comment 4:** Whether Producer C Constitutes a GOC Authority Capable of Providing a Financial Contribution As Defined by the Act
- Comment 5:** Whether DHMP's Zinc Supplier(s) Is A GOC Authority
- Comment 6:** Whether Actual Wire Rod and HRS Market Prices in the PRC Are Appropriate Benchmarks
- Comment 7:** Whether Benchmark Prices Should Include Freight
- Comment 8:** Whether Benchmark Prices Should Include Insurance Costs
- Comment 9:** Whether the GOC and DHMP Withheld Information Concerning the Location of DHMP's Facilities and Whether Information They Submitted is Reliable
- Comment 10:** Whether DHMP Is Located In an Industrial Zone Thereby Making Its Purchase of Land from the GOC Regionally Specific Under the Act
- Comment 11:** Whether DHMP Benefitted from an Interest-Free Deferral of its Land-Use Rights Payment
- Comment 12:** Whether the Eastfound Material's Land Acquisitions Are Countervailable
- Comment 13:** Whether the Department Should Countervail Eastfound Material's Alleged Unreported Land Payment Refund Discovered at Verification
- Comment 14:** Whether the Department Should Countervail Eastfound Metal's Land-Use Rights
- Comment 15:** Whether the Department Should Use Year 2001 as the Cut-off Date or Use the AUL Methodology to Value Subsidies
- Comment 16:** Whether the GOC Terminated the Income Tax Exemption for Investors In Designated Geographical Regions Within Liaoning Program
- Comment 17:** Whether the GOC Terminated the Income Tax Benefits for FIEs Based on Geographic Location

Comment 18: Whether the GOC Terminated the VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment Program

Comment 19: Whether the GOC Terminated the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Program

Comment 20: Whether the Department Should Initiate an Investigation of the PRC's Currency Manipulation

Comment 21: Benefit Calculation Under the Two Free, Three Half Income Tax Program

Comment 22: Whether DHMP Received a Subsidy Under the Income Tax Credits for FIES on Purchases of Domestically Produced Equipment Program

Comment 23: Whether DHMP Failed To Report VAT Deductions on Fixed Assets

II. Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to the People's Republic of China's (the PRC) and respondents' most recently completed fiscal year at the time we initiated this investigation. See 19 CFR 351.204(b)(2).

III. Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii) - (v) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) a firm that produces an input that is primarily dedicated to the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. See also the Preamble to the Department's regulations, which states "[I]n certain circumstances, a large minority voting interest (e.g., 40 percent) or a "golden share" may also result in cross-ownership." See Preamble to Countervailing Duty Regulations, 63 FR 65348, 65401, (November 25, 1998) (Preamble). The Court of International Trade (CIT) has further upheld the Department's authority to attribute subsidies based on whether a company could use or direct the

subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. See Fabrique de Fer de Charleroi, S.A. v. United States, 166 F. Supp. 2d 593, 600-603 (CIT 2001) (Fabrique).

The Eastfound Companies

Eastfound Metal and Eastfound Material are affiliated companies that produce and export the subject merchandise. These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of high levels of common ownership. Therefore, pursuant to 19 CFR 351.525(b)(6)(ii), we are attributing the subsidies received by Eastfound Metal and Eastfound Material to the combined sales of the companies, excluding the sales between them.

Eastfound Metal and Eastfound Material reported other affiliated parties; however, both companies reported that these other affiliates do not produce the subject merchandise and do not provide inputs. Therefore, because these other affiliates do not produce subject merchandise or otherwise fall within the situations outlined in 19 CFR 351.525(b)(6)(iii)-(v), we are not including these companies in our subsidy calculations. Our findings regarding the attribution of subsidies to the Eastfound Companies remains unchanged from the Preliminary Determination. See 74 FR at 57634.

DHMP

In its questionnaire response, DHMP indicated that it is the sole producer of subject merchandise. It also indicated that it is owned by a parent company. We sent a CVD questionnaire to the parent company of DHMP. The parent company supplied its response on September 9, 2009. Based on the information on the record of this investigation, we determine that the parent company did not produce subject merchandise or supply DHMP with an input that is primarily dedicated to the production of subject merchandise during the POI. Furthermore, we determine that it had no sales revenue during the POI and did not use any of the alleged subsidy programs. Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are attributing subsidies found to have been received by DHMP solely to the sales of DHMP. Our findings regarding the attribution of subsidies to DHMP remains unchanged from the Preliminary Determination. See 74 FR at 57634.

IV. Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 12 years. As no interested party has claimed that the AUL of 12 years is unreasonable, we have allocated non-recurring subsidies over a period of 12 years.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the sales (total sales or total export sales, as

appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

In the Preliminary Determination, we explained that, in accordance with the Department's practice, we identified and measured subsidies in China beginning on the date of the country's accession to the World Trade Organization (WTO), December 11, 2001. See Preliminary Determination, 74 FR at 57631; see also, e.g., Circular Welded Carbon Quality Steel Line Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008) (Line Pipe from the PRC), and accompanying Issues and Decision Memorandum (Line Pipe from the PRC Decision Memorandum) at "Allocation Period" section and Comment 18.

We received comments from interested parties regarding our decision to limit our investigation to subsidies bestowed after December 11, 2001. However, the comments from interested parties have not led us to alter the approach applied in the Preliminary Determination. See 74 FR at 57631. See Comments 14 and 15, below.

V. Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act) provide that the Department shall apply "facts otherwise available" if, inter alia, 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.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Application of Adverse Inferences: Provision of Electricity for Less Than Adequate Remuneration (LTAR)

On July 16, 2009, the Department issued its initial questionnaire to the GOC. In the questionnaire, the Department asked the GOC several questions regarding its alleged provision of electricity to the mandatory respondents for LTAR. See Appendix 7 of the Department's initial questionnaire. The GOC failed to respond to these questions. See the GOC's September 10, 2009, questionnaire response at 27 - 30. The Department issued a supplemental questionnaire in which it asked the GOC once again to submit the requested information concerning the provision of electricity for LTAR program. See the Department's September 16, 2009, supplemental questionnaire. Again, the GOC failed to provide all of the requested information with regard to several of the Department's questions. See the GOC's October 15, 2009, supplemental questionnaire response at 1 - 2.²

² The questions for which the GOC failed to provide responses pertained to how increases in cost elements in the GOC's electricity price proposals led to retail price increases for electricity, how various cost elements factored into the GOC's electricity price proposals, and how cost element increases in the GOC's price proposals and the final price increases for electricity were allocated across provinces and across tariff end-user categories.

The GOC did not provide the information requested by the Department as it pertains to the provision of electricity for LTAR program, despite having been given more than one opportunity to do so. We find that in failing to provide the requested information the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D)(iv) of the Act. Our finding in this regard is unchanged from the Preliminary Determination. See 74 FR at 557641. See “Federal Provision of Electricity for LTAR” under the “Programs Determined To Be Countervailable” section of this determination for a discussion of the Department’s derivation of the benefit.

Application of Adverse Inferences: Non-Cooperative Companies

In this investigation, 74 companies did not provide a response to the Department’s quantity and value (Q&V) questionnaire issued during the respondent selection process. These non-cooperative Q&V companies are listed in the “Suspension of Liquidation” section of the Federal Register notice that accompanies this issues and decision memorandum. We confirmed that each of these companies received the Q&V questionnaire which was sent via either Federal Express or DHL. See Memorandum to the File regarding “Delivery of Quantity and Value Questionnaires via Federal Express and DHL” (July 16, 2009).

The 74 non-cooperative Q&V companies withheld requested information and significantly impeded this proceeding. Specifically, by not responding to requests for information concerning the Q&V of their sales, they impeded the Department’s ability to select the most appropriate respondents in this investigation. Thus, in reaching our Preliminary Determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD rate for the non-cooperative Q&V companies on facts otherwise available.

We further determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to the Department’s Q&V questionnaires, these companies did not cooperate to the best of their ability in this investigation. Accordingly, we find that an adverse inference is warranted to ensure that the non-cooperating Q&V companies will not obtain a more favorable result than had they fully complied with our request for information.

In deciding which facts to use as adverse facts available (AFA), section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.” See, e.g., 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). The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

It is the Department’s practice to select, as AFA, the highest calculated rate in any segment of the proceeding. See, e.g., Laminated Woven Sacks From the People’s Republic of

China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008) (LWS from the PRC), and accompanying Issues and Decision Memorandum (LWS from the PRC Decision Memorandum) at “Selection of the Adverse Facts Available.”

In previous CVD investigations of products from the PRC, we adapted the practice to use the highest rate calculated for the same or similar program in other PRC CVD investigations. See id. and Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 70971, 70975 (November 24, 2008) (unchanged in the Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 29180 (June 19, 2009) (Lawn Groomers from the PRC), and accompanying Issues and Decision Memorandum (Lawn Groomers from the PRC Decision Memorandum) at “Application of Facts Available, Including the Application of Adverse Inferences”). For this final determination, consistent with the Department’s recent practice, we are computing a total AFA rate for the non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, we are applying the highest calculated rate for the identical program in this investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, we are using the highest non-de minimis rate calculated for the same or similar program in another PRC CVD investigation. Absent an above-de minimis subsidy rate calculated for the same or similar program, we are applying the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies. See, e.g., Lightweight Thermal Paper From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008) (LWTP from the PRC), and accompanying Issues and Decision Memorandum (LWTP from the PRC Decision Memorandum) at “Selection of the Adverse Facts Available Rate.” Our approach in this regard is unchanged from the Preliminary Determination. See 74 FR at 57631.

Further, where the GOC can demonstrate through complete, verifiable, positive evidence that non-cooperative Q&V companies (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department will not include those provincial programs in determining the countervailable subsidy rate for the non-cooperative Q&V companies. See, e.g., Certain Kitchen Shelving and Racks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009) (Racks from the PRC), and accompanying Issues and Decision Memorandum (Racks from the PRC Decision Memorandum) at “Use of Facts Otherwise Available and Adverse Facts Available.” In this investigation, the GOC did not provide any such information. Therefore, we are making the adverse inference that the non-cooperative Q&V companies had facilities and/or cross-owned affiliates that received subsidies under all of the sub-national programs on which the Department initiated.

For the income tax rate reduction or exemption programs, we are applying an adverse inference that the non-cooperative Q&V companies paid no income taxes during the POI. The six tax programs are: (1) Two Free, Three Half Tax Exemptions for FIEs, (2) Income Tax Exemptions for Export-Oriented FIEs, (3) Local Income Tax Exemption and Reduction Program

for Productive FIEs, (4) Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises, (5) Income Tax Benefits for FIEs Based on Geographical Location, and (6) Income Tax Exemption for Investors in Designated Geographical Regions within Liaoning.

The standard income tax rate for corporations in the PRC is 30 percent, plus a three percent provincial income tax rate.³ The highest possible benefit for all income tax reduction or exemption programs combined is 33 percent. Therefore, we are applying a CVD rate of 33 percent on an overall basis for these six income tax programs (*i.e.*, these six income tax programs combined provide a countervailable benefit of 33 percent). This 33 percent AFA rate does not apply to tax credit or tax refund programs. This approach is consistent with the Department's past practice. *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 Issues and Decision Memorandum (CWP from the PRC Decision Memorandum) at "Use of Adverse Facts Available" section and LWTP from the PRC Decision Memorandum at "Selection of the Adverse Facts Available Rate."

The 33 percent AFA rate does not apply to the following four income tax credit and rebate or accelerated depreciation programs because such programs may not affect the tax rate and, hence, the subsidy conferred, in the current year: (1) Income Tax Credit for Domestically-owned Companies Purchasing Domestically-produced Equipment, (2) Income Tax Exemption for Investment in Domestic Technological Renovation,⁴ (3) Preferential Income Tax Policy for Enterprises in the Northeast Region,⁵ and (4) Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China.⁶ Neither mandatory respondent used these programs, nor have we found greater than *de minimis* benefits for these direct tax programs in other CVD PRC proceedings. Therefore, we are using the highest non-*de minimis* rate for any indirect tax program from a PRC CVD investigation. The rate we select is 1.51 percent, calculated for the "Value-Added Tax and Tariff Exemptions on Imported Equipment" program in *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*) and accompanying Issues and Decision Memorandum (CFS from the PRC Decision Memorandum) at "Value-Added Tax and Tariff Exemptions on Imported Equipment" section.

We are also investigating value added tax (VAT) and tariff reduction programs. The Eastfound Companies used the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries program and VAT Refunds for FIEs Purchasing Domestically-produced Equipment program and, therefore, we are using, as AFA, The Eastfound Companies' rates of 0.02 percent and 0.13 percent, respectively. For the other following VAT and tariff reduction programs, for which we do not have respondent program usage, we are applying the 1.51 percent rate calculated in *CFS from the PRC*: (1) VAT

³ *See* GOC's October 15, 2009 supplemental questionnaire response at 9.

⁴ Program provides a tax credit to enterprises for a certain portion of investment in any domestically-produced equipment that relates to technology updates. *See* Wire Decking Initiation Checklist at 15 (June 25, 2009), which accompanies the *Wire Decking From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 31700 (July 2, 2009) (*Wire Decking Initiation Notice*).

⁵ Program reduces the depreciation life of fixed assets by up to 40 percent for tax purposes and shortens the period of amortization of intangible assets by up to 40 percent for tax purposes. *See* Wire Decking Initiation Checklist at 15.

⁶ Petitioner alleged that this program forgives tax liabilities owed by companies in the northeast region of China. *See* Wire Decking Initiation Checklist at 16.

Deductions on Fixed Assets and (2) VAT Exemptions for Newly Purchased Equipment in Jinzhou District.

Neither respondent used any of the loan programs on which the Department initiated. Therefore, for the following loan programs, we determine to apply the highest non-de minimis subsidy rate for any loan program in a prior PRC CVD investigation: (1) Honorable Enterprise Program, (2) Preferential Loans for Key Projects and Technologies, (3) Preferential Loans as Part of the Northeast Revitalization Program, and (4) Policy Loans for Firms Located in Industrial Zones in the City of Dalian in Liaoning Province. The highest non-de minimis subsidy rate is 8.31 percent calculated for the “Government Policy Lending Program,” from Lightweight Thermal Paper From the People’s Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 73 FR 70958 (November 24, 2008) (Amended LWTP from the PRC).

We also investigated a number of grant programs. Neither respondent used the following grant programs: (1) Five Points, One Line Program, (2) Export Interest Subsidies, (3) State Key Technology Fund, (4) Subsidies for Development of Famous Export Brands and China Top Brands, (5) Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands, and (6) Exemption of Fees for Firms Located in Designated Geographical Areas in Dalian. In addition, the Department has not calculated an above de minimis rates for any of these programs in prior investigations, and, moreover, all previously calculated rates for grant programs from prior PRC CVD investigations have been de minimis. Therefore, as AFA for each of these grant programs, we determine to use the highest calculated subsidy rate for any program otherwise listed, which could have been used by the non-cooperative Q&V companies. We determine that this rate is 44.91 percent for the “Provision of Hot-Rolled Steel (HRS) for LTAR” program from Circular Welded Carbon Quality Steel Pipe From the People’s Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 73 FR 42545 (July 22, 2008) (Amended CWP from the PRC).

Finally, there are several programs involving the provision of a good or service for LTAR, which we are investigating. For the Provision of Wire Rod for LTAR, we are using the rate of 1.35 percent calculated for the Eastfound Companies (see program section below). For the Provision of HRS for LTAR, we are using the rate of 0.32 percent calculated for the Eastfound Companies (see program section below). For the Provision of Zinc for LTAR, though we have respondent use of this program, DHMP’s rate is 0.00 percent. Therefore, we are using, as the AFA rate, the 44.91 percent calculated for the “Provision of HRS for LTAR” program from Amended CWP from the PRC.

Regarding the Provision of Electricity for LTAR,⁷ for reasons discussed in the program section below, we are using as AFA, the rate of 0.29 percent, which was calculated for the program “Federal Provision of Electricity for LTAR” in Pre-Stressed Concrete Steel Wire Strand From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010) (PC Strand from the PRC) and accompanying Issues and Decision Memorandum (PC Strand from the PRC Decision Memorandum) at “Federal Provision of Electricity for LTAR.”

For the Provision of Land for LTAR, for Firms Located in Designated Geographical Areas in Dalian, we are using the rate of 0.56 percent calculated for the Eastfound Companies (see program section below). Regarding the Provision of Water for LTAR for Firms Located in

⁷ Our findings regarding the federal provision of electricity for LTAR encompasses the program “Provision of Electricity for LTAR for Firms Located in Designated Geographical Areas in Dalian.”

Designated Geographical Areas in Dalian, which neither respondent used, the Department has not calculated a rate for this type of program in a prior PRC CVD investigation. Therefore, we have determined to use the highest non-de minimis rate calculated for a provision of a good or service at LTAR program for which the non-cooperative Q&V companies could have benefitted. We determine that this rate is 44.91 percent for the “Provision of HRS for LTAR” program from Amended CWP from the PRC.

For further explanation of the derivation of the AFA rates, see Memorandum to the File, regarding “Final Determination of Adverse Facts Available Rate” (June 3, 2010) (AFA Memorandum). 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.” See, e.g., SAA, at 870, 1994 U.S.C.C.A.N. at 4199. The Department considers information to be corroborated if it has probative value. Id. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. Id. at 869.

With regard to the reliability aspect of corroboration, we note that these rates were calculated in recent final CVD determinations. Further, the calculated rates were based upon verified information about the same or similar programs. Moreover, no information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. 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 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. See Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996).

In the absence of record evidence concerning these programs due to the decision of the non-cooperative Q&V companies not to participate in the investigation, we have reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs of this case. For the programs for which there is no program-type match, we have selected the highest calculated subsidy rate for any PRC program from which the non-cooperative Q&V companies could receive a benefit to use as AFA. The relevance of these rates is that it is an actual calculated CVD rate for a PRC program from which the non-cooperative Q&V companies could actually receive a benefit. Further, these rates were calculated for periods close to the POI in the instant case. Moreover, the failure of these companies to respond to requests for information by the Department has “resulted in an egregious lack of evidence on the record to suggest an alternative rate.” See Shanghai Taoen Int’l Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (CIT 2005). Due to the lack

of participation by the non-cooperative Q&V companies and the resulting lack of record information concerning their use of the programs under investigation, the Department has corroborated the rates it selected to use as AFA to the extent practicable.

On this basis, we determine the AFA countervailable subsidy rate for the non-cooperative Q&V companies to be 437.11 percent ad valorem. See AFA Memorandum.

VI. Application of All Others Rate to Companies Not Selected as Mandatory Respondents

In addition to DHMP and the Eastfound Companies, we received responses to the Q&V questionnaire from the following eight companies: Brynick Enterprises Limited;⁸ C-F Industries LLC; Dalian Xingbo Metal Products Co., Ltd.; Dandong Riqian Logistics Equipment Co., Ltd.; Globsea Co., Ltd.; Nanjing Topsun Racking Manufacturing Co., Ltd.; Ningbo Xinguang Rack Co., Ltd.; and Tianjin Jiali Machine Co., Ltd. See Memorandum to the File regarding “Q&V Cooperative Companies” (November 2, 2009). Though these eight companies were not chosen as mandatory respondents, they did cooperate fully with the Department’s request for Q&V information. We, therefore, are applying the all-others rate to them.⁹

VII. Subsidies Valuation Information

Benchmarks and Discount Rates

Although the Department is not calculating subsidy rates for any loans in this investigation, the benchmark interest rate is used to compute the discount rate that we are using to allocate benefits over time. Therefore, we discuss the derivation of the benchmark rates below. We did not receive any comments regarding the short-term and long-term benchmarks employed in the Preliminary Determination. Our benchmarks remain unchanged in the final determination.

Benchmark for Short-Term RMB Denominated Loans: Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. See 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department’s regulations provide that we “may use a national interest rate for comparable commercial loans.” See 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. However, for the reasons explained in CFS from the PRC, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. See CFS Decision Memorandum at Comment 10. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i).

⁸ Also known as, Ningbo Brynick Enterprises Limited.

⁹ We are also applying the all-others rate to Yangzhou Hynet Imp. and Exp. Corp. because the Department inadvertently failed to send to the company a Q&V questionnaire. See Memorandum to the File regarding “Yangzhou Hynet Imp and Exp Corp.” (November 2, 2009).

Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in Softwood Lumber from Canada, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002) (Softwood Lumber from Canada), and accompanying Issues and Decision Memorandum (Softwood Lumber from Canada Decision Memorandum) at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

We are calculating the external benchmark using the regression-based methodology first developed in CFS from the PRC and more recently updated in LWTP from the PRC. See CFS Decision Memorandum at Comment 10; see also LWTP from the PRC Decision Memorandum at "Benchmarks and Discount Rates." This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to the PRC, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to the state-imposed distortions in the banking sector discussed above.

Following the methodology developed in CFS from the PRC, we first determined which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries as of July 2007. As explained in CFS from the PRC, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund and are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "low middle income" by the World Bank. First, we did not include those economies that the Department considered to be non-market economies (NME) for antidumping (AD) purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.

Benchmark for Long-Term RMB Denominated Loans: The lending rates reported in the IFS represent short- and medium-term lending, and there are no sufficient publicly available long-term interest rate data upon which to base a robust long-term benchmark. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. See Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008)

(LWRP from the PRC), and accompanying Issues and Decision Memorandum (LWRP Decision Memorandum) at “Discount Rates.” In Citric Acid from the PRC, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. See 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 from the PRC), and accompanying Issues and Decision Memorandum (Citric Acid from the PRC Decision Memorandum) at Comment 14. In the Preliminary Determination, we utilized the revised methodology from Citric Acid from the PRC when deriving our long-term benchmark rates. See Preliminary Determination, 74 FR at 57636.

Discount Rates: Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided the subsidy.

ANALYSIS OF PROGRAMS

VIII. Programs Determined To Be Countervailable

A. Provision of Wire Rod for LTAR

The Department is investigating whether producers and suppliers, acting as Chinese government authorities, sold wire rod to the mandatory respondents for LTAR. DHMP and the Eastfound Companies reported obtaining wire rod during the POI from trading companies as well as directly from wire rod producers.

In Tires from the PRC, the Department determined that majority government ownership of an input producer is sufficient to qualify it as an “authority.” See Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40480 (July 15, 2008) (Tires from the PRC), and accompanying Issues and Decision Memorandum (Tires from the PRC Decision Memorandum) at “Government Provision of Rubber for Less than Adequate Remuneration.” Based on the record in the instant investigation, we determine that wire rod producers, which supplied respondents, and that are majority-government owned are “authorities.” See Memorandum to the File regarding “Final Calculations for the Eastfound Companies” (June 3, 2010) (Eastfound Companies’ Final Calculations). As a result, we determine that wire rod supplied by companies deemed to be government authorities constitute(s) a financial contribution in the form of a governmental provision of a good and that the respondents received a benefit to the extent that the price they paid for wire rod produced by these suppliers was for LTAR. See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an “authority” within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input was sold for LTAR. See CWP from the PRC Decision Memorandum at “Hot-Rolled Steel for Less Than Adequate Remuneration;” Racks from the PRC Decision Memorandum at “Provision of Wire Rod for Less than Adequate Remuneration;” and Circular Welded Austenitic Stainless Pressure Pipe From the People's

Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 4936 (January 28, 2009) (CWASPP from the PRC) and accompanying Issues and Decision Memorandum (CWASPP from the PRC Decision Memorandum) at “Provision of SSC for LTAR.” Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC together identify the producers from whom the trading companies acquired the wire rod that was subsequently sold to respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities.

In response to these requests, DHMP and the Eastfound Companies were able to identify the firms that produced the wire rod that was ultimately sold to them. We have used the information concerning the ownership status of the wire rod suppliers to determine whether DHMP and the Eastfound Companies purchased wire rod that was produced by government authorities. In the case of DHMP, we determine that none of the wire rod it purchased was produced by firms acting as government authorities. Therefore we have not conducted a subsidy analysis for DHMP’s purchases of wire rod during the POI. Regarding the Eastfound Companies, we determine that it purchased a certain quantity of wire rod that was produced by government authorities during the POI. Therefore, we determine, with regard to wire rod produced by these firms, that the Eastfound Companies received a financial contribution within the meaning of section 771(5)(D)(iv) of the Act. We received comments from interested parties regarding the extent to which the respondent’s purchased wire rod from government authorities. See Comments 2 through 5, below.

Having addressed the issue of financial contribution, we must next analyze whether the sale of wire rod to the Eastfound Companies by suppliers designated as government authorities conferred a benefit within the meaning of section 771(5)(iv) of the Act. The Department’s regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in Softwood Lumber from Canada, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. See Softwood Lumber Decision Memorandum at “Market-Based Benchmark.”

Beginning with tier-one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the Preamble:

Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government’s involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See Preamble, 63 FR at 65377. The Preamble further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

In the instant investigation, the GOC reported the total wire rod production by state-owned entities during the POI. In the Preliminary Determination, we explained that the number of these state-owned entities (SOEs) accounted for approximately the same percentage of the wire rod production in the PRC as was recently found in Racks from the PRC, in which the Department determined that the GOC had direct ownership or control of wire rod production. See 74 FR at 57637; see also Racks from the PRC Decision Memorandum, at Comment 4. Because the GOC did not provide any information that would lead the Department to reconsider the determination in Racks from the PRC, in the Preliminary Determination, we found that the substantial market share held by SOEs showed that the government played a predominant role in the PRC's wire rod market during the POI. See 74 FR at 57637; see also Racks from the PRC Decision Memorandum at 15. In the Preliminary Determination, we further explained that the government's predominant position is further demonstrated by the low level of imports, which accounted for only one percent of the volume of wire rod available in the Chinese market during the POI. See 74 FR at 57637; see also GOC's September 10, 2009, questionnaire response at 11. We also explained in the Preliminary Determination that because the share of imports of wire rod into the PRC is small relative to Chinese domestic production of wire rod, it would be inappropriate to use import values to calculate a benchmark. See 74 FR at 57637. We note that our approach in the Preliminary Determination in this regard was consistent with the Department's approach in LWRP from the PRC. See LWRP from the PRC Decision Memorandum at Comment 7.

In addition to the government's predominant role in the market, we explained in the Preliminary Determination that the 10 percent export tariff and export licensing requirement instituted by the GOC contributed to the distortion of the domestic market in the PRC for wire rod. See 74 FR at 57637. We further explained in the Preliminary Determination that such export restraints can discourage exports and increase the supply of wire rod in the domestic market, with the result that domestic prices are lower than they would be otherwise. See 74 FR at 57637; see also Racks from the PRC Decision Memorandum at 15. Consequently, in the Preliminary Determination we determined that there are no appropriate tier one benchmark prices available for wire rod. See 74 FR at 57637.

Subsequent to the Preliminary Determination, we issued a supplemental questionnaire to the GOC in which we inquired as to whether export tariffs and export licensing requirements remained in place with regard to wire rod during the POI. In its response, the GOC confirmed that an export tariff of 15 percent was in effect for wire rod and that the export requirements in place during the POI of the investigation of Racks from the PRC remained in effect during the POI of the instant investigation. See GOC's December 15, 2009, questionnaire response at 1. Therefore, based on the information discussed in the Preliminary Determination and the information obtained subsequent to the Preliminary Determination, we continue to find that there are no appropriate tier one benchmark prices available for wire rod during the POI. We received comments from interested parties regarding this issue. See Comment 6, below.

We examined whether the record contained data that could be used as a tier-two wire rod benchmark under 19 CFR 351.511(a)(2)(ii). The Department has on the record of the investigation prices for wire rod (industrial quality, low carbon), as sourced from the American Metals Market (AMM). See Petitioners' October 19, 2009, Benchmark Comments at Exhibit 1. The benchmark prices are reported on a monthly basis in U.S. dollars per metric ton (MT). No other interested party submitted tier-two wire rod prices on the record of this investigation.

Therefore, we find that the data from AMM should be used to derive a tier-two, world market price for wire rod that would be available to purchasers of wire rod in the PRC. We note that the Department has relied on pricing data from industry publications in recent CVD proceedings involving the PRC. See, e.g., CWP from the PRC Decision Memorandum at “Hot-Rolled Steel for Less Than Adequate Remuneration” and LWRP from the PRC Decision Memorandum at “Hot-Rolled Steel for Less Than Adequate Remuneration.” Further, we find that there is no basis to conclude that prices from the AMM are any less reliable or representative than data from other trade industry publications used by the Department in prior CVD proceedings involving the PRC. Our findings in this regard have not changed from our preliminary findings.

To determine whether wire rod suppliers, acting as government authorities, sold wire rod to respondents for LTAR, we compared the prices that the Eastfound Companies paid to the suppliers to our wire rod benchmark price. We conducted our comparison on a monthly basis. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by the Eastfound Companies for its purchases of wire rod.

As explained in the Preliminary Determination, under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. See 74 FR at 57637. Regarding delivery charges, at the time of the Preliminary Determination, we lacked information and, therefore, did not adjust the benchmark in this regard. Id. But, in the Preliminary Determination, we explained that we would continue to seek the relevant information for the final determination. Subsequent to the Preliminary Determination, Petitioners submitted information concerning ocean freight. Specifically, Petitioners submitted on the record of the investigation price quotes from Maersk Line for shipping iron and steel products from Los Angeles, California to Shanghai, PRC in each month of the POI. In accordance with 19 CFR 351.511(a)(2)(iv), we have added these ocean freight costs to our wire rod benchmark price. See Petitioners’ January 15, 2010, submission at Exhibit 12. In addition, we have added import duties, as reported by the GOC, and the VAT applicable to imports of wire rod into the PRC. See 19 CFR 351.511(a)(2)(iv). With respect to the three percent insurance charge on imports that Petitioners argue should be added to the benchmark, consistent with Racks from the PRC, while the Department will consider in future determinations the propriety of including insurance as a delivery charge, the existing record of this investigation does not support such an adjustment. See Racks from the PRC Decision Memorandum at Comment 9. Regarding the question of whether to adjust for inland freight in the wire rod benchmark and the prices respondents paid to GOC authorities, we lack on the record of the instant investigation the necessary information concerning inland freight rates to make such an adjustment. We note that respondents reported the wire rod prices paid to GOC authorities net of inland freight. Thus, inland freight costs are absent from both benchmark and government wire rod prices. We intend to collect information concerning inland freight in any subsequent administrative review(s). We received comments from interested parties regarding this aspect of our benchmark calculations. See Comment 7 and 8, below.

Comparing the benchmark unit prices to the unit prices paid by the Eastfound Companies for wire rod, we determine that wire rod was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a). We calculated the total benefit by multiplying the unit benefit by the quantity of wire rod purchased.

Finally, with respect to specificity, the third subsidy element specified under the Act, the GOC has provided information on end uses for wire rod. See GOC's September 10, 2009, initial questionnaire response at 14. The GOC stated that the consumption of wire rod occurs across a broad range of industries. Id. While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. See section 771(5A)(D)(iii)(I) of the Act; see also LWRP Decision from the PRC Memorandum at Comment 7, and Racks from the PRC Decision Memorandum at "Provision of Wire Rod from Less Than Adequate Remuneration."

We find that the GOC's provision of wire rod for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). Therefore, to calculate the net subsidy rate, we divided the benefit by a denominator comprised of total sales for the Eastfound Companies. On this basis, we calculated a total net subsidy rate of 1.35 percent ad valorem for the Eastfound Companies.

B. Provision of HRS Steel for LTAR

The Department is investigating whether producers and suppliers, acting as Chinese government authorities, sold HRS to the mandatory respondents for LTAR. DHMP and the Eastfound Companies reported purchasing HRS during the POI from trading companies as well as directly from HRS producers.

As explained above, in Tires from the PRC, the Department determined that majority government ownership of an input producer is sufficient to qualify the producer as an "authority." See Tires from the PRC Decision Memorandum at "Government Provision of Rubber for Less than Adequate Remuneration." Based on the record of this investigation, we determine that HRS producers that supply respondents and that are majority-government owned are "authorities." See Eastfound Companies' Final Calculations. As a result, we determine that HRS supplied by companies deemed to be government authorities constitute a financial contribution to respondents in the form of a governmental provision of a good and that the respondents received a subsidy to the extent that the price they paid for HRS produced by these suppliers was sold for LTAR. See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act. Our finding in this regard is unchanged from the Preliminary Determination. See 74 FR at 57638.

In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an "authority" within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input was sold for LTAR. See e.g., CWP from the PRC Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration," Racks from the PRC Decision Memorandum at "Provision of HRS for Less than Adequate Remuneration," and CWASPP from the PRC Decision Memorandum at "Provision of SSC for LTAR." Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC together identify the producers from whom the trading companies acquired the HRS that was subsequently sold to respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities.

In response to these requests, DHMP and the Eastfound Companies were able to identify the firms that produced the HRS that was ultimately sold to them. We have used the information concerning the ownership status of the HRS suppliers to determine whether DHMP and the Eastfound Companies purchased HRS that was produced by government authorities. In the case of DHMP, we determine that none of the HRS it purchased was produced by firms acting as government authorities. Therefore, we have not conducted a subsidy analysis for DHMP's purchases of HRS during the POI. Regarding the Eastfound Companies, we determine that it purchased a certain quantity of HRS that was produced by government authorities during the POI. Therefore, we determine, with regard to HRS produced by these firms, that the Eastfound Companies received a financial contribution within the meaning of section 771(5)(D)(iv) of the Act. Our findings in this regard are unchanged from the Preliminary Determination. See 74 FR at 57638.

Having addressed the issue of financial contribution, we must next analyze whether the sale of HRS to the mandatory respondents by suppliers designated as government authorities conferred a benefit within the meaning of section 771(5)(iv) of the Act. As stated above, the Department's regulations at 19 CFR 351.511(a)(2) set forth three bases for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services.

As instructed, the GOC provided the percentage of HRS production accounted for by SOEs during the POI. The GOC further reported the portion of HRS produced by "collectives." In the final determination of LWRP from the PRC, the Department affirmed its decision to treat collectives as government authorities. See LWRP from the PRC Decision Memorandum at Comment 5. Based on these aggregate data, we determine that government authorities accounted for a majority of the HRS produced during the POI. Based on these data, we determine that domestic prices for HRS cannot serve as a viable tier-one benchmark as described under 19 CFR 351.511(a)(2)(i). Consequently, as there are no other available tier-one benchmark prices, we have turned to tier-two, *i.e.*, world market prices available to purchasers in the PRC. Our findings in this regard are unchanged from the Preliminary Determination. See 74 FR at 57638.

We examined whether the record contained data that could be used as a tier-two HRS benchmark under 19 CFR 351.511(a)(2)(ii). The Department has on the record of the investigation prices for HRS, as sourced from the Steel Benchmark Report. See Petitioners' October 19, 2009, Benchmark Comments at Exhibit 2. The benchmark prices are reported on a monthly basis in U.S. dollars per MT. No other interested party submitted tier-two HRS prices on the record of this investigation. Therefore we find that the data from the Steel Benchmark Report should be used to derive a tier-two, world market price for HRS that would be available to purchasers of HRS in the PRC. We note that the Department has relied on pricing data from industry publications in recent CVD proceedings involving the PRC. See, *e.g.*, CWP from the PRC Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration," and LWRP from the PRC Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration." Further, we find that there is no basis to conclude that prices from the Steel Benchmark Report are any less reliable or representative than data from other trade industry publications used by the Department in prior CVD proceedings involving the PRC. Our findings in this regard are unchanged from the Preliminary Determination. See 74 FR at 57638.

To determine whether HRS suppliers, acting as government authorities, sold HRS to the Eastfound Companies for LTAR, we compared the prices the respondents paid to the suppliers to our HRS benchmark price. We conducted our comparison on a monthly basis. The Steel

Benchmark Report provides multiple prices for each month of the POI. Therefore, to arrive at a single monthly benchmark HRS price, we simple averaged the prices for each month. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by the Eastfound Companies for its purchases of HRS.

As explained in the Preliminary Determination, under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. See 74 FR at 57639. Regarding delivery charges, as noted above, Petitioners submitted on the record of the investigation price quotes from Maersk Line for shipping iron and steel products from Los Angeles, California to Shanghai, PRC in each month of the POI. In accordance with 19 CFR 351.511(a)(2)(iv), we have added these ocean freight costs to our HRS benchmark price. See Petitioners' January 15, 2010, submission at Exhibit 12. In addition, we have added import duties, as reported by the GOC, and the VAT applicable to imports of HRS into the PRC. See 19 CFR 351.511(a)(2)(iv). With respect to the three percent insurance charge on imports noted by Petitioners, consistent with Racks from the PRC, while the Department will consider in future determinations the propriety of including insurance as a delivery charge, the existing record of this investigation does not support such an adjustment. See Racks from the PRC Decision Memorandum at Comment 9. Regarding the question of whether to adjust for inland freight in the HRS benchmark and the prices respondents paid to GOC authorities, we lack on the record of the instant investigation the necessary information concerning inland freight rates to make such an adjustment. We note that respondents reported the HRS prices paid to GOC authorities net of inland freight. Thus, inland freight costs are absent from both benchmark and government HRS prices. We intend to collect information concerning inland freight in any subsequent administrative review(s).

Comparing the benchmark unit prices to the unit prices paid by the Eastfound Companies for HRS, we determine that HRS was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a). We calculated the total benefit by multiplying the unit benefit by the quantity of HRS purchased.

Finally, with respect to specificity, in prior cases involving the provision of HRS for LTAR, the Department has found that the program is specific under section 771(5A)(D)(iii)(I) of the Act because the industries that utilize HRS are limited. See LWRP from the PRC Decision Memorandum at Comment 7, and Racks from the PRC Decision Memorandum at "Provision of HRS from Less Than Adequate Remuneration." We determine that there is no information on the record at this time to warrant reconsideration of the Department's prior findings in this regard.

We find that the GOC's provision of HRS for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). Therefore, to calculate the net subsidy rate, we divided the benefit by a denominator comprised of total sales for the Eastfound Companies. On this basis, we calculated a total net subsidy rate of 0.32 percent ad valorem for the Eastfound Companies.

C. Provision of Land for LTAR

Eastfound Metal, Eastfound Material, and DHMP reported acquiring land-use rights from Chinese governments. Regarding DHMP, in the Preliminary Determination, we found that

DHMP was located in an economic/industrial zone and, therefore, found the land transactions countervailable. See 74 FR at 57640 – 57641. As a result of information collected at verification, we have revised our approach. We have determined that none of DHMP’s facilities and none of its land transactions are located in an economic/industrial zone. Therefore, we find that the land transaction DHMP reported is not countervailable. For additional information, see Comments 8 through 10.

In the Preliminary Determination, we did not countervail Eastfound Metal’s land-use rights purchase because we determined that it occurred prior to the December 11, 2001, cut-off date (i.e., from which the Department will identify and measure subsidies in the PRC for purposes of this investigation.) See 74 FR at 57639. We have reached the same conclusion in this final determination. See Comments 14 and 15.

Eastfound Material reported that it acquired two parcels of land (Land A in 2008 and Land B in 2006) located in Jinzhou District within the City of Dalian from local government authorities. In the Preliminary Determination, we found that Eastfound Material’s purchases of Land A and B occurred in a geographical area designated as an industrial zone and, therefore, found the land transactions countervailable. See 74 FR at 57639-57640. We have reached the same conclusion in this final determination. Specifically, we find that Eastfound Material’s land-use rights acquisition are specific under section 771(5A)(D)(iv) of the Act.¹⁰ Our specificity finding in this regard is consistent with the Department’s practice. See, e.g., LWS Decision Memorandum at Comment 9 (where the Department found that when the land is in an industrial park located within the seller’s (e.g., county’s or municipality’s) jurisdiction, the provision of the land-use rights is regionally specific under section 771(5A)(D)(iv) of the Act). We further find that Eastfound Material’s land transaction constitute a financial contribution, in the form of a provision of a good, within the meaning of section 771(5)(D)(iii) of the Act. For further discussion regarding Eastfound Material’s land-use rights purchases, see Comments 12 and 13.

To determine whether Eastfound Material received a benefit, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we looked to whether there are market-determined prices (referred to as tier-one prices in the LTAR regulation) within the country. See 19 CFR 351.511(a)(2)(i). In LWS from the PRC, the Department determined that “Chinese land prices are distorted by the significant government role in the market” and, hence, tier-one benchmarks do not exist. See LWS Decision Memorandum at Comment 10. The Department also found that tier-two benchmarks (world market prices that would be available to purchasers in China) are not appropriate. Id. at “Analysis of Programs – Government Provision of Land for Less Than Adequate Remuneration;” see also 19 CFR 351.511(a)(2)(ii). Therefore, the Department determined the adequacy of remuneration by reference to tier-three and found that the sale of land-use rights in the PRC was not consistent with market principles because of the overwhelming presence of the government in the land-use rights market and the widespread and documented deviation from the authorized methods of pricing and allocating land. See LWS Decision Memorandum at Comment 10; see also 19 CFR 351.511(a)(2)(iii). We determine that there is insufficient new information on the record of this investigation to warrant a change from the findings in LWS from the PRC.

Eastfound Material has claimed that it purchased Land A through a public listing process that contains auction elements and that based on this fact the Department should find that it

¹⁰ As discussed in Comment 12, we further find that Eastfound Material’s land-purchases are also specific under section 771(5A)(D)(i) of the Act.

acquired its land-use rights at market value. In analyzing Eastfound Material's claim, we resort to the Department's regulations and past practice. Section 351.511(a)(2)(i) of the regulations states that the Department can use sales from a government-run auction in certain circumstances to determine whether a government-provided good or service is provided for LTAR, but only if the government sells a significant portion of the good or service through competitive bid procedures that are open to everyone. These circumstances are not present here. The Public Listing Notice clearly states that Land A can only be used for "metal products industry."¹¹ Thus, because the public listing process is only open to metal products industry, the overwhelming majority of the purchasers of this government good or service are explicitly excluded from this auction. As a result, Eastfound Material was the only bidder for Land A. Therefore, the bidding price set by the Land Authority in Jinzhou District cannot be used as benchmark prices under section 351.511(a)(2)(i) of the regulations. See Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada, 66 FR 43186 (August 17, 2001),¹² (unchanged in the final determination, see Softwood Lumber from Canada).

For these reasons, we are not able to use Chinese or world market prices as a benchmark. Therefore, we are comparing the price that the Eastfound Material paid for its granted land-use rights with comparable market-based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of, the PRC. Specifically, we are comparing the prices Eastfound Material paid to Beihai Village in 2006, and to Dalian Municipal Bureau in 2008, to the respective Thailand prices in 2006 and 2008 for Thailand's certain industrial land in industrial estates, parks, and zones, consistent with LWS from the PRC. See LWS Decision Memorandum at "Analysis of Programs – Government Provision of Land for Less Than Adequate Remuneration."

To calculate the benefit, we computed the amounts that Eastfound Material would have paid for both of its granted land-use rights and subtracted the amounts Eastfound Material actually paid for both of its purchases, Land B in 2006 and Land A in 2008. Our comparison indicates that the prices Eastfound Material paid to the government authority in 2006 for Land B, and the price it paid for Land A in 2008 were less than our land benchmark prices for each respective year and, thus, Eastfound Material received a benefit under section 771(5)(E)(iv) of the Act. Next, in accordance with 19 CFR 351.524(b)(2), we examined whether the subsidy amount exceeded 0.5 percent of Eastfound's total consolidated sales in the years of purchase. Our analysis indicates that the subsidy amount exceeded the 0.5 percent threshold for both land

¹¹ See Eastfound Material's supplemental questionnaire response at Exhibit 9, pages 1-2 (October 15, 2009).

¹² In Softwood Lumber from Canada, British Columbia provided stumpage prices set by government auction. The Department determined that the auction was only open to small businesses that were registered as small business forest enterprises, and that the overwhelming majority of the purchasers of the government good or service were explicitly excluded from the auction. Therefore, the auction prices submitted by British Columbia could be used as benchmark prices under 19 CFR 351.511(a)(2)(i). Furthermore, the Department found that because the provincial government provider constituted a majority or substantial portion of the market, there was a significant distortion in the private transaction prices for the good or service within that country's market. Therefore, the Department determined that it could not use the private transaction prices provided by the provincial governments. Accordingly, the Department concluded that stumpage prices from the United States qualified as commercially available world market prices because it was reasonable to conclude that U.S. stumpage would be available to softwood lumber producers in Canada at the same prices available to U.S. lumber producers.

purchases. Therefore, we used the discount rate described under the “Benchmarks and Discount Rates” section of this determination to allocate the benefit over the life of the land-use rights contracts, which is 50 years.

To calculate the net subsidy rate, we divided the benefit allocated to the POI by the total sales of the Eastfound Companies. On this basis, we determine the total net subsidy rate to be 0.56 percent for the Eastfound Companies.

D. Provision of Electricity for LTAR

As discussed above in the “Adverse Facts Available” section, we find that the GOC has failed to cooperate to the best of its ability and, therefore, we find that the GOC provided electricity to respondents during the POI in a manner that constitutes a financial contribution and is specific within the meaning of sections 771(5)(D)(iv) and 771(5A)(D)(iv) of the Act, respectively.

In the Preliminary Determination, we explained that, where possible, the Department will normally rely on the responsive producer’s or exporter’s records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. See 74 FR at 57641. We further explained in the Preliminary Determination that, while respondents provided some information with respect to their electricity usage and payments, we did not have on the record information that could meaningfully be compared to the appropriate benchmarks. Id. For example, we did not have information from respondents indicating the electricity rates that they paid at off-peak, normal, and peak periods. Therefore, we relied on the subsidy rate calculated for the same or similar program in a PRC CVD investigation, which was an ad valorem subsidy rate of 0.07 percent from LWTP from the PRC.

Subsequent to the Preliminary Determination, we obtained information from the Eastfound Companies regarding its monthly electricity usage at the off-peak, normal, and peak periods. We also asked the GOC to provide all electricity schedules in effect during the POI for all provinces and municipalities in the PRC. In response, the GOC submitted electricity rate schedules for the provinces of Inner Mongolia, Jiangsu, Jiangxi, Tianjin, and Zhejiang.

Where possible, the Department will normally rely on the responsive producer’s or exporter’s records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. In this investigation, however, while the GOC provided electricity schedules for certain provinces in the PRC, it did not provide schedules for all provinces and jurisdictions in the PRC. As a result, we find that we do not have on the record information that allows us to construct a complete and representative electricity benchmark. Therefore, we have determined to adopt the same methodology employed in the Preliminary Determination, which is to utilize an electricity for LTAR net subsidy rate calculated in a prior CVD proceeding involving the PRC. However, for the final determination, we have selected a net subsidy rate that is different from the one utilized in the Preliminary Determination. For the final determination, we have used a net subsidy rate of 0.29 percent ad valorem, which was calculated for the provision of electricity for LTAR program in PC Strand from the PRC. See PC Strand from the PRC Decision Memorandum at “Federal Provision of Electricity for LTAR.” The net subsidy rate from PC Strand from the PRC reflects the Department’s most recent net subsidy rate calculation involving the provision of electricity for LTAR and, moreover, reflects the Department’s revised benefit calculation methodology for this program.

On this basis, we calculated a net subsidy rate of 0.29 percent ad valorem for the Eastfound Companies and a net subsidy rate of 0.29 percent ad valorem for DHMP.

E. Two Free, Three Half Program

The Foreign Invested Enterprise and Foreign Enterprise Income Tax Law (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for FIEs in the PRC. The intent of this law is to attract foreign businesses to the PRC. According to Article 8 of the FIE Tax Law, FIEs which are “productive” and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed “productive” if they qualify under Article 72 of the Detailed Implementation Rules of the Income Tax Law of the People’s Republic of China of Foreign Investment Enterprises and Foreign Enterprises.

DHMP and Eastfound Material are “productive” FIEs and received benefits under this program during the POI. Eastfound Metal did not use this program during the POI.

We determine that the exemption or reduction in the income tax paid by “productive” FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. See sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, i.e., “productive” FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. Our approach in this regard is unchanged from the Preliminary Determination and is consistent with the Department’s practice. See 74 FR at 57641; see also CFS from the PRC Decision Memorandum at “Two Free Three Half Program” and Citric Acid from the PRC Decision Memorandum at “Two Free Three Half Program.”

To calculate the benefit, we treated the income tax savings enjoyed by DHMP and Eastfound Material as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company’s tax savings received during the POI by each company’s total sales during that period.¹³ To compute the amount of the tax savings, we compared the income tax rate that each respondent would have paid in absence of the program with the income rate that each respondent actually paid (for Eastfound Material, 0 percent). On this basis, we determine a countervailable subsidy of 0.63 percent ad valorem for the Eastfound Companies, and a countervailable subsidy of 0.49 percent ad valorem for DHMP.

Further, the respondents reported that the GOC terminated the Two Free, Three Half Tax Exemption for FIEs on January 1, 2008. We find that respondents’ claims of termination do not meet the requirements specified under 19 CFR 351.526(d)(1), which provide that the Department will not find a program to be terminated and a program-wide change warranted if it finds that the administering authority continues to provide residual benefits under the program. As indicated in the Enterprise Tax Law of 2007, firms currently enjoying a tax benefit under the program may continue to do so in future years. Therefore, we find that there is no basis to find that this program has been terminated.

¹³ For Eastfound Material, we used as the denominator the combined total sales for Eastfound Material and Eastfound Metal.

F. Income Tax Benefits for FIEs Based on Geographical Location

To promote economic development and attract foreign investment, “productive” FIEs located in coastal economic zones, special economic zones, or economic and technical development zones in the PRC receive preferential tax rates depending on the zone. This program was first enacted on June 15, 1988, pursuant to the Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Zones, as issued by the Ministry of Finance. The program was continued on July 1, 1991, pursuant to Article 30 of the FIE Tax Law. Pursuant to Article 7 of the FIE Tax Law, productive FIEs established in a coastal economic development zone, special economic zone, or economic technology development zone, receive preferential income tax rates of 15 or 24 percent, depending on the zones in which the companies are located, as opposed to the standard 30 percent income tax rate. The Department has previously found this program to be countervailable. See, e.g., Citric Acid from the PRC Decision Memorandum at “Reduced Income Tax Rates to FIEs Based on Location.”

Eastfound Material reported that it received an income tax reduction under this program with respect to the tax return it filed during the POI. Eastfound Metal used this program during the POI. DHMP reported receiving an income tax deduction on the tax return it filed during the POI based on the fact that its facilities are located in a Coastal Economic Open Zone. See DHMP’s September 9, 2009, questionnaire response at Exhibit 28, see also DHMP’s December 10, 2009, supplemental questionnaire response at 6 - 9.

We determine that the reduced income tax rate paid by “productive” FIEs under this program confers a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue foregone by the GOC and provides a benefit to the recipient in the amount of the tax savings within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act. We further determine that the reduction afforded by this program is limited to enterprises located in designated geographical regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by the Eastfound Companies and DHMP as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the companies’ tax savings received during the POI by the respective total sales for the Eastfound Companies and DHMP. To compute the amount of the tax savings, we compared the income tax rate that the Eastfound Companies and DHMP would have paid in absence of the program (30 percent) with the preferential tax rate (24 percent). Our approach in this regard remains unchanged from the Preliminary Determination. See 74 FR at 57642. On this basis, we calculate a total net subsidy rate of 0.16 percent ad valorem for the Eastfound Companies and 0.25 percent ad valorem for DHMP.

Further, respondents reported that the GOC terminated the Tax Benefits for FIEs Based on Geographic Location program on January 1, 2008. We find that respondents’ claims of termination do not meet the requirements specified under 19 CFR 351.526(d)(1), which provide that the Department will not find a program to be terminated and a program-wide change warranted if it finds that the administering authority continues to provide residual benefits under the program. As indicated in the Enterprise Tax Law of 2007, firms currently enjoying a tax benefit under the program may continue to do so in future years. Therefore, we find that there is no basis to find that this program has been terminated. See Comment 17, below.

G. Income Tax Exemption for Investors in Designated Geographical Regions Within Liaoning

Under Article 9 of the FIE Tax Law, the provincial governments, the autonomous regions, and the centrally governed municipalities have been delegated the authority to provide exemptions and reductions of local income tax for industries and projects for which foreign investment is encouraged. As such, the local governments establish the eligibility criteria and administer the application process for any local tax reductions or exemptions.

To promote economic development and attract foreign investment, the Jinzhou District of the City of Dalian, Liaoning Province exempts industries in the Jinzhou District from local income tax for seven years from the first profit-making year and extends that exemption for three more years for enterprises with projects encouraged by the Dalian Government. The Department has previously found income tax exemption programs that are limited to certain geographical regions to be countervailable. See, e.g., Citric Acid from the PRC Decision Memorandum at “Reduced Income Tax Rates to FIEs Based on Location.”

Eastfound Material is located in Jinzhou District and enjoyed the exemption of local income tax rate of three percent during the POI. Eastfound Metal did not use this program during the POI.

We determine that the exempted income tax rate offered to FIEs under this program confers a countervailable subsidy. The exempted rate is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine that the exemption afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act. To calculate the benefit, we treated the income tax savings enjoyed by Eastfound Material as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company’s tax savings received during the POI by the total sales of the Eastfound Companies during that period.

On this basis, we determine that the Eastfound Companies received a countervailable subsidy of 0.08 percent ad valorem under this program.

Further, respondents reported that the GOC terminated the Income Tax Exemption for Investors in Designated Geographical Regions Within Liaoning program. We find that respondents’ claims of termination do not meet the requirements specified under 19 CFR 351.526(d)(1). Under 19 CFR 351.526(d)(1), the Department will not find a program to be terminated and a program-wide change warranted if it finds that the administering authority continues to provide residual benefits under the program. As indicated in the Enterprise Tax Law of 2007, firms currently enjoying tax benefit under the program may continue to do so in future years. Therefore, we find that there is no basis to find that this program has been terminated. See Comment 16, below.

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

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. The National Development

and Reform Commission (NDRC) and the General Administration of Customs are the government agencies responsible for administering this program. Qualified enterprises receive a certificate either from the NDRC or one of its provincial branches. To receive the exemptions, a qualified enterprise only has to present the certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. The Department has previously found this program to be countervailable. See, e.g., Citric Acid Decision from the PRC Memorandum at “VAT Rebate on Purchases by FIEs of Domestically Produced Equipment.”

Eastfound Metal, an FIE, reported receiving VAT and tariff exemptions under this program for imported equipment. DHMP and Eastfound Material did not use this program.

We determine that the VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and the exemptions provide a benefit to the recipients in the amount of the VAT and tariff savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further determine that the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises. As described above, only FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program. No information has been provided to demonstrate that the beneficiary companies are a non-specific group. As noted above under “Two Free/Three Half” program, the Department finds FIEs to be a specific group under section 771(5A)(D)(i) of the Act. The additional certain enterprises requiring approval by the NDRC does not render the program to be non-specific. This analysis is unchanged from the Preliminary Determination and is consistent with the Department’s approach in prior CVD proceedings. See 74 FR at 57642 – 57643; see also e.g., CFS from the PRC Decision Memorandum at Comment 16, and Tires from the PRC Decision Memorandum at “VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment on Encouraged Industries.”

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2). Therefore, we investigated and verified the VAT and tariff exemptions that Eastfound Metal received under the program during the POI and prior years.¹⁴

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is unchanged from the Preliminary Determination and is consistent with the Department’s approach in prior cases. See 74 FR at 57643; see also Line Pipe from the PRC Decision Memorandum at Comment 8 (“... we agree with Petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties”). Next, we summed the amount of duty and VAT exemptions received in each year. For each year, we then divided the total grant amount by the

¹⁴ See Eastfound Metal Verification Report at 12-13.

corresponding total sales for the year in question. For Eastfound Metal, the total amount of the VAT and tariff exemptions for each year approved was less than 0.5 percent for the Eastfound Companies' total sales for the respective year. Therefore, we do not reach the issue of whether Eastfound Metal's VAT and tariff exemptions were tied to the capital structure of capital assets of the firm. Instead, we expense the benefit to the year in which the benefit is received, consistent with 19 CFR 351.524(a). On this basis, we determine the countervailable subsidy to be 0.02 percent ad valorem for the Eastfound Companies.

The GOC reported that pursuant to the Notice of Ministry of Finance, General Administration of Customs and General Bureau of State Taxation, No. 43 (2008) (Notice 43), dated December 25, 2008, the VAT exemption linked to imported equipment under this program has been terminated but the import tariff exemption has not been terminated. See GOC's September 10, 2009, initial questionnaire response at 59-60 and Exhibit 29. Article 1 of Notice 43 states that as of January 1, 2009, VAT on imported equipment for self-use in domestic and foreign investment projects as encouraged and stipulated in Circular 37 will be resumed and the custom duty exemption will remain in effect. Article 4 of Notice 43 provides for a transition period for the termination of the VAT exemption. Under Article 4, for a project which has a letter of confirmation prior to November 10, 2008, and the imported equipment has been declared with customs before June 30, 2009, VAT and tariff can be exempted. However, for imported equipment for which the import customs declaration is made on or after July 1, 2009, VAT will be collected. As such, the GOC stated the latest possible date for companies to claim or apply for a VAT exemption under this program was June 30, 2009. The GOC reported that there is no replacement VAT exemption program.

We received comments from interested parties regarding the GOC's claim that the VAT exemption portion of this program has been terminated. We find that respondents' claims of termination do not meet the requirements specified under 19 CFR 351.526(d)(1), the Department will not find a program to be terminated and a program-wide change warranted if it finds that the administering authority continues to provide residual benefits under the program. As discussed above, the Department allocates over time benefits received under this program whose amounts exceed 0.5 percent of the relevant sales denominator in the year of receipt. Therefore, because benefits under this program may continue beyond the POI, we find that residual benefits continue to be provided and, thus, the requirements under 19 CFR 351.526(d)(1) have not been met. See Comment 19, below.

I. VAT Refunds for FIEs Purchasing Domestically-Produced Equipment

As outlined in GUOSHUIFA (1999) No. 171, Notice of the State Administration of Taxation Concerning the Trial Administrative Measures on Purchase of Domestically-Produced Equipment by FIEs, the GOC refunds the VAT on purchases of certain domestic equipment to FIEs if the purchases are within the enterprise's investment amount and if the equipment falls under a tax-free category. Article 3 specifies that this program is limited to FIEs with completed tax registrations and with foreign investment in excess of 25 percent of the total investment in the enterprise. Article 4 defines the type of equipment eligible for the VAT exemption, which includes equipment falling under the Encouraged and Restricted B categories listed in the Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment (No. 37 (1997)) and equipment for projects listed in the Catalogue of Key Industries, Products and Technologies Encouraged for Development by the State. To receive the rebate, an FIE must

meet the requirements above and, prior to the equipment purchase, bring its Registration Handbook for Purchase of Domestically-Produced Equipment by FIEs as well as additional registration documents to the taxation administration for registration. After purchasing the equipment, FIEs must complete a Declaration Form for Tax Refund (or Exemption) of Exported Goods, and submit it with the registration documents to the tax administration. The Department has previously found this program to be countervailable. See, e.g., Citric Acid from the PRC Decision Memorandum at “VAT Rebate on Purchases by FIEs of Domestically Produced Equipment.”

Eastfound Metal and Eastfound Material reported receiving VAT refunds on its purchases of domestically-produced equipment under this program. DHMP has not received VAT refunds under this program.

We determine that the refund of the VAT paid on purchases of domestically-produced equipment by FIEs confers a countervailable subsidy. The rebates are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further determine that the VAT rebates are contingent upon the use of domestic over imported goods and, hence, specific under section 771(5A)(C) of the Act. Our findings in this regard remain unchanged from the Preliminary Determination. See 74 FR at 57643.

Normally, we treat exemptions from indirect taxes and import charges, such as VAT refunds, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

We verified the equipment for which Eastfound Metal and Eastfound Material received VAT rebates from 2001 through the POI.¹⁵ For 2003, 2005 and 2008, the total amount of the VAT rebates approved was less than 0.5 percent of the Eastfound Companies’ total sales for each year. Therefore, we have expensed the benefit to the year in which it is received, i.e., 2003, 2005, and 2008, respectively, which is consistent with 19 CFR 351.524(a).

For 2007, however, the total amount of VAT rebates exceeded 0.5 percent of the Eastfound Companies’ total sales for that year. We verified that the VAT rebates were for capital equipment.¹⁶ Accordingly, we are treating the VAT refunds for this year as a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii). To calculate the countervailable subsidy for the Eastfound Companies, we used our standard methodology for non-recurring benefits. See 19 CFR 351.524(b) and the “Allocation Period” section of this notice. Specifically, we used the discount rate described above in the “Benchmarks and Discount Rates” section to calculate the amount of the benefit for the POI. Our methodology for calculating the benefit remains unchanged from the Preliminary Determination. See 74 FR at 57643.

We then summed the benefits allocated and expensed to the POI and divided that amount by the Eastfound Companies’ total consolidated sales for 2008. On this basis, we determine the countervailable subsidy to be 0.13 percent ad valorem for the Eastfound Companies.

As discussed above, pursuant to 19 CFR 351.526(a)(1) and (2), the Department may take a program-wide change to a subsidy program into account in establishing the cash deposit rate if it determines that subsequent to the POI, but before the preliminary determination, a program-

¹⁵ See Eastfound Material Verification Report at 12-13; and Eastfound Metal Verification Report at 13-14.

¹⁶ Id.

wide change occurred and the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question.

The GOC reported that, pursuant to the Notice for Termination of Tax Refund for FIE Purchasing Domestically Produced Equipment, No. 176 (CS 2008), this program has been terminated. See GOC's September 10, 2009, initial questionnaire response at 87. The GOC stated that Article 1 of the regulation provides that since January 1, 2009, the policy of VAT refund for purchase of domestically-produced equipment by FIEs is terminated. Id. at Exhibit 35. Article II(2) provides for a transition period, provided that (1) the investment project received a letter of confirmation that the FIE project is in conformity with state industry policy before November 9, 2008, and it was registered with the tax authorities, and (2) the domestically-produced equipment was purchased and VAT invoice was issued and claims for VAT refund were filed with the tax authorities prior to June 30, 2009.

As such, the GOC stated that the last day for companies to apply for or claim benefits under the program is June 30, 2009, provided that the ratification and purchase of the equipment were made prior to that date. Id. at 87. The GOC, however, did not report the last date that a company could receive VAT refunds under this program. Under 19 CFR 351.526(d)(1), the Department will not adjust the cash deposit rate for a terminated program if residual benefits may continue to be bestowed under the program. As discussed above, the Department allocates over time benefits received under this program whose amounts exceed 0.5 percent of the relevant sales denominator in the year of receipt. Therefore, because benefits under this program may continue beyond the POI, we find that residual benefits continue to be provided and, thus, the requirements under 19 CFR 351.526(d)(1) have not been met.

J. International Market Exploration Fund (SME Fund)

The SME Fund, established under CQ(2000) No. 467, encourages the development of small and medium-sized enterprises (SMEs) by reducing the risk of operation for these enterprises in the international market. To qualify for the program, a company needs to satisfy the criteria in CQ (2000), which provides that the SME should have export and import rights, exports of less than \$15,000,000, an accounting system, personnel with foreign trade skills, and a plan for exploring the international market.¹⁷ The GOC reported that, for the mandatory respondents, the Dalian Foreign Economic and Trade Bureau and the Financial Bureau of Dalian are the authorities responsible for this program which provides one-time assistance for each approved application. Eastfound Metal and Eastfound Material reported receiving assistance under this program.

We determine that the SME Fund provides countervailable subsidies within the meaning of section 771(5) of the Act. We find that the grants constitute a financial contribution and benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We also determine that this program is an export subsidy, under section 771(5A)(B) of the Act, because the program supports the international market activities of SMEs and is limited to enterprises that have exports of less than \$15,000,000. According to the GOC, the SME Fund provides one-time assistance. Therefore, consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as "non-recurring." To measure the benefits of each grant that are allocable to the POI, we first conducted the "0.5 percent test" for each grant. See 19 CFR 351.524(b)(2). We divided the total amounts approved in each year by the relevant sales for those years. As a

¹⁷ See GOC's October 5, 2009 supplemental questionnaire response at 4.

result, we found that all grants for the Eastfound Companies are less than 0.5 percent and expensed in the year of receipt. Our findings remain unchanged from the Preliminary Determination. See 74 FR at 57644. Therefore, for the POI, we calculated a total net subsidy rate of 0.01 percent ad valorem for the Eastfound Companies.

K. Income Tax Credits for FIEs on Purchases of Domestically Produced Equipment

The Circular of the Ministry of Finance and the State Administration of Taxation of the People's Republic of China on Distribution of Interim Measures Concerning the Reduction and Exemption of Enterprise Income Tax for Investment in Domestic Equipment for Technological Renovation (CAISHUZI (1999) (209)) and Circular of the Ministry of Finance and the State Administration of Taxation on Enterprise Income Tax Credits for Purchases of Domestic Equipment by Foreign Invested Enterprises and Foreign Enterprises (CAISHUI (2000) No. 49) permit FIEs to obtain tax credits of up to 40 percent of the purchase value of domestically produced equipment. Specifically, the tax credit is available to FIEs and foreign-owned enterprises whose projects are classified in either the Encouraged or Restricted B categories of the Catalogue of Industrial Guidance for Foreign Investment. The credit can be taken for domestically produced equipment so long as the equipment is not listed in the Catalogue of Non-Duty-Exemptible Articles of Importation. The Department has previously found this program to be countervailable. See, e.g., Citric Acid from the PRC Decision Memorandum at "Income Tax Credits for FIEs on Purchases of Domestically Produced Equipment."

DHMP reported receiving tax exemptions under this program. The Eastfound Companies did not report using this program during the POI. Consistent with the Department's prior findings, we find that income tax credits for the purchase of domestically produced equipment are countervailable subsidies. The tax credits are a financial contribution in the form of revenue forgone by the government and provide a benefit to the recipients in the amount of the tax savings. See sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further determine that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

To calculate the benefit, we treated the income tax savings received by DHMP as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided DHMP's tax savings by DHMP's total sales. On this basis, we calculated a total net subsidy rate of 0.49 percent ad valorem for DHMP. For further discussion of DHMP's use of this program, see Comment 21, below.

IX. Programs Determined To Not Confer Benefits During the POI

A. Provision of Zinc for LTAR

The Department is investigating whether producers and suppliers, acting as Chinese government authorities, sold zinc to the mandatory respondents for LTAR. We verified that the Eastfound Companies did not purchase zinc during the POI.¹⁸ DHMP initially reported purchasing zinc during the POI from a trading company. Subsequent to the Preliminary Determination, DHMP submitted mill certificates for its zinc purchases that identified the

¹⁸ See Eastfound Metal Verification Report at 8 and 18.

producer of the zinc it purchased during the POI. Based on the information in the mill certificates, we determine that the zinc producer is a state-owned firm and, thus, its sales of zinc to DHMP constitutes a financial contribution within the meaning of section 771(5)(D)(iv) of the Act.

With respect to specificity, one of the three subsidy elements specified under the Act, the GOC has provided information on end uses for zinc. See GOC's Initial Questionnaire Response at 25 (September 10, 2009). The GOC further stated that the consumption of zinc occurs across a broad range of industries (e.g., galvanized steel products, alkaline batteries, various metal alloys, etc.). Id. While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. See section 771(5A)(D)(iii)(I) of the Act; see also LWRP Decision Memorandum at Comment 7, and Shelving Decision Memorandum at "Provision of Wire Rod from Less Than Adequate Remuneration."

Having addressed the issue of financial contribution and specificity, we must next analyze whether the sale of zinc to DHMP by government authorities conferred a benefit within the meaning of section 771(5)(iv) of the Act. As stated above, the Department's regulations at 19 CFR 351.511(a)(2) set forth the bases for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. As explained in the Preliminary Determination, we found that government authorities accounted for approximately 67 percent of zinc production during the POI. See 74 FR at 57631. Therefore, we preliminarily determined that domestic zinc prices are not viable tier-one prices as described under 19 CFR 351.511(a)(2)(i). We have reached the conclusion in the final determination.

We next examined whether the record contained data that could be used as a tier-two zinc benchmark under 19 CFR 351.511(a)(2)(ii). The Department has on the record of the investigation prices for zinc, as sourced from the AMM. See Petitioners' October 19, 2009, submission at Exhibit 3. The benchmark prices are reported on a monthly basis in U.S. dollars per MT. No other interested party submitted tier-two zinc prices on the record of this investigation.

Therefore, we find that the data from AMM should be used to derive a tier-two, world market price for zinc that would be available to purchasers of zinc in the PRC. We note that the Department has relied on pricing data from industry publications in recent CVD proceedings involving the PRC. See, e.g., CWP Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration," and LWRP Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration." Further, we find that there is no basis to conclude that prices from the AMM are any less reliable or representative than data from other trade industry publications used by the Department in prior CVD proceedings involving the PRC.

To determine whether zinc suppliers, acting as government authorities, sold zinc to DHMP for LTAR, we compared the prices DHMP paid to its suppliers to our zinc benchmark price. We conducted our comparison on a monthly basis. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by the DHMP for its purchases of zinc.

As explained in the Preliminary Determination, under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust

the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. See 74 FR at 57644. Regarding delivery charges, as noted above, Petitioners submitted on the record of the investigation price quotes from Maersk Line for shipping iron and steel products from Los Angeles, California to Shanghai, PRC in each month of the POI. In accordance with 19 CFR 351.511(a)(2)(iv), we have added these ocean freight costs to our zinc benchmark price. See Petitioners' January 15, 2010, submission at Exhibit 12. In addition, we have added import duties, as reported by the GOC, and the VAT applicable to imports of zinc into the PRC. See 19 CFR 351.511(a)(2)(iv). With respect to the three percent insurance charge on imports noted by Petitioners, consistent with Racks from the PRC, while the Department will consider in future determinations the propriety of including insurance as a delivery charge, the existing record of this investigation does not support such an adjustment. See Racks from the PRC Decision Memorandum at Comment 9.

Regarding the question of whether to adjust for inland freight in the zinc benchmark and the prices respondents paid to GOC authorities, we lack on the record of the instant investigation the necessary information concerning inland freight rates to make such an adjustment. Specifically, we lack inland freight information as it applies to the zinc benchmark. Concerning the zinc prices that DHMP paid to its domestic supplier, DHMP indicated that the zinc was delivered to its factory. Therefore, we find that the inland freight cost is embedded in the zinc price that DHMP paid to its domestic supplier. Thus, we find that the zinc benchmark lacks an inland freight component while inland freight costs are embedded in the zinc prices DHMP reported paying to its domestic supplier. In order to ensure that we conduct our benefit calculation on an "apples-to-apples" basis, we have used the average of the inland freight rates that DHMP paid on several of its HRS purchases as a surrogate for purposes of determining the inland freight that was embedded in the price that DHMP paid to its zinc supplier. See DHMP's December 10, 2009, supplemental questionnaire response at Exhibit SSS-3 and DHMP's September 9, 2009, supplemental questionnaire response at Exhibit 15. We then subtracted this surrogate inland freight rate from the unit prices DHMP reported paying to its domestic zinc supplier. In this manner, we have ensured that inland freight costs are absent from both benchmark and government zinc prices. We intend to collect information concerning inland freight in any subsequent administrative review(s).

Comparing the benchmark unit prices to the unit prices paid by DHMP for zinc, we determine that zinc was not provided for LTAR and that a benefit does not exist. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

B. Export Incentive Payments Characterized as "VAT Rebates"

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." See 19 CFR 351.517(a); see also 19 CFR 351.102 (for a definition of "indirect tax"). To determine whether the GOC provided a benefit under this program, we compared the VAT exemption upon export to the VAT levied with respect to the production and distribution of like products when sold for domestic consumption. The GOC reported that the VAT levied on wire decking sales in the domestic market is 17 percent and that the VAT exempted upon the export of wire decking is five percent.

We verified that neither DHMP nor the Eastfound Companies received excessive VAT rebates during the POI.¹⁹ We, therefore, have determined that the VAT exempted upon the export of wire decking did not confer a countervailable benefit because the amount of the VAT rebated on export is lower than the amount paid in the domestic market. Our finding in this regard is unchanged from our Preliminary Determination. See 74 FR at 57646.

X. Programs Determined To Be Not Used

We determine that DHMP and the Eastfound Companies did not apply for or receive benefits during the POI under the programs listed below:

A. Loan Programs

1. Honorable Enterprise Program
2. Preferential Loans for Key Projects and Technologies
3. Preferential Loans as Part of the Northeast Revitalization Program
4. Policy Loans for Firms Located in Industrial Zones in the City of Dalian in Liaoning Province

B. Provision of Goods and Services for LTAR

1. Provision of Water for LTAR for Firms Located in Designated Geographical Areas in the City of Dalian in Liaoning Province

C. Income and Other Direct Taxes

1. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment
2. Income Tax Exemption for Investment in Domestic Technological Renovation
3. Preferential Income Tax Policy for Enterprises in the Northeast Region
4. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China

D. Indirect Tax and Tariff Exemptions

1. VAT Deductions on Fixed Assets
2. VAT Exemptions for Newly Purchased Equipment in the Jinzhou District

E. Grant Programs

1. Five Points, One Line
2. Export Interest Subsidies

¹⁹ See DHMP Verification Report at 7; Eastfound Material Verification Report at 17; and Eastfound Metal Verification Report at 18.

3. State Key Technology Project Fund
4. Subsidies for Development of Famous Export Brands and China World Top Brands
5. Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands
6. Exemption of Fees for Firms Located in Designated Geographical Areas in the City of Dalian in Liaoning Province

F. Preferential Income Tax Subsidies for FIEs

1. Income Tax Exemption Program for Export-Oriented FIEs
2. Local Income Tax Exemption and Reduction Programs for Productive FIEs
3. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises

XI. Analysis of Comments

Comment 1: Whether the Department May Apply the CVD Law to an NME Country

DHMP explains that the Department is conducting a parallel AD investigation of the same product and industry. DHMP argues that in the companion AD investigation, the Department calculated the normal value by use of surrogate values. According to DHMP, such values are already adjusted for any countervailable subsidy as such values are not based on subsidized raw materials. Nor, contends DHMP, do the surrogate values reflect financial ratios from companies that received subsidies. Thus, DHMP argues the simultaneous application of the CVD law would result in the double application of duties. DHMP notes that this practice is prohibited by U.S. law and the WTO agreement. DHMP argues that in Georgetown Steel, the U.S. Court of Appeals for the Federal Circuit held that “upon the purpose of the countervailing duty law, the nature of non-market economies and the actions Congress has taken in other statutes specifically address the question of exports from those economies.” See Georgetown Steel Corporation v. United States, 801 F. Supp. 2d 1308, 1314 (Fed. Cir. 1986) (Georgetown Steel).

DHMP notes that in analyzing the Trade Act of 1974 and the Trade Agreements Act of 1979, the Court held that “Congress intended that any selling by nonmarket economies at unreasonably low prices should be dealt with under the AD law.” DHMP asserts that there is no indication in any of those statutes, or their legislative history, that Congress intended or understood that the CVD law also would apply. DHMP further argues that the court further determined that “Congress elected to deal with the problem under the antidumping law and not under the countervailing duty law.” See Georgetown Steel, 801 F. Supp. 2d. at 1316 and 1318. DHMP argues that although AD and CVD investigations are meant to address different behaviors, their similar purposes and the fact that relief is affected in the same way results in a double remedy. DHMP cites section 771a(c)(1)(C) of the Act that recognizes the potential for double remedy in certain circumstances and it provides for an adjustment to the export price in the dumping calculation for CVD duties assessed due to export subsidies.

DHMP contends that in GPX, the court held that “if Commerce now seeks to impose CVD remedies on the products of NME countries as well, Commerce must apply methodologies that make such parallel remedies reasonable, including methodologies that will make it unlikely that double counting will occur.” See GPX Int’l Tire Corp. v. United States, 645 F. Supp. 2d 1231, 1243 (CIT 2009) (GPX). By countervailing the subsidies in the CVD investigation and also using surrogate values in the NME calculation in the AD investigation, DHMP argues that the Department is applying an unfair double remedy to respondents from NME countries. Therefore, DHMP concludes that the Department has no legal authority to conduct a CVD investigation while continuing to treat China as an NME for purposes of the AD law. Therefore, DHMP argues the Department must terminate the CVD investigation.

The Eastfound Companies argue that the Department lacks the authority to conduct a CVD investigation against the Eastfound companies, or any Chinese company, as long as the Department treats the PRC as an NME country in a parallel AD investigation and urges the Department to adopt in full the arguments submitted by the GOC.

The GOC also argues that there is a contradiction between the Department’s continuing treatment of the PRC as an NME for purposes of the parallel AD investigation of wire decking while also conducting a CVD investigation of wire decking. The GOC contends that the Department must either (1) make its AD wire decking determination without employing its NME methodology, or (2) terminate its CVD investigation regarding the same wire decking imports. The GOC argues that the current approach is contrary to both U.S. trade remedy laws and the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). The GOC further argues that such an approach will result in double-counting the same alleged subsidies under both CVD and AD law, which leaves the Department in the contradictory position of arguing that market prices both can and cannot exist in the PRC.

The GOC asserts that under the statutory scheme that Congress created to address allegedly unfair imports, the CVD law does not apply to NMEs. The GOC argues that when the Department attempts to measure subsidies and impose CVDs in a country it treats as an NME, it is contradicting the premises of its authority to conduct the CVD investigation and engaging in double-counting and creating duplicative remedies.

The GOC notes that in GPX the CIT explained that “if Commerce now seeks to impose CVD remedies on the products of NME countries as well, Commerce must apply methodologies that make such parallel remedies reasonable, including methodologies that will make it unlikely that double counting will occur.” See GPX, 645 F. Supp 2d at 1231. The GOC notes that the Department has not, to date, applied such methodologies.

The GOC explains that under the AD methodology applied to firms operating in NME countries, the Department utilizes surrogate factor of production values to calculate normal value and disregards domestic costs and prices on the assumption that those prices are subsidized. The GOC further explains that the Department values factors of production in proceedings utilizing the NME methodology using the market value of these factors in a non-subsidized market economy country. Thus, according to the GOC, the dumping margins will capture the difference between U.S. price and the non-subsidized market benchmark price for the factors of production. The GOC contends that the GPX court found that in the case of domestic subsidies “the export price is not being compared with the price of the good in the PRC in which case both sides of the comparison would be equally affected, but rather, export price, however it is affected by the subsidy, is compared with the presumptively subsidy-free constructed normal value.” See GPX, 645 F. Supp 2d at 1242. Thus, the GOC contends that CVDs provide a duplicative remedy since

CVD rates would also capture the difference between allegedly subsidized Chinese imports and non-subsidized market imports. As such, the GOC argues that the Department should terminate the CVD investigation to avoid the imposition of a double remedy on importers of wire decking from the PRC.

The GOC further argues that the imposition of CVD duties on Chinese imports violates the requirements of the Administrative Procedure Act (APA). The GOC contends that the APA establishes procedures that must be followed when agencies formulate, amend or repeal a rule, including the Department. The GOC argues that the Department's change of methodology to now apply the CVD law to the PRC clearly falls within the rule-making rubric and must follow the procedures outlined in the APA.

The GOC argues that the Department's previous position that the CVD law does not apply to NMEs meets the APA's definition of a rule as "the whole or part of an agency statement of general or particular applicability and future effects designed to implement, interpret, or prescribe law or policy." See USC 551(4). The GOC further argues that the Department has issued statements of legal interpretation regarding the imposition of CVD duties against imports from NMEs following a notice and comment period no fewer than three times over the past twenty years and each time found that CVD duties could not be imposed against NMEs. First, the Department adopted its position not to apply the CVD law to NMEs in 1984 after a specific notice and comment period. Second, the Department affirmed its 1984 decision not to apply the CVD law to NMEs in the 1993 "General Issues Appendix", a formal written statement appended to the Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria, which resolved various CVD law issues, including a specific reaffirmation of the rule regarding non-application of the CVD laws to NMEs. See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, 37261 (July 9, 1993) (General Issues Appendix). Finally when it promulgated its CVD regulations in 1998, the Department again confirmed that it did not intend to impose CVDs against NMEs.

The GOC argues that once an agency has given its regulation a definitive interpretation, any subsequent change in that interpretation is effectively an amendment of the regulation, which may not be effected without first engaging in APA notice and comment rulemaking. The GOC contends that the Department's treatment of NMEs in the CVD context was a definitive interpretation. Therefore, even if it was permissible under the statute for the Department to revise its regulations such that the CVD law could be applied to countries designated by the Department as NMEs, it is not permissible for the Department to make this application prior to the final amendment of the applicable rules promulgated through established rulemaking procedures.

Petitioners contest the claim that the Department lacks the authority to conduct a CVD investigation against the PRC because it continues to treat the PRC as an NME. Petitioners disagree that the CVD law may not lawfully be applied to NME countries, that imposition of both CVDs and ADs imposes a double remedy against the same practice, and that the agency's decision to apply the CVD law to the PRC violates the APA. Petitioners argue that none of respondents' claims have merit.

First, Petitioners argue that neither the statute nor any judicial precedent preclude the Department from applying the CVD law to the PRC as an NME country. Petitioners take issue with respondent's claim that in Georgetown Steel the CIT found that under the statutory scheme, the CVD law does not apply to NME countries. This assertion, contend Petitioners, misconstrues the holding of the CIT. According to Petitioners, in Georgetown Steel the CIT did

not find that the CVD law prohibits the application of the CVD law to all NME countries, but sustained the Department's "broad discretion," under the facts of that case, to determine not to apply the CVD law to the countries at issue. Thus, argue Petitioners, the Department has rightfully concluded that Georgetown Steel did not bar application of the CVD law to the PRC. Notably, the U.S. Court of International Trade has concurred, finding that "the Georgetown Steel court only affirmed {the Department's} decision not to apply CVD law to the NMEs in question in that particular case and recognized the continuing 'broad discretion' of the agency to determine whether to apply countervailing duty law to NMEs." See Georgetown Steel, 801 F. 2d at 1316 – 1318.

Petitioners further note that the Protocol of Accession with the PRC expressly allows for the application of the CVD law to the PRCC even while the PRC remains classified as an NME. Accordingly, Petitioners argue respondents' contention that the Department is precluded from conducting a CVD investigation against the PRC based on the holding of Georgetown Steel or otherwise must be rejected.

Petitioners further assert that respondents' contention that the application of the CVD law to the PRC imposes a double remedy is both misplaced in this case and invalid. Petitioners argue that respondents have cited to no statutory authority that would permit the Department to terminate this CVD investigation or to adjust the CVD calculations to prevent double counting. Petitioners further argue that the statute contemplates only an adjustment to AD duties, not to CVD duties, and then only for export subsidies identified. Petitioners argue that, as the Department has consistently recognized, if there were to be any adjustment to prevent an incidence of alleged double remedies, such an adjustment would have to occur in the context of an AD investigation.

Petitioners further argue that GPX, on which respondents rely, does not preclude application of the CVD law to the PRC, does not hold that a double remedy necessarily occurs when both CVD duties and AD duties are applied, and does not require either termination of a CVD case or setting a CVD rate to zero in this context as respondents urge. Petitioners argue that the GPX court held that "Commerce may have the authority to apply the CVD law to products of an NME designated country . . ." See GPX, 645 F. Supp. 2d. at 1240.

Further, according to Petitioners, GPX found only that the "potential" for double counting may exist where both CVD and AD duties are imposed, not that there was necessarily double counting in such instances. See GPX, 645 F. Supp. 2d. at 1243. They add that GPX does not require either termination of a CVD case against an NME country where a dumping case exists or setting subsidy rates to zero in this context.

Petitioners disagree that the Department's decisions in recent cases to apply the CVD law to the PRC, a country the Department classifies as an NME, reflect an effective amendment of a regulation that is impermissible without engaging in the APA notice and comment rulemaking. Petitioners argue that the APA does not apply to AD or CVD administrative proceedings. See 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) and accompanying Issues and Decision Memorandum (OCTG from the PRC Decision Memorandum) at Comment 1. Petitioners argue that in GSA the Court found that "antidumping and countervailing proceedings . . . are investigatory in nature." See GSA, S.r.l. v. United States, 77 F. Supp. 2d. 1349, 1359 (1999) (GSA) (citing Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316(I) (1994) at 892, reprinted in 1994 U.S.S.C.A.N. at 4215-216 (1994)). Moreover

Petitioners argue, the GOC is incorrect in contending that the agency has amended a regulation with respect to this practice. Petitioners argue that there is no regulation addressing the application or non-application of the CVD law to NME countries. The Department's decision as to whether a subsidy can be calculated in an NME situation is based on the facts of each case using the Department's "informed discretion." See SEC v. Chenery Corp., 332 U.S. 194, 202-03 (1947) (Chenery Corp.). Thus, the GOC's contention that the Department has violated the APA by applying the CVD law to the PRC in this case is also invalid.

Department's Position: We disagree with the GOC and the respondent firms regarding the Department's authority to apply the CVD law to the PRC. The Department's positions on the issues raised are fully explained in multiple cases. See, e.g., OCTG from the PRC Decision Memorandum at Comment 1. Congress granted the Department the general authority to conduct CVD investigations. See, e.g., sections 701, 771(5), and (5A) of the Act. In none of these provisions is the granting of this authority limited only to market economies. For example, the Department was given the authority to determine whether a "government of a country or any public entity within the territory of a country is providing . . . a countervailable subsidy" See section 701(a) of the Act. Similarly, the term "country," defined in section 771(3) of the Act, is not limited only to market economies, but is defined broadly to apply to a foreign country, among other entities. See section 701(b) of the Act (providing the definition of "Subsidies Agreement country").

In 1984, the Department first addressed the issue of the application of the CVD law to NMEs. In the absence of any statutory command to the contrary, the Department exercised its "broad discretion" to conclude that "a 'bounty or grant,' within the meaning of the CVD law, cannot be found in an NME." See Carbon Steel Wire Rod From Poland; Final Negative Countervailing Duty Determination, 49 FR 19374 (May 7, 1984) (Wire Rod from Poland) and Wire Rod From Czechoslovakia; Final Negative Countervailing Duty Determination, 49 FR 19370 (May 7, 1984) (Wire Rod from Czechoslovakia). The Department reached this conclusion, in large part, because both output and input prices were centrally administered, thereby effectively administering profits as well. The Department explained that "{t}his is the background that does not allow us to identify specific NME government actions as bounties or grants." See, e.g., Wire Rod from Czechoslovakia, 49 FR at 19373. Thus, the Department based its decision upon the economic realities of Soviet-bloc economies. In contrast, the Department has previously explained that, "although price controls and guidance remain on certain 'essential' goods and services in the PRC, the PRC Government has eliminated price controls on most products" See Memorandum from Shana Lee-Alaia and Lawrence Norton to David M. Spooner, Assistant Secretary of Commerce, Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China, "Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy" (March 29, 2007) (Georgetown Steel Memorandum) discussed in CFS from the PRC. Therefore, the primary concern about the application of the CVD law to NMEs originally articulated in the Wire Rod from Poland and Wire Rod from Czechoslovakia cases is not a significant factor with respect to the PRC's present-day economy. Thus, the Department has concluded that it is able to determine whether subsidies benefit imports from the PRC.

The Georgetown Steel Memorandum details the Department's reasons for applying the CVD law to the PRC and the legal authority to do so. Georgetown Steel does not rest on the absence of market-determined prices, and the decision to apply the CVD law to the PRC does

not rest on a finding of market-determined prices in the PRC. In the case of the PRC's economy today, as the Georgetown Steel Memorandum makes clear, the PRC no longer has a centrally-planned economy and, as a result, the PRC no longer administratively sets most prices. As the Georgetown Steel Memorandum also makes clear, it is the absence of central planning, not market-determined prices, that makes subsidies identifiable and the CVD law applicable to the PRC. See Georgetown Steel Memorandum at 5.

As the Department explains in the Georgetown Steel Memorandum, extensive PRC government controls and interventions in the economy, particularly with respect to the allocation of land, labor and capital, undermine and distort the price formation process in the PRC and, therefore, make the measurement of subsidy benefits potentially problematic. See Georgetown Steel Memorandum at 5; see also Memorandum to David M. Spooner, Assistant Secretary for Import Administration, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China, "Status as a Non-Market Economy" (August 30, 2006) (Lined Paper Memorandum) at 22. The problem is such that there is no basis for either outright rejection or acceptance of all the PRC's prices or costs as CVD benchmarks because the nature, scope and extent of government controls and interventions in relevant markets can vary tremendously from market-to-market. Some of the PRC prices or costs will be useful for benchmarking purposes, *i.e.*, are market-determined, and some will not, and the Department will make that determination on a case-by-case basis, based on the facts and evidence on the record. Thus, because of the mixed, transitional nature of the PRC's economy today, there is no longer any basis to conclude, from the existence of some "non-market-determined prices," that the CVD law is not applicable to the PRC.

The U.S. Court of Appeals for the Federal Circuit (CAFC) recognized the Department's broad discretion in determining whether it can apply the CVD law to imports from an NME in Georgetown Steel. See Georgetown Steel, 801 F. Supp. 2d at 1308. The issue in Georgetown Steel was whether the Department could apply CVDs (irrespective of whether any AD duties were also imposed) to potash from the USSR and the German Democratic Republic and carbon steel wire rod from Czechoslovakia and Poland. The Department determined that those economies, which all operated under the same, highly rigid Soviet system, were so monolithic as to render nonsensical the very concept of a government transferring a benefit to an independent producer or exporter. The Department therefore concluded that it could not apply the U.S. CVD law to these exports, because it could not determine whether that government had bestowed a subsidy (then called a "bounty or grant") upon them. See, e.g., Wire Rod from Czechoslovakia, 49 FR at 19373. While the Department did not explicitly limit its decision to the specific facts of the Soviet Bloc in the mid-1980s, its conclusion was based on those facts. The CAFC accepted the Department's logic, agreeing that, "Even if one were to label these incentives as a 'subsidy,' in the loosest sense of the term, the governments of those nonmarket economies would in effect be subsidizing themselves." See Georgetown Steel, 801 F. Supp. 2d. at 1316. Noting the "broad discretion" due the Department in determining what constituted a subsidy, the Court then deferred to the Department's judgment on the question. Thus, Georgetown Steel did not hold that the Department was free not to apply the CVD law to exports from NME countries, where it was possible to do so. The CAFC simply deferred to the Department's determination that it was unable to apply the CVD law to exports from Soviet Bloc countries in the mid-1980s.

The Georgetown Steel Court did not find that the CVD law prohibited the application of the CVD law to all NMEs for all time, but only that the Department's decision not to apply the

law was reasonable based upon the language of the statute and the facts of the case. Specifically, the CAFC recognized that:

{T}he agency administering the countervailing duty law has broad discretion in determining the existence of a “bounty” or “grant” under that law. We cannot say that the Administration’s conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the export of potash to the United States were not bounties or grants under section 303 was unreasonable, not in accordance with law or an abuse of discretion. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-45, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984).

See Georgetown Steel, 801 F. Supp. 2d. at 1318 (emphasis added).

The Georgetown Steel Court did not hold that the statute prohibited application of the CVD law to NMEs, nor did it hold that Congress spoke to the precise question at issue. Instead, as explained above, the Court held that the question was within the discretion of the Department.

The CIT concurred, explaining that “the Georgetown Steel court only affirmed {the Department}’s decision not to apply countervailing duty law to the NMEs in question in that particular case and recognized the continuing ‘broad discretion’ of the agency to determine whether to apply countervailing duty law to NMEs.” See Government of the People’s Republic of China et al. v. United States, 483 F. Supp. 2d 1274, 1282 (CIT 2007) (GOC v. United States) (citing Georgetown Steel at 1318). Therefore, the Court declined to find that the Department’s investigation of subsidies in the PRC was ultra vires.

The respondents’ argument that the intent of Congress was that the CVD law does not apply to NMEs is also flawed. Since the holding in Georgetown Steel, Congress has expressed its understanding that the Department already possesses the legal authority to apply the CVD law to NMEs on several occasions. For example, on October 10, 2000, Congress passed the PNTR Legislation. In section 413 of that law, which is now codified in 22 U.S.C. § 6943(a)(1), Congress authorized funding for the Department to monitor “compliance by the People’s Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People’s Republic of China.” See 22 U.S.C. § 6943(a)(1) (emphasis added). The PRC was designated as an NME at the time this bill was passed, as it is today. Thus, Congress not only contemplated that the Department possesses the authority to apply the CVD law to the PRC, but authorized funds to defend any CVD measures the Department might apply.

This statutory provision is not the only instance where Congress has expressed its understanding that the CVD law may be applied to NMEs in general and the PRC in particular. In that same trade law, Congress explained that “{o}n November 15, 1999, the United States and the People’s Republic of China concluded a bilateral agreement concerning the terms of the People’s Republic of China’s eventual accession to the World Trade Organization.” See 22 U.S.C. § 6901(8). Congress then expressed its intent that the “United States Government must effectively monitor and enforce its rights under the Agreements on the accession of the People’s Republic of China to the WTO.” See 22 U.S.C. § 6941(5). In these statutory provisions, Congress is referring, in part, to the PRC’s commitment to be bound by the SCM Agreement as well as the specific concessions the PRC agreed to in its Accession Protocol.

The Accession Protocol allows for the application of the CVD law to the PRC, even while the PRC remains classified as an NME by the Department. In fact, in addition to agreeing to the terms of the SCM Agreement, specific provisions were included in the Accession Protocol that involve the application of the CVD law to the PRC. For example, Article 15(b) of the Accession Protocol provides for special rules in determining benchmarks that are used to measure whether the subsidy bestowed a benefit on the company. Paragraph (d) of that same Article provides for the continuing treatment of the PRC as an NME. There is no limitation on the application of Article 15(b) with respect to Article 15(d), thus indicating it became applicable at the time the Accession Protocol entered into effect. Although WTO agreements such as the Accession Protocol do not grant direct rights under U.S. law, the Accession Protocol contemplates the application of CVD measures to the PRC as one of the possible existing trade remedies available under U.S. law. Therefore, Congress' directive that the "United States Government must effectively monitor and enforce its rights under the agreements on the accession of the People's Republic of China to the WTO," contemplates the application of the CVD law to the PRC. See 22 U.S.C. § 6941(5). Neither the SCM Agreement nor the PRC's Accession Protocol is part of U.S. domestic law. However, the Accession Protocol, to which the PRC agreed, is relevant to the PRC's and our international rights and obligations. Congress thought the provisions of the Accession Protocol important enough to direct that they be monitored and enforced.

We disagree with the GOC's contention that the application of the CVD law to the PRC constitutes a retroactive amendment to a binding rule that requires a formal rulemaking. An agency has broad discretion to determine whether notice-and-comment rulemaking or case-by-case adjudication is the more appropriate procedure for changing a policy or a practice. See, e.g., Chenery Corp., 332 U.S. at 202-03 ("the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency"). Here, the decision of whether a subsidy can be calculated in an NME hinges on the facts of the case, and should be made exercising the Department's "informed discretion." See Chenery Corp., 332 U.S. at 203. The CIT agreed, stating that:

While Commerce acknowledges that it has a policy or practice of not applying countervailing duty law to NMEs, see, e.g., Request for Comment, Commerce has not promulgated a regulation confirming that it will not apply countervailing duty law to NMEs. In the absence of a rule, Commerce need not follow the notice-and-comment obligations found in the APA, 5 U.S.C. § 553, and instead may change its policy by "ad hoc litigation." See Chenery Corp., 332 U.S. at 203.

See GOC v. United States, 483 F. Supp. 2d at 1282.

The CIT has repeatedly recognized the Department's discretion to modify its practice and has upheld decisions by the Department to change its policies on a case-by-case basis rather than by rulemaking when it has provided a reasonable explanation for any change in policy. See, e.g., Budd Co., Wheel & Brake Div. v. United States, 746 F. Supp. 1093 (CIT 1990) (holding that the Department did not engage in rulemaking when it modified its hyperinflation methodology: "because it fully explained its decision on the record of the case it did not deprive plaintiff of procedural fairness under the APA or otherwise"); Sonco Steel Tube Div., Ferrum, Inc. v. United States, 694 F. Supp. 959, 966 (CIT 1988) (formal rulemaking procedures were not required in determining whether it was appropriate to deduct further manufacturing profit from the

exporter's sales price). This is because it is necessary for the Department to have the flexibility to observe the actual operation of its policy through the administrative process and as opposed to formalized rulemaking. See Ceramica Regiomontana, S.A. v. United States, 10 CIT 399, 404-05, *aff'd*, 810 F.2d 1137 (1987). The Department has provided a fully reasoned analysis for its change of practice. See LWTP from the PRC IDM at Comment 1; see also Georgetown Steel Memorandum.

The Department's decision to apply the CVD law in this investigation is also not subject to the notice-and-comment rulemaking of the APA because of the nature of the proceedings before the agency. The "APA does not apply to antidumping administrative proceedings" because of the investigatory and not adjudicatory nature of the proceedings, a principle equally applicable to CVD proceedings. See GSA, 77 F. Supp. 2d at 1359 (citing SAA at 892) ("Antidumping and countervailing proceedings . . . are investigatory in nature.").

The GOC cites to determinations where it claims the Department established a rule under the APA that it would not apply the CVD law to the PRC. The argument premised on these determinations is incorrect because the Department does not create binding rules under the APA through its administrative determinations. Instead, in these determinations the Department expounds on its practice in light of the facts in each proceeding. Furthermore, in the determinations to which the GOC cites, the Department never found that the Congress exempted the PRC from the CVD law. In Wire Rod from Poland, which provided the Department's analysis on the Soviet bloc economies and examined whether the CVD law could be applied, the Department articulated its decisions based on the status of those economies at the time. For example, after analyzing the operation of the market (or lack thereof) in Poland, the Department explained that:

These are the essential characteristics of nonmarket economic systems. It is these features that make NME's irrational by market standards. This is the background that does not allow us to identify specific NME government actions as bounties or grants.

See Wire Rod from Poland, 49 FR at 19374.

The Department concluded that Congress had never clearly spoken to this issue. Id. In the absence of any statutory command to the contrary, the Department exercised its "broad discretion" to conclude that "a 'bounty or grant,' within the meaning of the CVD law, cannot be found in an NME." Id. The Department based its decision upon the economic realities of these Soviet-bloc economies. It did not create a sweeping rule against ever applying the CVD law to NMEs. Indeed, the Department's subsequent actions demonstrate that it did not create a rule against the application of CVD law to NMEs. For example, in 1992, the Department initiated a CVD investigation against the PRC, notwithstanding its status as an NME, after determining that certain industry sectors were sufficiently outside of government control. See Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks From the People's Republic of China, 57 FR 877 (January 9, 1992) (Lug Nuts from the PRC Initiation). The Department ultimately rescinded the CVD investigation on the basis of the AD investigation, the litigation, and a subsequent remand determination, concluding that it was not a market-oriented industry.

The GOC references Certain Steel Products from Austria (General Issues Appendix), claiming that a reference to the Department's practice elevated that practice to the level of a rule. However, the statement is simply an explanation that the CVD law is not concerned with the

subsequent use or effect of a subsidy and that “Georgetown Steel cannot be read to mean that countervailing duties may be imposed only after the Department has made a determination of the subsequent effect of a subsidy upon the recipient’s production.” See Certain Steel Products from Austria (General Issues Appendix), 58 FR at 37261. This reference to Georgetown Steel does not set forth a broad rule, but merely acknowledged the Department’s practice regarding non-application of the CVD law to NMEs.

The Department has appropriately, and consistently, determined that formal rulemaking was not appropriate for this type of decision. Instead of promulgating a rule when it drafted other CVD rules, the Department reiterated its position that the decision to not apply the CVD law in prior investigations involving NMEs was a practice:

In this regard, it is important to note here our practice of not applying the CVD law to non-market economies. The CAFC upheld this practice in Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986).

See Preamble, 63 FR at 65360. See also Certain Steel Products from Austria (General Issues Appendix), 58 FR at 37261.

In a subsequent determination, the Department continued to explain that it has a practice of not applying the CVD law to NMEs, and did not refer to this practice as a rule. “The Preamble to the Department’s regulations states that . . . it is important to note here our practice of not applying the CVD law to non-market economies. . . . We intend to continue to follow this practice.” See Final Affirmative Countervailing Duty Determination: Sulfanilic Acid From Hungary, 67 FR 60223 (September 25, 2002) (Sulfanilic Acid from Hungary) and accompanying Issues and Decision Memorandum (Sulfanilic Acid from Hungary Decision Memorandum) at Comment 1. The claim that the Department has somehow created a rule, when it has neither referred to its practice as such nor adopted notice-and-comment rulemaking for this practice, is erroneous.

Regarding the issue of double counting, we disagree with the comments of the GOC and the respondent firms. The respondents have not cited to any statutory authority that would allow us to terminate this CVD investigation to avoid the alleged double remedies or to make an adjustment to the CVD calculations to prevent an incidence of alleged double remedies. If any adjustment to avoid a double remedy is possible, it would only be in the context of an AD investigation. We note that this position is consistent with the Department’s decisions in recent PRC cases. See, e.g., OCTG from the PRC Decision Memorandum at Comment 2, Citric Acid from the PRC Decision Memorandum at Comment 2, and Racks from the PRC Decision Memorandum at Comment 2.

The respondents’ reliance on GPX is misplaced. This decision is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted. Even if reliance on GPX were not misplaced, GPX does not support the positions attributed to it by the GOC. Contrary to the respondents’ claim that GPX absolutely precludes the Department from simultaneously applying the CVD law and the NME methodology under the AD law, the Court in GPX clearly stated that “Commerce may have the authority to apply the CVD law to products of an NME-designated country.” See GPX, 645 F. Supp. 2d at 1240. Moreover, GPX did not find that a double remedy necessarily occurs through concurrent application of the CVD statute and NME provision of the AD statute, only that the “potential” for such double counting may exist. Id.

Comment 2: Whether Producer A Constitutes a GOC Authority Capable of Providing a Financial Contribution As Defined by the Act²⁰

Petitioners argue that input Producer A is a GOC authority capable of providing a financial contribution to the respondents. Petitioners argue that Producer A was restructured from an SOE via a management buy-out process they refer to as the gaizhi process. According to Petitioners, under gaizhi, the GOC uses its close affiliations with a firm's shareholders, officers, and directors to maintain de facto control over supposedly privatized SOEs. Citing to proprietary information contained in their January 15, 2010, submission at Exhibits 3 through 8, Petitioners claim that the GOC used the gaizhi process to maintain its control over Producer A.

Petitioners also argue that the GOC owns a significant, albeit minority, interest in Producer A. Petitioners claim that the GOC may hold additional shares of Producer A through shareholders registered outside of the PRC but, according to Petitioners, the GOC has withheld any information regarding these shareholders. Petitioners dispute the GOC's claims that it does not have access to ownership information of shareholders registered outside of the PRC. Petitioners argue that, as a fellow owner with significant holdings in Producer A, the GOC would be privy to the ownership structure of other shareholders registered outside of the PRC. Petitioners further argue that Article 23 of the Steel Plan prohibits "any foreign investment in the iron and steel industry of China" from obtaining a controlling interest of a steel producer. See Steel Plan, at Exhibit CVD-2 of the June 5, 2009, petition. Petitioners further argue that the GOC routinely collects ownership information and cites to an instance in which it claims the GOC prevented a foreign firm from acquiring the foreign parent of Producer A. See Petitioners' January 15, 2010, submission at Exhibit 1. Regarding Producer A, Petitioners also assert that the mere fact that it is owned by shareholders registered outside of the PRC does not necessarily establish that Producer A is not a GOC authority. Citing to OCTG from the PRC, Petitioners contend that the Department rejected the notion that foreign ownership means that a company is not a GOC authority:

Foreign ownership or registry of an owner does not necessarily mean that a company will not be treated as an authority. Foreign companies can be owned by the GOC or GOC-controlled companies.

See OCTG from the PRC Decision Memorandum at Comment 8. Petitioners also contend that to find otherwise would incentivize the GOC to refuse to identify foreign shareholders in order to demonstrate that particular input producers under examination in a CVD proceeding were not GOC authorities. Petitioners also assert in OCTG from the PRC the Department determined that the PRC had the ability to identify the ultimate owners of the input producers in question:

²⁰ The identity of Producer A is business proprietary. For the identity of Producer A as well as business proprietary discussion of this comment, see the Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping/Countervailing Duty Operations, "Issues and Decision Memorandum for Final Determination; Proprietary Versions of Comments 2, 3, and 4, (June 3, 2010) (Input Producer Memorandum), a proprietary document of which the public version is on file in the CRU room 1117 in the main Commerce building.

With respect to the second category (enterprises for which the GOC's information shows ownership by another company, or ownership by a combination of companies, government entities, and/or individuals), we determine that the GOC has failed to provide even the basic information requested in our 1st SQ to allow the Department to determine, as a threshold matter, the ultimate owners of these enterprises (i.e., information that traces ownership back to individual or state owners).

See OCTG from the PRC Decision Memorandum at "Use of Facts Otherwise Available and Adverse Facts Available." Petitioners argue that the facts of the instant investigation mirror those of OCTG from the PRC as does the GOC's unwillingness to cooperate. As a result, Petitioners argue that the Department should find that Producer A is a GOC authority.

Petitioners also argue that Producer A's additional affiliations with the GOC demonstrate that the firm should be treated as a GOC authority. Petitioners' arguments on this point reference proprietary information. For additional information, see Petitioners' January 15, 2010, submission at Exhibits 2 and 4. Petitioners further argue that the Department requested information concerning these additional affiliations but that the GOC refused to supply the requested information. Petitioners argue that as a result of the GOC's refusal to cooperate to best of its ability, the Department should apply AFA, as it did in OCTG from the PRC, and find that Producer A is a GOC authority.

In addition, Petitioners argue that the GOC has used certain government institutions to maintain its control over Producer A, as evidenced by Producer A's articles of association. Petitioners' arguments on this point reference proprietary information. For further information, see Petitioners' January 15, 2010, submission at Exhibit 8.

Lastly, Petitioners argue that Producer A's status as a GOC authority is demonstrated by its pursuit of GOC policies and interest. Petitioners' arguments on this point reference proprietary information. For further information, see Petitioners' October 21, 2009, submission at Exhibits 2 and 5.

The GOC takes issue with Petitioners' claim that the GOC used the gaizhi process to exert control over Producer A. The GOC argues that Petitioners offer no proof of such GOC influence. Instead, according to the GOC, Petitioners simply link certain company officials to membership in provincial, national, and consultative bodies and then assert that such membership transforms the company officials into GOC officials capable of exerting GOC influence by means of the gaizhi process. The GOC contests the relevance and reliability of the information on which Petitioners' rely when making their arguments on this point. The GOC argues that information cited by Petitioners in Exhibit 3 of their January 15, 2010, submission pertains solely to the CEO of Producer A and says nothing about Producer A itself. Concerning Exhibit 4 of Petitioners' submission, the GOC argues that Petitioners provide no evidence indicating that the individual cited by Petitioners as being a member of the Tenth Hebei PPC is the same individual identified in Producer A's articles of incorporation. The GOC further argues that even if the individual in question is a member of the Tenth Hebei PPC and an employee of Producer A, Petitioners have failed to demonstrate how participation in such legislative bodies translates into GOC control of Producer A and, therefore, the information is not relevant to Producer A. The GOC makes the same argument with respect to the individuals referenced in Exhibits 5 and 7 of Petitioners' submission. Regarding Exhibit 6 of Petitioners' submission, the GOC notes that the exhibit contains an article pertaining to chairman of Producer B, not

Producer A.²¹ The GOC further notes that the information contained in Exhibit 8 of Petitioners' submission is simply a scholarly article about the gaizhi process and contains no specific information regarding Producer A.

The GOC contests Petitioners' claims that the GOC has used GOC institutions to maintain its control over Producer A. The GOC argues that Petitioners mischaracterize article 10.7 of Producer A's articles of incorporation, which state the company must form a Communist Party Committee (CPC) and that the CPC must be a managerial-level department. The GOC asserts that Article 10.7 actually says that "the department of party committee and personnel of party affairs shall be incorporated into the administrative organization and staffing" and comprise only "0.6 percent of the total company staff." See GOC's October 15, 2009, supplemental questionnaire response at Exhibit 7. The GOC also takes issue with the claim that Article 10.6 requires the establishment of a GOC-controlled labor union. Citing to Article 10.6, the GOC notes that it merely states that a labor union will be established "in accordance with the provision of relative laws of China," a provision the GOC contends says nothing of GOC control.

The GOC objects to Petitioners' claim that the GOC withheld information concerning the owners of the foreign firms that hold shares in Producer A, and that the GOC's actions warrant the application of AFA. The GOC argues that it responded to every supplemental questionnaire the Department issued concerning the owners of Producer A as well as the owners of the owners of Producer A. The GOC further argues that it explained in its supplemental questionnaire response that, as the firms that own shares in Producer A are based outside of mainland China, the GOC did not have access regarding those firms' owners. See GOC's October 26, 2009, supplemental questionnaire at 1, GOC's December 15, 2009, supplemental questionnaire response at 2, and GOC's January 5, 2010, supplemental questionnaire response at 2. The GOC argues there is no record evidence indicating that the foreign firms had any affiliation or relationship with the GOC or Chinese local governments.

The GOC rejects Petitioners' claim that an alleged linkage between Producer A and company officials' membership in certain legislative and consultative bodies renders Producer A an GOC authority. The GOC argues that Petitioners are wrong to simply assume that membership in certain legislative and consultative bodies is the equivalent of being a GOC official and that such an affiliation in and of itself confirms GOC control. The GOC argues that even if one were to wrongly determine that certain individuals at Producer A were affiliated with the GOC, Petitioners are wrong to conclude that such an affiliation would necessarily give rise to GOC control of the firm in question. Citing to OCTG from the PRC the GOC argues that the Department found that if shareholders/directors are affiliated with the government then "it would be necessary to determine" whether there is the ability to control the company. See OCTG from the PRC Decision Memorandum at Comment 8.

The GOC further notes that Petitioners' citation to the general functions of the CPC, as discussed in their January 15, 2010, submission, are wrong, as the citation in question is to an article describing the function of the National People's Congress (NPC), an organization that is totally different from the local level CPC. The GOC notes that Petitioners do not address the actual activities of the CPC within Producer A and offer only unsupported hypotheses concerning the CPC's alleged influence within Producer A. Instead, contends the GOC, Petitioners merely cite to a single academic paper that only covers years 2000 through 2004 and

²¹ Producer B is discussed below.

in which the author admits that “systematic evidence is scarce” for support of his claims concerning the gaizhi process. See Petitioners’ January 15, 2010, submission at Exhibit 8.

The GOC contests Petitioners’ claims that Producer A is a GOC authority, as evidenced by its pursuit of GOC policies and interests. The GOC argues that Petitioners’ claims concerning the provincial government’s plans to merge Producer A and another private steel company are based on a single news article that discusses the government’s purported merger plans. The GOC further notes that Petitioners have provided no evidence indicating whether the merger has occurred. In addition, the GOC argues that the provincial government’s 11th Five Year Plan does not contain evidence indicating that Producer A is an GOC authority. Rather, the GOC contends that the information cited by Petitioners merely represents the provincial government’s attempts to assist small and medium-sized enterprises. The GOC further notes that the tenth proposal of the provincial government’s plan states that it seeks to reduce governmental burden on companies in areas including “autonomous operational rights for privately owned enterprises.” See Petitioners’ October 21, 2009, submission at Exhibit 5, page 3.

Department’s Position: The information on the record of the instant investigation indicates that the GOC’s ownership level does not serve as a basis to determine that Producer A operated as a GOC authority during the POI.

We disagree with Petitioners that the GOC refused to supply information we requested regarding Producer A’s affiliations, thereby warranting an adverse inference. Specifically, while the GOC has stated that it is unable to identify the ultimate owners of the entities which own the majority of Producer A because those entities are located outside of the PRC, the GOC did explain that these entities have no affiliation with or relationship to the GOC or the Chinese local government. We, therefore, find that based on the information on the record these entities have no affiliation or relationship with the GOC or Chinese local governments.

Regarding Petitioners’ claim that the management of Producer A remained unchanged from Producer A’s time as an SOE to its current form, we find that the mere fact that some of Producer A’s management staff has stayed with the firm after the firm’s conversion from an SOE is not sufficient, in and of itself, to warrant a finding that the firm is a GOC authority. The information concerning the gaizhi process placed on the record by Petitioners is of a general nature and does not provide any information specific to Producer A. Furthermore, we note that the record information shows that the members of Producers A’s board of directors and senior company officials are not appointed by the government.

With respect to the arguments made by Petitioners that Producer A is a government authority due to the presence of a GOC industrial plan, we find that there is insufficient support to find that a government industrial plan renders all companies within that particular industry to be government authorities. Further, regarding Petitioners’ claims that the GOC has forced Producer A to merge with another steel company we find that there is no information on the record indicating that any such merger has, in fact, occurred.

In this investigation, the GOC submitted information indicating that during the POI, certain company officials were members of the CPC. Petitioners further allege that a certain official at Producer A was a member of the Tenth Hebei PPC and that a director of an entity that owns Producer A was a member of China People’s Political Consultative Conference (CPPCC), allegations which the GOC contests. Petitioners also argue that Producer A’s articles of association demonstrate that Producer A is subject to GOC control.

Thus, the question before the Department is whether the fact that certain individual owners or managers of a company are officials of the GOC or CPC, CPPCC, or are part of various legislative/consultative bodies is relevant to an analysis of government control over the company. On this matter, we disagree with Petitioners that there is sufficient evidence on the record of this investigation to reach such a conclusion with respect to Producer A. We find that the record lacks the necessary broader information regarding, *e.g.*, the role that these organizations play in the PRC in forming and implementing such things as government industrial policies, or Chinese Communist Party (CCP) initiatives or priorities. The record likewise lacks the information necessary to fully understand the extent of the ability of individual government or CCP officials to further such policies and initiatives within companies that they may own or manage. Accordingly, we find that this record information provides an insufficient basis on which to conclude that the relationships between individual owners and the GOC or CCP evince government control over Producer A. The Department intends to continue to explore this issue in future segments of this proceeding and future CVD proceedings involving the PRC.

Comment 3: Whether Producer B Constitutes a GOC Authority Capable of Providing a Financial Contribution As Defined by the Act²²

Petitioners argue that the GOC's level of ownership of Producer B is such that the firm is a GOC authority. Petitioners argue that Producer B is a former state-owned firm and dispute the GOC's claims that Producer B is completely owned by shareholders with no connection to the GOC. Petitioners contend that Producer B was restructured from an SOE via the *gaizhi* process and thus, through the GOC's close affiliations with Producer B's shareholders, officers, and directors, the GOC has maintained its *de facto* control over the firm. Petitioners support their argument with citations to proprietary information contained in Exhibit 6 of their January 15, 2010, submission.

Petitioners claim that the GOC has withheld information requested by the Department regarding whether shareholders or board members of Producer B were government officials or otherwise affiliated with the GOC. Citing to OCTG from the PRC, Petitioners urge the Department to apply AFA and assume that Producer B is a government authority. See OCTG from the PRC Decision Memorandum at "Use of Facts Otherwise Available and Adverse Facts Available."

The GOC contends it has provided complete information to the Department concerning the ownership of Producer B. See GOC's October 15, October 26, and December 23, 2009, supplemental questionnaire responses. Therefore, the GOC argues that application of AFA against the GOC, as it applies to the ownership status of Producer B, is not warranted.

The GOC contests Petitioners' claims that company officials from Producer B are affiliated with the GOC through membership in legislative and consultative bodies, and that such memberships render Producer B a GOC authority. The GOC notes that the source information on which Petitioners rely to make their case in this regard in fact references a name that is different from the employee of Producer B identified in the ownership information submitted by the GOC. Thus, the GOC argues that Petitioners' information provides no evidence to indicate that Producer B is a GOC authority. The GOC further notes that information from Petitioners contains a name of an individual that is a member of the 14th Neiqiu County-Level People's

²² The identity of Producer B is business proprietary. For the identity of Producer B as well as business proprietary discussion of this comment see the Input Producer Memorandum.

Congress. The GOC contends, however, that Petitioners have not provided any link between the individual listed in the information Petitioners provided and the individual (whose name is spelled differently) that the GOC identified as a shareholder of Producer B. Thus, the GOC contends that Petitioners, by simply providing a name on a list found in Exhibit 7 of their January 15, 2010, submission, have not provided any proof that this is the same individual who is a shareholder of Producer B, let alone demonstrated that he is a government official or that the company is a GOC authority.

The Eastfound Companies also take issue with Petitioners' claims that Producer B is a government authority. The Eastfound Companies note that the GOC provided substantial amounts of information to the Department regarding the ownership status of Producer B including articles of association, capital verification reports, and business registration forms. The Eastfound Companies explain that based on this information, the Department determined that Producer B was not a GOC authority in the Preliminary Determination. See the Department's November 2, 2009, Preliminary Calculations Memorandum at Attachment II, page 3. The Eastfound Companies assert that no information or argument presented by Petitioners since the Preliminary Determination should cause the Department to reverse its initial finding in this regard. The Eastfound Companies contend that Petitioners' arguments concerning the privatization of Producer B consist of nothing more than assertions on the privatization process in general in the PRC, but say nothing of the actual privatization process that was undertaken by Producer B. The Eastfound Companies add that Petitioners have failed to present evidence detailing the actual methods used by the GOC to maintain control over Producer B. The Eastfound Companies further argue that there is no logic to Petitioners' allegations. According to the Eastfound Companies, if the Department were to assume, as Petitioners suggest, that the GOC maintained control over all privatized companies, then the economic reality would be the same as that in the former Soviet Union where the Department was unable to identify specific government actions as subsidies. The Eastfound Companies attest that the Court addressed this very issue in Georgetown Steel: "Even if one were to label these incentives as a 'subsidy,' in the loosest sense of the term, the governments of those nonmarket economies would in effect be subsidizing themselves." See Georgetown Steel, 801 F.2d at 1316.

The Eastfound Companies rebut Petitioners' claims that certain company officials' membership in legislative and consultative bodies renders Company B a GOC authority. The Eastfound Companies argue that Petitioners provided absolutely no evidence of the specific political opinions or political influence of these individuals or the manner in which the GOC supposedly controls them and gives them specific instructions on managing the business operations of the company. The Eastfound Companies note that the evidence referenced by Petitioners in their case briefs regarding the CPPCC states that membership is open to nearly all adults in the PRC regardless of ethnic states, gender, family background, occupation, etc. See Petitioners' January 15, 2010, submission at Exhibit 2. The Eastfound Companies further point out that CPPCC members, in turn, elect fellow members to serve in local Congresses. *Id.* Thus, according to the Eastfound Companies, it is clear that local Congresses consist of individuals that are elected by fellow CPPCC members, and may reflect people from all walks of life, and are not appointed by the GOC.

Department's Position: Similar to our position in Comment 2 above, regarding Petitioners' claim that the management of Producer B remained unchanged from Producer B's time as an SOE to its current form, we find that the mere fact that some of Producer B's management staff

has stayed with the firm after the firm's conversion from an SOE is not sufficient, in and of itself, to warrant a finding that the firm is a GOC authority. Further, the information concerning the gaizhi process placed on the record by Petitioners is general in nature and does not provide any information specific to Producer B.

We also disagree with Petitioners that the Department should, pursuant to AFA, assume that Producer B is a GOC authority on the grounds that the GOC failed to disclose that certain company officials are CPPCC and municipal/provincial People's Congress members. We find that Petitioners' claims concerning membership in the CPPCC and various municipal/provincial People's Congresses by certain company officials employed at Producer B are not supported by record evidence. For more information, see the Input Producer Memorandum.

Furthermore, even if Petitioners had provided sufficient information indicating that company officials employed by Producer B were members of the PPC, CPPCC, or various legislative bodies, as explained above, we find that the record lacks the necessary broader information regarding, e.g., the role that these organizations play in the PRC in forming and implementing such things as government industrial policies, or CCP initiatives or priorities. The record likewise lacks the information necessary to fully understand the extent of the ability of individual government or CCP officials to further such policies and initiatives within companies that they may own or manage. Accordingly, we find that the record information provides an insufficient basis on which to conclude that the relationships between individual owners and the GOC or CCP evince government control over Producer B.

Comment 4: Whether Producer C Constitutes a GOC Authority Capable of Providing a Financial Contribution As Defined by the Act²³

With regard to Producer C, Petitioners contend that it is a former SOE that continued to serve as a GOC authority during the POI through shares held by Producer C's GOC-controlled labor union. Petitioners claim that the labor union held a significant share of Producer C's shares, such that it was able to effectively control the firm. See Petitioners' January 15, 2010, submission at Exhibit 1. Petitioners also argue that, in spite of its management buyout, the GOC has maintained de facto control over Producer C through the gaizhi process. Petitioners cite to proprietary information contained in their January 15, 2010, submission at Exhibit 8 to support their argument. In addition, Petitioners claim that Producer C's pursuit of GOC policies and interests demonstrate that the firm is a GOC authority. Petitioners claim that proprietary proxy materials demonstrate Producer C's pursuit of GOC policies. See Petitioners' January 15, 2010, submission at Exhibit 1.

Further, Petitioners assert that Producer C is a GOC authority based on the GOC's ability to control its business activities. Petitioners' claims on this point reference business proprietary information. See Petitioners' January 15, 2010, submission at Exhibit 11.

The GOC contests Petitioners' claims that the GOC maintained control of Producer C through the gaizhi process. The GOC notes that the information on which Petitioners rely to make this allegation is merely a general article regarding one author's opinion of the impact of the gaizhi process on corporate governance in general and says nothing regarding the effect Producer C's particular management buyout had on the company.

²³ The identity of Producer C is business proprietary. For the identity of Producer C as well as business proprietary discussion of this comment see the Input Producer Memorandum.

The GOC urges the Department to discount Petitioners' claim that the alleged link of an official from Producer C with assorted legislative and consultative bodies renders Producer C a GOC authority. The GOC argues that Petitioners have failed to support their contention that the GOC's affiliation with the individual that is Producer C's largest shareholder, general manager, and board chairman, enables the GOC to control the firm. The GOC notes that nowhere in the information cited by Petitioners does it indicate that the individual in question is a GOC official or that the individual's membership in legislative or consultative bodies have made him a GOC official. The GOC notes that Article 53(14) of the Civil Servant Law of the PRC prevents government officials from undertaking profit-making activity or holding a concurrent position at a profit-making firm. The GOC also argues that the mere fact that Producer C has won certain awards from the government proves nothing regarding alleged the GOC's alleged control of the company.

The GOC disputes Petitioners' arguments that the circumstances surrounding the proposed purchase of shares by a foreign firm of a company allegedly affiliated with Producer C demonstrates the GOC's control over Producer C's operations thereby making Producer C a GOC authority. The GOC points out that Petitioners' own information indicates that the firm slated for purchase was a foreign company and thus not subject to GOC policy. See Petitioners' January 15, 2010, submission at Exhibit 11. The GOC further argues that information supplied by Petitioners indicates that the Hong Kong stock exchange forced the foreign purchaser to make a general offering because it found that the purchaser was acting in concert with the chairman of the firm slated for purchase. The GOC asserts that Petitioners have failed to demonstrate how the event indicates that the GOC controls the firm slated for purchase, the chairman of said firm, or Producer C. The GOC notes that the GOC's request for information concerning the foreign purchaser's attempted acquisition says nothing about the normal records or information the GOC would normally have on foreign investors. In addition, the GOC points out that the foreign purchaser's proposed acquisition was ultimately rejected on antitrust grounds, a fact that provides no indication that the firm slated for purchase or Producer C is a GOC authority. The GOC also argues that the PRC is not unique in applying its antitrust regulations to acquisitions made by foreign firms.

The GOC argues that Petitioners have provided no credible evidence to support their claim that Producer C has pursued GOC interests and policies in a manner that renders Producer C a GOC authority.

Lastly, the GOC contests the notion that Producer C is a GOC authority by virtue of shares held by the labor union. The GOC argues that Petitioners' claims on this point are based on information from 2002 and 2003 and, thus, the GOC questions the relevance of Petitioners' argument. Citing to business proprietary information submitted by Petitioners, the GOC explains that the labor union's share ownership, in fact, translates into a minor share stake in Producer C. See Petitioners' January 15, 2010, submission at Exhibit 1 at 61 – 62. The GOC further argues that the largest shareholders, which account for the vast majority of the shares of Producer C, are foreign entities that are not subject to GOC control. See GOC's October 15, 2010, supplemental questionnaire response.

Department's Position: Similar to our position in Comments 2 and 3 above, regarding Petitioners' claim that the management of Producer C remained unchanged from Producer C's time as purportedly state-owned firm to its current form, we find that the mere fact that some of

Producer B's management staff has stayed with the firm after the firm's sale is not sufficient, in and of itself, to warrant a finding that the firm is a GOC authority.

With respect to the arguments made by Petitioners that Producer C is a government authority due to the presence of a GOC industrial plan, we find that there is insufficient support to find that a government industrial plan renders all companies within that particular industry to be government authorities.

We also disagree with Petitioners' argument that Producer C is a GOC authority based on the GOC's ability to control its business activities. Our determination in this regard makes extensive reference to business proprietary information. Therefore, for further discussion, see the Input Producer Memorandum.

We further disagree with Petitioners' claim that Producer C was majority-owned by the GOC by virtue of shares held by a labor union. The evidence on the record demonstrates that during the POI, the labor union in question held a relatively small share of Producer C's outstanding shares. See the GOC's October 15, 2009, supplemental questionnaire response.

We disagree with Petitioners' claim that Producer C is a GOC authority due to government control exerted over company officials that are CPP members. As explained above, we find that the record lacks the necessary broader information regarding, e.g., the role that these organizations play in the PRC in forming and implementing such things as government industrial policies, or CCP initiatives or priorities. The record likewise lacks the information necessary to fully understand the extent of the ability of individual government or CCP officials to further such policies and initiatives within companies that they may own or manage. Accordingly, we find that such record information provides an insufficient basis on which to conclude that the relationships between individual owners and the GOC or CCP evince government control over Producer C.

Comment 5: Whether DHMP's Zinc Supplier(s) Is A GOC Authority

Petitioners urge the Department to find that DHMP acquired its zinc inputs during the POI from a producer that was a GOC authority. Petitioners claim that information submitted by the GOC confirms that the zinc DHMP purchased during the POI was produced by a GOC authority. Petitioners further argue that the GOC acknowledged that the zinc producer in question is a GOC authority.

The GOC and respondents did not submit rebuttal comments.

Department's Position: We agree with Petitioners. Information submitted by the GOC indicates that the entity that produced the zinc DHMP purchased during the POI was a GOC authority. See the GOC's January 4, 2010, supplemental questionnaire at 1. As a result, in the final determination, we have compared the price DHMP paid to this entity for zinc with a zinc benchmark to determine whether DHMP acquired zinc for LTAR. As explained in the "Programs Determined To Not Confer Benefits During the POI" section, the prices DHMP paid on its purchases of zinc are higher than the benchmark zinc price and does not result in a countervailable benefit under this program.

Comment 6: Whether Actual Wire Rod and HRS Market Prices in the PRC Are Appropriate Benchmarks

The Department preliminarily determined that inputs supplied by the government authorities constitute a financial contribution and provide a benefit. The GOC contends that in identifying the benchmark for determining the benefit, the Department ignored its findings regarding the nature of prices in the PRC as stated in the Georgetown Memorandum, where the Department found that “although price controls and guidance remain on certain ‘essential’ goods and services in China, the PRC Government has eliminated price controls on most products; market forces now determine the prices of more than 90 percent of products traded in China.” See Georgetown Steel Memorandum at 5 (citing The Economist Intelligence Unit, Country Commerce: China, 2006 at 73). The GOC notes that the Department also found that “SOEs have the legal right and obligation to act as independent economic entities under the 1994 Company Law (as amended in 2006), including independent import and export decisions on both amounts and prices.” Id. at 8. As such, the GOC argues that the Department erred when it selected a wire rod benchmark from outside of the PRC.

The Preamble states that “distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.” The GOC states that it reported to the Department total wire rod production in the PRC during the POI by various ownership categories and their respective percentages of total production and that the Department preliminarily determined that the quantity of wire rod production by SOEs and collectives “accounted for approximately the same percentage of wire rod production in the PRC as was recently found in Racks from the PRC, in which the Department determined that the GOC had direct ownership or control of wire rod production.” See Preliminary Determination, 74 FR at 57637. The GOC states that in the current investigation, the total production of wire rod by SOEs and collectives amounted to 45.34 percent during the POI. See GOC’s September 10, 2009, supplemental questionnaire response at 10. The GOC notes that despite the fact that the total production of wire rod by privately-held companies and FIEs amounted to 53.42 percent, the Department concluded that “the substantial market share held by SOEs shows that the government plays a predominant role in the market.” See Preliminary Determination, at 74 FR 57637. The GOC contends that left unexplained were the “certain circumstances” in this investigation as described in the Preamble that led the Department to conclude that the minority share of production by SOEs resulted in distortion of a market where the majority of production came from private entities.

The GOC posits that, according to the Department, the mere fact of government ownership of the SOEs is a sufficient basis for determining that these entities act to distort the market. The GOC notes that there were 339 producers of wire rod in the PRC during the POI and among these producers the Department considers 60 of them (52 SOEs and eight collectives) to be government authorities. See GOC’s December 15, 2009, questionnaire response at Exhibit 3 and GOC’s March 9, 2010, case brief at Exhibit 2. The GOC argues that the Department has proffered no evidence that there is any coordination among the SOEs in supplying or pricing wire rod that would act to significantly distort the market. In particular, the GOC argues that the Department has not provided any evidence that the finding in the Georgetown Steel Memorandum, that SOEs have the legal right and obligation to act as independent economic entities in terms of pricing, has been superseded by subsequent events or does not apply with respect to wire rod.

As to the Department's claim that export tariffs and export licensing requirements contribute to the distortion of the domestic market for wire rod because they would restrain exports and increase domestic supply resulting in lower prices, the GOC contends that the Department has merely asserted a theoretical argument. The GOC states that the Department offers no evidence that domestic prices are lower than they would be without export tariffs and export licensing requirements. The GOC adds that in other cases involving export restraints, the Department has taken the position that substantial evidence of the impact of such restraints on prices must be provided in order to determine that export restraints lower prices and result in a subsidy. See, e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Leather From Argentina, 55 FR 40212, 40213-14 (October 2, 1990); and Coated Free Sheet Paper From Indonesia: Final Affirmative Countervailing Duty Determination, 72 FR 60642 (October 25, 2007), and accompanying Issues and Decision Memorandum at "GOI's Log Export Ban." The GOC adds that the Department's claim that "the government's predominant position is further demonstrated by the low level of imports," is without substance. The GOC states that the low level of imports may simply be evidence of sufficient domestic supply and serve to dilute the government's role in the market.

Similarly, with regard to HRS, the GOC states that the Department preliminarily determined that the market for HRS is dominated by SOEs and, therefore, found that domestic benchmarks could not be used for HRS. See Preliminary Determination, 74 FR at 57638. However, the GOC notes that the data it submitted to the Department indicate that total HRS production in 2008 was 130 million MT. Of that total, 55 percent of the output was produced by SOEs or collectives and 31 percent was produced by private producers. See GOC's October 16, 2009, questionnaire response at Exhibit 13. The GOC contends that there is no evidence that the government controls the price of HRS and, thus, absent such evidence there is no basis to conclude that the 31 percent produced by 102 private producers are controlled by the GOC. See GOC's March 9, 2010, case brief at Exhibit 3. The GOC argues that it is not sufficient to dismiss a market of this size as an inappropriate benchmark.

The GOC further argues that the evidence on the record and the Department's findings in the Georgetown Steel Memorandum support the conclusion that the prices of wire rod and HRS are dictated by market forces. The GOC states that there are no laws or policies that govern the pricing of these inputs or their levels of production. The GOC adds that the fact that it does not regulate the price of steel products is demonstrated in the "Catalogue of Government-Set Prices" (Decree 11 of State Development and Planning Commission, 2001). See GOC's September 10, 2009, questionnaire response at Exhibit 6.

As such, the GOC argues that the Department should conclude that the state-owned input producers are independent commercial entities and not countervail the respondents' purchases of wire rod and HRS from SOEs. Alternatively, the GOC argues that the Department should conclude that there are domestic market prices from non-government and private entities for wire rod and HRS that can be used as appropriate tier-one benchmarks.

In their rebuttal brief, Petitioners assert that there is substantial record evidence demonstrating that the GOC plays a predominant role in the steel market, which has a distorting effect on the marketplace for wire rod and HRS. They first note the Department's consistent and recent findings that wire rod and HRS prices in the PRC "cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration." See LWRP from the PRC Decision Memorandum at Comment 7; see also Racks from the PRC, Line Pipe from the PRC, Lawn Groomers from the PRC, and CWP

from the PRC. Petitioners state that in prior CVD investigations involving the PRC, the Department has considered and rejected every argument now raised by the GOC and no new facts have been placed on the record of this investigation that would lead to a different result for this final determination.

Petitioners also argue that the GOC's conclusion that the Georgetown Steel Memorandum finds that all prices in the PRC are market-determined and that the PRC is no longer a non-market economy for purposes of determining benchmarks is incorrect. Petitioners state that these conclusions cannot be drawn from the general propositions relied upon by the Department when it determined that subsidy cases could be filed against the PRC. They add that the GOC remains actively involved in the steel market having designated the industry as a "strategic" and "pillar" industry. See June 5, 2009, Petition at Volume III, Exhibit CVD-2 (Steel Plan, Article 1). They further contend that the alleged absence of price controls does not establish that price controls and other means of influencing steel pricing in the PRC do not exist. Petitioners argue that the Department need not find that formal price controls exist on wire rod and HRS to conclude that the government influences pricing of these products such that there is no useable market-determined price on which to base an adequacy determination under 19 CFR 351.511(a)(2)(ii).

Petitioners discuss that there are specific reasons, articulated by the Department in the Preliminary Determination, explaining why prices in the markets for wire rod and HRS in the PRC are not considered sufficiently market-determined to use as benchmarks for measuring the adequacy of remuneration of the respondents' purchases of those inputs from government authorities. See Preliminary Determination, 74 FR at 57637-38. These reasons are: (1) the GOC owns a significant share of production for both products; (2) low level of wire rod imports is an indication of government influence on the wire rod market; and (3) the GOC employs export controls on wire rod that distort prices for that product. Petitioners add that the GOC's participation in the market is sufficiently extensive that it can affect private prices and, contrary to the GOC's claims, the Department is not required to provide specific evidence demonstrating the precise level of market distortion or government control that is occurring.

Petitioners further argue that the GOC cannot claim that the HRS market is not influenced by the government's 55 percent ownership share of the production or that such presence does not distort prices. Petitioners also argue that the GOC's contention that its 45.34 percent control of the wire rod market does not constitute a predominant share of the market is misplaced. Petitioners discuss that in Racks from the PRC, the Department found that this less than majority share did represent a predominant share of the wire rod market sufficient to cause distortion. See Racks from the PRC Decision Memorandum at "Provision of Wire Rod for LTAR, and Preliminary Determination, 74 FR at 57638. Petitioners add that the claimed 45.34 percent control admitted by the GOC is likely understated given the manner in which the GOC defines FIEs and, as such, the GOC could have majority share of the wire rod market. Additionally, Petitioners argue that the low level of wire rod imports (less than one percent of the market during the POI) demonstrates that there are insufficient imports of wire rod to corroborate any claim that Chinese home market prices for wire rod represent non-distorted market prices.

Rebutting the GOC's claims that the Department is required to demonstrate with substantial evidence the impact of export restraints on the market, Petitioners argue that the Department is not required to show the precise effect export restraints may have had on pricing or to demonstrate that formal price controls existed. Petitioners posit that it is enough to show that the GOC's influence in the market could have had such an impact on pricing so to make

domestic transactions less reliable as a benchmark than other potential benchmarks. In response to the cases cited by the GOC, Petitioners argue that all of those cases are inapposite to the question of whether domestic pricing is an appropriate benchmark. Petitioners discuss that in this investigation the Department is evaluating the reliability of domestic pricing as a benchmark and, therefore, any evidence, such as export tariffs and export licensing requirements, that diminish the reliability of the proposed benchmark is relevant and should be considered.

As such, given the Department's findings that SOE's had a predominant share of the wire rod and HRS markets and the government intervened in those markets in a manner that could affect prices is enough evidence to render domestic transaction prices unreliable and to justify the Department's decision to apply a world-market benchmark price to measure the adequacy of remuneration for the respondents' purchases of wire rod and HRS from government authorities.

Department's Position: The GOC's arguments regarding this matter have been previously addressed and rejected by the Department. See, e.g., Racks from the PRC Decision Memorandum at Comment 8; Line Pipe from the PRC Decision Memorandum at Comment 5, and CWP from the PRC Decision Memorandum at Comment 7. The Department's long-standing practice is to utilize a benchmark outside of the country of provision when the government's sales constitute a significant portion of the sales of the good in question. See, e.g., Line Pipe from the PRC Decision Memorandum at Comment 5. Out of country benchmarks are required in such instances because the use of in-country private producer prices would be akin to comparing the benchmark to itself (i.e., such a benchmark would reflect the distortions of the government presence). See CWP from the PRC Decision Memorandum at Comment 7. The Department reached a similar conclusion in Softwood Lumber from Canada:

Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.

See Softwood Lumber from Canada Decision Memorandum at Comment 34.

Concerning wire rod, the GOC has reported that SOEs accounted for a significant share of wire rod production in the PRC during the POI, a percentage that is nearly the same as that observed in Racks from the PRC and PC Strand from the PRC in which the Department declined to use in-country wire rod benchmarks due to the distortive effect caused by the market share held by state-owned wire rod producers. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, "Aggregate Production Data from the Government of the PRC Concerning the Wire Rod, Hot-Rolled Steel, and Zinc Industries," (November 2, 2009) (Aggregate Production Data Memorandum), a public document on file in the CRU, room 1117; see also Racks from the PRC Decision Memorandum at Comment 8, and PC Strand from the PRC Decision Memorandum at Comment 15. As the Department has explained, in instances in which the government or state-owned firms account for a significant portion of production of the good in question, it is reasonable to conclude that domestic prices for comparable goods are effectively determined by the government provided prices. Concerning HRS, the percentage produced by state-owned firms is even greater than the percentage of state-owned firms that

produce wire rod. See Aggregate Production Data Memorandum. Furthermore, in such instances, the Department has found that it is not necessary when determining the viability of a tier-one benchmark to “look beyond the degree of state-ownership” in the PRC and “consider the actual nature and structure of the industry.” For example, in CWP from the PRC, the Department rejected the GOC’s contention that, in instances in which the government accounts for a significant portion of production of the good in question, the Department was nonetheless obliged to examine whether there is a single or uniform government-set price, whether the industry in question is highly fragmented, whether state-owned producers operate the same as private producers, whether private investment in the industry in question is growing, and whether a functioning market exists as evidenced by day-to-day price fluctuations. See CWP from the PRC Decision Memorandum at Comment 7.

In addition to the government’s ownership share of the market, we find that the presence of an export tariff and export licensing requirements instituted during the POI is further evidence of the GOC’s predominant role and contributed to the distortion of the domestic market in the PRC for wire rod. Such export restraints can discourage exports and increase the supply of wire rod in the domestic market, with the result that domestic prices are lower than they otherwise would be. Moreover, the very low share of the domestic market that is supplied by imports is further evidence that the government plays a predominant role through its involvement in the market.

The GOC asserts that the large number of non-affiliated wire rod producers ensures little to no scope for strategic interaction among the firms, and that the competitive nature of these firms means their pricing decisions are driven by their costs and not by the strategic influence of the GOC’s alleged control of other firms. As the Department has explained in prior CVD proceedings involving the PRC, in making this argument the GOC fails to realize that the Department’s position is not driven by a finding of collusion between private and state-owned wire rod producers. See, e.g., Racks from the PRC Decision Memorandum at Comment 8. Rather, because of its substantial market presence, the GOC becomes a price leader, with which private firms are forced to compete. Private wire rod suppliers are essentially competing, not with other private producers, but with GOC-controlled entities. Id. Therefore, consistent with the Department’s practice (e.g., Softwood Lumber from Canada), we are using out-of-country benchmarks for wire rod where actual transaction prices are significantly distorted because of the predominant role of the government in the market.

Further, regarding the GOC’s contention that a large number of private wire rod producers ensure that the domestic market for wire rod is not distorted by the involvement of state-owned firms, we find that such arguments do not apply where the government accounts for a substantial market share. See Racks from the PRC Decision Memorandum at Comment 8. We find such market behavior assumptions are only valid when the market forces of supply and demand are not subject to government involvement in the market as a substantial producer of competitive merchandise. In this instance, because the SOEs account for such a significant portion of wire rod and HRS production, the competitive forces of supply and demand are not allowed to operate in a manner that would tend to yield truly competitive prices.

Concerning HRS, as explained above, the GOC provided the percentage of HRS production accounted for by SOEs during the POI. Based on these aggregate data, we determine that government authorities accounted for a majority of the HRS produced during the POI. Based on these data, we determine that domestic prices for HRS cannot serve as a viable tier-one benchmark as described under 19 CFR 351.511(a)(2)(i). Consequently, as there are no other

available tier-one benchmark prices, we have turned to tier-two, i.e., world market prices for HRS available to purchasers in the PRC.

On this basis, we continue to find that it is not appropriate to use tier-one benchmarks, as described under 19 CFR 351.511(a)(2)(i), when determining whether benefits were conferred under the provision of wire rod and HRS for LTAR programs.

Comment 7: Whether Benchmark Prices Should Include Freight

Petitioners state that 19 CFR 351.511(a)(2)(iv) provides that the Department will adjust benchmark prices to include delivery charges and that the Department has consistently applied this requirement in CVD investigations and reviews. See, e.g., Line Pipe from the PRC and Tires from the PRC. Specifically, in Line Pipe from the PRC, where the Department used world market prices as the benchmark to measure the adequacy of remuneration, Petitioners note that the Department determined that it should add delivery charges to the benchmark price. See Line Pipe from the PRC Decision Memorandum at “Provision of HRS for LTAR” and Comment 7. As such, in addition to the VAT and import charges that the Department included in the benchmark price at the Preliminary Determination, Petitioners argue that the Department should add delivery charges, such as international and domestic freight, to the benchmark price. They add that international freight charges for shipping “iron, steel, iron and steel articles, metal” from Los Angeles to Shanghai are on the record. See Petitioners’ January 15, 2010, submission at Exhibit 12.

Petitioners also discuss that DHMP reported that for most transactions the suppliers delivered the inputs to the company. See DHMP’s December 10, 2009, questionnaire response at 4. As such, Petitioners state that the purchase prices reported by DHMP for wire rod, HRS, and zinc are delivered prices. Therefore, because shipping costs are included in the prices, they argue that the Department should either add the average shipping costs reported by DHMP on its inputs purchases during the POI to the benchmark prices for wire rod, HRS, and zinc, or the Department should subtract the average domestic shipping charge from DHMP’s purchases of wire rod, HRS, and zinc from GOC authorities. Petitioners add that for assessing the cost of domestic freight charges for DHMP, the Department should use the average domestic freight charge reported by DHMP in Exhibit SSS-3 of its December 10, 2009, questionnaire response.

DHMP replies that the benchmarks provided by Petitioners do not indicate whether or not the prices include factors for transportation, insurance, or delivery. DHMP contends that the wire rod price simply states “Industrial Quality” and that the HRS price indicates “Region: World Export Market” without stating terms of sale or delivery. DHMP adds that the zinc price is simply “Producer’s US Spot Price, SHG.” Because this pricing data are ambiguous as to whether transportation, handling, insurance, or duty are included, DHMP argues that no adjustment should be made to the prices as there is no evidence that such an adjustment is appropriate. In the alternative, to the extent that these benchmarks are used, DHMP states that the Department should treat such data as a surrogate for Chinese domestic data and adjust only for local transportation.

Department’s Position: As stated in the Preliminary Determination, under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. See 74 FR at 57637.

Thus, in the Preliminary Determination, the Department expressed its intention to include such delivery prices as ocean freight in the derivation of the benchmarks used to determine whether GOC authorities sold wire rod and HRS to respondents for LTAR. Id. However, at the time of the Preliminary Determination, the Department lacked the necessary data. Id. We note that the inclusion of delivery charges, such as ocean freight, in tier-two (world market price) benchmarks is in accordance with the Department's practice. See, e.g., Racks from the PRC Decision Memorandum at "Provision of Wire Rod for Less Than Adequate Remuneration."

Subsequent to the Preliminary Determination, Petitioners submitted ocean freight data. Specifically, Petitioners submitted onto the record of the investigation price quotes from Maersk Line for shipping iron and steel products from Los Angeles, California to Shanghai, PRC in each month of the POI. See Petitioners' January 15, 2010, submission at Exhibit 12. In accordance with 19 CFR 351.511(a)(2)(iv), we have added these ocean freight costs to the benchmarks utilized in the input for LTAR programs. In addition, in accordance with 19 CFR 351.511(a)(2)(iv), we have continued to add import duties and VAT, as reported by the GOC, to the input benchmarks. See Preliminary Determination, 74 FR at 57637.

Regarding Petitioners' request that the Department also add inland freight to the input benchmarks and to the prices respondents paid to domestic suppliers that sold inputs produced by GOC authorities, we agree in principal that such an adjustment should be made. See Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 20923 (May 6, 2009) (HRC from India) and accompanying Issues and Decision Memorandum (HRC from India Decision Memorandum) at Comment 13. The CIT affirmed the Department's approach in HRC from India in this regard. See United States Steel Corp. v. United States, 2009 Ct. Int'l Trade Lexis 156, 25, Slip Op. 2009-152 (Dec. 30, 2009). However, we lack on the record of the instant investigation the necessary information concerning inland freight rates for the Eastfound Companies and DHMP to make such an adjustment to the benchmark price and the prices respondents paid to GOC authorities.

We note that the Eastfound Companies reported their input prices paid to GOC authorities net of inland freight. Concerning DHMP's purchases of zinc, we find that DHMP's inland freight costs are embedded in the zinc prices it reported paying to its domestic supplier. Therefore, as explained above in the "Provision of Zinc for LTAR" section, we have used the average inland freight costs that DHMP reported on its domestic purchases of HRS as a surrogate for purposes of determining the inland freight costs on DHMP's domestic purchases of zinc. We then subtracted this surrogate inland freight rate from the unit prices DHMP reported paying to its domestic zinc supplier. Thus, for the provision of inputs for LTAR programs involving the Eastfound Companies and DHMP, inland freight costs are absent from both benchmark and government prices. We intend to collect information concerning inland freight in any subsequent administrative review(s).

Comment 8: Whether Benchmark Prices Should Include Insurance Costs

Petitioners argue that the Department should revise its calculation at the Preliminary Determination for the market-determined benchmark prices for wire rod, HRS, and zinc to account for the cost of insurance. Petitioners state that the Department is required to adjust benchmark prices to include delivery charges pursuant to 19 CFR 351.511(a)(2)(iv):

In measuring adequate remuneration {using either an “actual market-determined price” or “world market price” benchmark}, the Secretary will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. This adjustment will include delivery charges and import duties.

Petitioners claim that importers incur insurance costs in importing goods into the PRC. Citing to the PRC’s “Rules Regarding the Determination on Customs Value of Imported and Exported Goods” (Customs Value Rules) at Articles 38 and 39, Petitioners claim that an importer of wire rod into the PRC is required to pay a transportation-related insurance charge of three percent of the cost of goods plus freight.²⁴ Specifically, Article 38 of the Customs Value Rules states that:

The cost of transport for imported goods shall be calculated on the basis of charges that are actually paid. Where the cost of transport is unascertainable, however, Customs shall calculate the cost en facto for transportation or on the basis of the freight rate or freight amount for the carriage of the goods published by the Shipping Industry at the time of importation.

Article 38 of the Customs Value Rules states that:

The cost of insurance for imported goods shall be calculated in the fact that the charges are actually paid. If the insurance for imported goods is unascertainable or does not occur in practice, Customs shall calculate the cost of insurance on the basis of 3% of the sum of C&F. The formula shall be expressed as follows:

The cost of insurance = (Cost of Goods + Freight) x 3%

Accordingly, Petitioners argue that the Department should make adjustments to the benchmark prices for wire rod, HRS, and zinc to include all delivery charges (international freight charges, domestic freight charges, and insurance charges) and import duties as required under 19 CFR 351.511(a)(2)(iv).

The GOC asserts that there is no basis for including insurance costs in the Department’s raw material benchmarks. The GOC counters that Petitioners simply cite to Article 39 of the Customs Value Rules but they provide no information that such costs would be or are actually incurred on the raw materials in question. Furthermore, the GOC argues that the Department has addressed and rejected this very argument with respect to its benchmark for wire rod due to insufficient evidence in Racks from the PRC. See Racks from the PRC Decision Memorandum at Comment 9. According to the GOC, Petitioners have not submitted any new evidence that would provide the basis for the Department to reconsider and reverse its decision in Racks from the PRC.

Department’s Position: Regarding Petitioners’ request that the Department also add the cost of insurance to the wire rod benchmark, we disagree. As explained in the Preliminary Determination and consistent with the approach in Racks from the PRC, we find that there is insufficient evidence on the record to warrant a change to the input benchmarks to reflect the cost of insurance. See 74 FR at 57637; see also Racks from the PRC Decision Memorandum at

²⁴ See also Petitioners’ January 15, 2010, submission at Exhibit 12.

Comment 9, and PC Strand from the PRC Decision Memorandum at Comment 13. Petitioners argue that the PRC customs authorities require an importer of wire rod to pay insurance charges. However, the evidence cited by Petitioners only establishes that the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data. The Department intends to consider in future determinations the propriety of including insurance as a delivery charge provided interested parties provide information that is more compelling than what has been presented in the instant investigation and Racks from the PRC.

Comment 9: Whether the GOC and DHMP Withheld Information Concerning the Location of DHMP's Facilities and Whether Information They Submitted is Reliable

Petitioners argue that the GOC and DHMP have withheld important information and that DHMP also provided conflicting information in its responses and at verification about the location of DHMP's facilities relative to the Yingchengzi Industrial Park and other industrial zones in the Ganjingzi District. Petitioners claim that because the information presented by the GOC and DHMP could not be verified, the Department should rely on the address reported on the website of DHMP as the best evidence of whether DHMP is within the preferential zone. Petitioners contend the information from the website indicates that DHMP is located in an industrial zone designated by the GOC. Petitioners add that the Department relied on this information in the Preliminary Determination to determine that DHMP was located in an industrial zone during the POI. See 74 FR at 57641. According to Petitioners, the Department found in DRAMS from Korea that the probative value of other record evidence can be enhanced "where the parties are found to be secretive or evasive with respect to information that is relevant and responsive to the investigating authority's analysis." See Final Results of Countervailing Duty Administrative Review: Dynamic Random Access Memory Semiconductors From the Republic of Korea, 71 FR 14,174 (March 21, 2006) (DRAMS from Korea) and accompanying Issues and Decision Memorandum (DRAMS from Korea Decision Memorandum) at Comment 1. Accordingly, Petitioners urge the Department to continue to find that DHMP acquired land-use rights for LTAR by being located within one of the designated preferential areas in Dalian.

The Nucor Corporation (Nucor) argues that at verification DHMP failed to provide to the Department credible and verifiable evidence required in a trade investigation, in particular with regard to land-related subsidy issues.²⁵ Nucor contends that respondents instead sought to have the Department conduct verification based on documents created specifically for verification. Nucor discusses that the Department encountered this situation when attempting to verify the sub-zones within the Ganjingzi Industrial Park. Nucor states that the GOC replied that no such sub-zones exist and proffered only the Ganjingzi District website as evidence. Further, with regard to identifying the six industrial parks within the Ganjingzi District, Nucor notes that the GOC annotated the map and blueprints by hand. Nucor argues that hand drawn maps and computerized blueprints that were created during verification fall short of complying with the Department's request for original source documents and are the types of materials intended to be excluded by the prohibition against materials created specifically for the purposes of verification.

The GOC argues that Petitioners and Nucor have chosen to selectively read the Department's January 8, 2010, verification outline and the GOC Dalian Verification Report and

²⁵ Nucor is a domestic interested party.

have failed to note that the GOC prepared and provided at verification the information and documentation specifically requested by the Department. The GOC notes that in the January 8, 2010, verification outline, the Department requested that respondents and the GOC make available a map demarking the boundaries of the industrial zones at issue. The GOC contends it prepared and made available such maps in response to the Department's request. The GOC further explains that at verification it stated that the website of the Ganjingzi District contains a link for all of the industrial parks located within Ganjingzi and that the website lists seven industrial parks, one of which is the Yingchengzi Industrial Park. See GOC Dalian Verification Report at 4. The GOC claims that at verification GOC officials were able to demonstrate that the boundaries of these industrial zones were accurately marked on the map presented at verification. The GOC argues this verified information demonstrates that DHMP is not located in the Yingchengzi Industrial Park.

Department's Position: We disagree with the argument that DHMP and the GOC withheld and provided conflicting information about the location of its facilities. As explained in Comment 10, during the DHMP verification, company officials provided documentation using Google Earth along with a map that shows that the location of DHMP's facility is at Guanjia Village, which according to a DHMP official is on the north Shuang Daowen Road, not on the southern portion of the road where the zone is located. See DHMP Verification Exhibit at VE-8(D) and DHMP's January 5, 2009, submission at Exhibit 4SCVD-1. The Department's verification team also found that DHMP was not included within the zone based on their tour of the outskirts of one of the two Yingchengzi Industrial zones and their review of the brochure from the Industrial Park, which identifies companies that are within the location and geographic area. See DHMP Verification Report at 6 and DHMP Verification Exhibit at VE-8(E). Furthermore, the Department's verification team also noted that DHMP's location in Shagangzi Village is not contained within the boundaries of the Yingchengzi Industrial Park, based on a computerized map which indicates the boundaries of the two parts of Yingchengzi Industrial Park in relation to Shagangzi Village. See Dalian GOC Verification Report at 5, and GOC Verification Exhibit at Exhibit 8.

On this basis, we determine that DHMP has not been secretive or evasive with respect to information that is relevant and responsive to the Department's analysis of this issue and we find that Petitioners' reference to DRAMS from Korea is not on point. Thus, for purpose of this final determination, we find that DHMP's facility is not located within an industrial zone designated by the GOC.

Comment 10: Whether DHMP Is Located In an Industrial Zone Thereby Making Its Purchase of Land from the GOC Regionally Specific Under the Act

DHMP explains that in the Preliminary Determination the Department found that DHMP's production facility is located within a designated preferential area in Dalian. See 74 FR at 57639. DHMP notes that information on the record does not support such a finding. DHMP contends that the Department ignored the information of record submitted by DHMP in accepting Petitioners' allegations before the Preliminary Determination. DHMP notes that Petitioners alleged that this benefit was provided to entities located in certain industrial zones even though questionnaire responses, certifications, and maps DHMP placed on the record indicate that none of DHMP's facilities were located within any industrial zone. DHMP explains

that in its September 9, 2009, questionnaire response it stated that it did not receive a benefit from the GOC as a result of its land purchases and that land that it purchased was not located in designated geographical areas in the City of Dalian.

DHMP further asserts that this fact is confirmed by the rate of tax DHMP paid during the year in which the transaction at issue occurred. According to DHMP, under the FIE Tax Law, an FIE was eligible for a central government tax rate of 15 percent if it is located in special economic zones (SEZ) or technological development zones. DHMP argues that it was not eligible for the reduced income tax rate and did not pay taxes at the reduced rate because it was not located in such an area. DHMP argues that the DHMP Verification Report indicates that DHMP's applicable tax rate was 24 percent, not 15 percent. See DHMP verification report at VE-4. DHMP explains that, had it been located in any of the SEZ or technological development zones, as asserted by Petitioners, DHMP would have been eligible for the reduced income tax rate of 15 percent and that this rate would have been reflected in the tax return DHMP filed in 2007, the year in which the land transaction at issue occurred.

DHMP further contests Petitioners' claim that DHMP was exempted from paying a land-use tax associated with its land payment. DHMP notes that Article 5 of the Contract for Transfer of Collective Land Use Rights stipulated that the land use fee should be collected and submitted to the government by the village committee and not paid separately by the company. Additionally, DHMP notes that the Department was able to trace and separate the payments at its verification. See Department's Verification Report at VE-8A at 3 and VE-8B at 5.

Petitioners state that DHMP did not support its claims that it was not located in an industrial zone. First, Petitioners argue that the brochure that DHMP provided at verification was not contemporaneous to the POI, thus it does not support DHMP's contention that it was not located in a designated geographical area. Second, Petitioners claim that DHMP's payment schedule presented at verification does not match the narrative of its response or case brief filed by DHMP or the GOC. Petitioners further contend that discrepancies occur in other documentation that DHMP provided to the Department at verification. Petitioners claim that the GOC presented the verifiers only with the documents that the GOC had created for purposes of verification and not the original source documents the Department had requested, such as original maps or source documents identifying the boundaries of the Yingchengzi Industrial Park. Petitioners argue the maps reviewed at verification were created by inputting coordinates into a computer and, as such, prove nothing. Petitioners further argue that the maps fail to show the preferential zones' parameters, the legends and road names are illegible, and the relationship of the alleged Yingchengzi Industrial Park to DHMP's facilities is not clear.

Petitioners further claim that accuracy of the reported boundaries for the Yingchengzi Industrial Park is called into question by the fact that companies located outside of the reported boundaries nonetheless report their location as within the Yingchengzi Industrial Park. For example, Petitioners claim that a company reported as being located in the Yingchengzi Industrial Zone, is, according to documents supplied by the GOC at verification, located outside the two zones identified by DHMP. Petitioners also argue that a comparison of the maps submitted in DHMP's December 12, 2009, supplemental questionnaire response with the "Yingchengzi Industrial Park Blueprint" maps obtained by the Department at verification confirms that the maps submitted in the December 12, 2009, submission are unreliable. Petitioners note that at verification the GOC created maps by inserting control points/location of the zone's borders into a software program that generated a computerized blueprint of the two parts of the Yingchengzi Industrial Park. Petitioners argue that given the lack of any source

documents from the GOC and its creation of this map, it appears the maps submitted by DHMP are also unreliable because they were created for purposes of this investigation.

Petitioners further question why DHMP and the GOC did not allow the Department to conduct verification at the Yingchengzi Administration Committee, the authority that oversees the zone and, according to Petitioners, was the proper source of verification. Petitioners also dispute DHMP's assertion that since it did not receive a lower tax rate in the zone, it must not have been located in the zone. Petitioners argue there is no information on the record to prove that the companies within the zone paid the lower tax rate that was applied to all foreign-invested entities located in the Yingchengzi Industrial Zone. Petitioners note that as the Department has found in CVD cases involving the PRC, designated zones have been implemented by governments at all levels throughout the PRC, and the amount and type of preferential policies offered in designated zones have varied just as widely as geographic dissemination of the zones.

Petitioners note that the tax rate applied to DHMP is consistent with the preferential tax rate paid by productive FIEs in Coastal Economic Open Zones. To qualify for the reduced income tax rate of fifteen percent, a firm must be engaged in "technology-intensive or knowledge-intensive projects; long term projects with foreign investments of over \$30 million; or developing energy resources, transportation and port construction projects." Petitioners note that, because DHMP does not qualify under any of these special categories, it should not be eligible for the fifteen percent tax rate.

Finally, Petitioners conclude that DHMP's assertion that it did not receive the tax rate for companies located within the zone is not sufficient evidence by itself for the Department to find that the company is not located within the zone. If the GOC and DHMP had provided the documents that the Department requested initially and prior to verification the information ascertaining its status would be on the record.

Department's Position: In the Preliminary Results, the Department determined that DHMP was located in one of the preferential zones based on allegations put on the record by Petitioners; specifically that DHMP's web site stated that it was located in the zone. See 74 FR at 57641. At verification of DHMP, the Department examined the contracts that DHMP paid for two pieces of property, the factory and its administrative offices, both of which were located within the Dalian City District. At verification, the Department confirmed the amounts DHMP paid for these properties. See DOC Verification Report at 6 and VE-8(A) and VE-8(B). Further, at verification, the verifiers toured the outskirts of the zone in question and noted its boundaries. See DHMP Verification Report at 6. At verification the Department reviewed the brochure from the Industrial Park, which is run by the Ministry Committee, which identified companies that are within the location and geographic area of the zone in question. The information indicates that DHMP (including its headquarters, factory, or sales office) is not listed among those companies in the zone. See DOC Verification Report at 6 and VE-8(E). The information presented by DHMP at verification matched the information collected by the Department during the verification of the GOC, where GOC officials were able to identify the location of DHMP's headquarters and the locations of the two industrial parks. As in the Department's verification of DHMP, the verifiers at the GOC verification were able to ascertain that DHMP was not located in one of the six industrial parks within the region. See GOC Verification Report at 5-6. The Department's findings in this regard are further supported by information collected during the Department's tour of DHMP's sales office. See DHMP Verification Report at 6.

We disagree with Petitioners' argument that DHMP's acquisition of land-use rights is specific under section 771(5A)(D)(iv) of the Act because DHMP's facilities are located in a Coastal Economic Open Zone. We find that such coastal zones, which are designated by the central government for tax purposes, cover broad areas and are located in numerous places throughout the PRC, and, are not synonymous with the industrial zones at issue in the provision of land for LTAR allegation. As a result, we find that DHMP's location within a coastal economic zone for purposes of a reduction in its income tax rate is not relevant to the program under investigation, the provision of land for LTAR.

On this basis, we find that there is sufficient and reliable information on the record for the Department to conclude that none of DHMP's facilities or properties, including those properties acquired from the GOC, were located in an industrial zone. As a result, we find that DHMP's purchase of land-use rights from the GOC are not regionally-specific, as described under section 771(5A)(D)(iv) of the Act and, thus not countervailable.

Comment 11: Whether DHMP Benefitted from an Interest-Free Deferral of its Land-Use Rights Payment

Petitioners note that at verification DHMP presented a land-use rights payment schedule which extended over several years. Petitioners allege that this information from verification demonstrates that DHMP benefitted from an interest free deferral of its payment for land-rights during the POI. Petitioners assert that the deferral of land-use rights payments constitutes a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act and confers a benefit equal to the amount of DHMP's interest savings.

Petitioners note that the Department has recognized similar factual scenarios involving the provision of land-use rights for LTAR. According to Petitioners, in Wire Rod from Italy, the Department examined an industrial site lease and found a financial contribution under the LTAR standard and calculated the benefit as "equal to the difference between the rent and what would have been paid annually in a lease established in accordance with market conditions." See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy, 63 FR 40474, 40482-84 (July 29, 1998) (Wire Rod from Italy). In Wire Rod from Italy, Petitioners argue that the lease provided a two-year payment exemption and that the Department found that the deferral provided "a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, in the form of revenue foregone, which provides a benefit in the amount of rent that would normally have been collected." See Wire Rod from Italy, 63 FR at 40485. Petitioners also refer to CTL Plate from Korea in which they claim the Department found the waiver of a management fee and further price discount to constitute foregone revenue under section 771(5)(D)(ii) of the Act. See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea, 64 FR 73176, 73184 (December 29, 1999) (CTL Plate from Korea).

Petitioners further argue that the deferral of land-use rights payments were specific under section 771(5A)(D)(i) of the Act because the land-use rights were the result of negotiations between the government and DHMP, which Petitioners contend were the result of DHMP being located in a preferential zone. Petitioners argue that the Department should countervail this additional benefit to DHMP for the final determination.

DHMP argues that Petitioners never identify any formal program under which this purported "interest-free" deferral was made. DHMP notes that they only cite two administrative

decisions, neither of which DHMP contends supports the allegation of Petitioners. According to DHMP, in Wire Rod from Italy the Department found the existence of a benefit for a duty-free loan where the respondent had borrowed money from the region government at a reduced rate of interest to support the purchase of a factory. During a portion of this loan period, no interest was charged. Thus, the benefit at issue in Wire Rod from Italy, DHMP argues, was part of a specific loan and formal loan program of the region. In CTL Plate from Korea, contends DHMP, the Department found the Government of Korea (GOK) adjusted the land purchase price and waived a management fee. DHMP argues that it was the change in the price paid, that constituted revenue forgone by the GOK and which created the subsidy.

DHMP argues that the facts of Wire Rod from Italy and CTL Plate from Korea are dissimilar from the facts of the instant investigation. DHMP argues that it entered into an agreement to pay a certain sum of money for the land and that this agreement was followed. While DHMP acknowledges that it did not pay in accordance with the original schedule directly to the seller, there was no reduction in the payment nor was any money loaned to DHMP under any program in conjunction with the purchase.

DHMP further argues that it paid the land use tax each year and that none of the obligations on the original contract were waived by the village. Therefore, DHMP argues that the claim it received a countervailable subsidy program has no legal or factual basis.

Department's Position: In its questionnaire response, DHMP reported a transaction with the local government for the purchase of land. See DHMP's September 9, 2009, questionnaire response at Exhibit 18. DHMP provided a translated copy of the contract in its submission. Id. The terms of the contract between DHMP and the GOC stipulated that DHMP pay a fixed amount to the local government as well as assume an amount of debt that the seller (i.e., the GOC) owed to a third party. See Exhibit 18 of DHMP's September 9, 2009, questionnaire response.

We verified that DHMP paid the fixed amount owed to the local government several years prior to the POI. See DHMP Verification Report at VE-8(a). To the extent that the GOC allowed DHMP to defer repaying some or all of the fixed payment, any such benefit on the deferral would be expensed prior to the POI.²⁶ Thus, Petitioners' allegations concerning payment deferrals are applicable only to the payments DHMP made to the third-party. Petitioners allege that the deferral constitutes revenue forgone under section 771(5)(D)(ii) of the Act because DHMP was able to defer its payments to the third party. However, we find that there is not sufficient evidence to conclude that the third party to whom DHMP made the payments constitutes a GOC authority. As such, we cannot conclude that DHMP's alleged deferral of payment to the third party constitutes revenue forgone as described under section 771(5)(D)(ii) of the Act. Therefore, for purposes of this final determination, we find that there is no countervailable subsidy associated with this transaction.

Comment 12: Whether the Eastfound Material's Land Acquisitions Are Countervailable

Petitioners assert that Eastfound Material and the GOC confirmed at verification that the parcels of land acquired by Eastfound Material in 2006 and 2008 were located in a designated preferential zone, the Jinzhou IT Industrial Zone. Nucor adds that prior to the start of its

²⁶ The Department treats interest-free loans as recurring subsidies in which the benefit is the interest that would have been charged during the relevant period. See 19 CFR 351.509(d).

verification Eastfound Material revealed, as a “minor correction,” that the GOC informed the company that it is, in fact, located in the Jinzhou IT Industrial Zone. See Eastfound Material Verification Report at 1. Nucor states that neither Eastfound Material nor the GOC were able to produce any documentation to support Eastfound Material’s contention that no benefits were provided to the company and that Eastfound Material was grandfathered into the zone. Therefore, it argues that the Department should continue to countervail land-use rights for these parcels of land at LTAR for the final determination.

Eastfound Material argues that none of the land that it acquired is countervailable. Regarding Land A (2008), it states that the company’s land-use cannot be considered regionally specific because Eastfound Material was established on the land prior to the establishment of the Jinzhou IT Industrial Zone. See Eastfound Material Verification Report at 1, and GOC Dalian Verification Report at 1-4. Similarly, it argues that Land B (2006) is also not countervailable. It states that, as the Department verified, Eastfound Material has been denied the land use rights with respect to Land B. See Eastfound Material Verification Report at 11. As such, Eastfound Material argues that it would be unreasonable for the Department to countervail the Land B acquisition because no good (i.e., the provision of land use rights) was provided to Eastfound Material.

The GOC argues that although Eastfound Material is located on a site that is now within the geographical confines of the Jinzhou IT Industrial Zone, it is not an IT company and its prior location in an area that was subsequently designated as an IT industrial zone does not make its acquisition of land-use rights regionally specific. The GOC also claims that there are no specific special benefits provided to companies locating in the IT zone, rather the types of incentives that are available to companies in the zone are the same as those available to companies under the Northeast Revitalization Program and other types of programs broadly available in the PRC. Accordingly, the GOC asserts that despite its current location in an area that is now designated as an industrial zone, Eastfound Material did not receive any special benefits from that location.

Additionally, with respect to Land A, the GOC argues that the Department’s verification report indicates that although Eastfound Material first acquired the land in a purchase contract in 2005 and occupied it in that year, its 50-year land-use rights were not finalized until Eastfound Material’s successful participation in a subsequent public listing in 2008. Moreover, the GOC indicates that when Eastfound Material acquired the land-use rights for Land A in 2008, it paid a price that was above the professionally appraised market value.²⁷ As for the land-use rights for Land A, the GOC argues that Eastfound Material initially acquired Land A prior to the establishment of the Jinzhou IT Industrial Zone, and thus was “grandfathered” in the IT industrial zone.

The GOC further argues with regard to Land B that Eastfound Material obtained land-use rights for Land B prior to the establishment of the Jinzhou IT industrial Zone and therefore, the issue of obtaining land-use rights in an industrial zone for LTAR does not arise. Accordingly, the GOC urges the Department to reverse its finding in the Preliminary Determination and determine that Eastfound Material did not obtain land-use rights for LTAR in a manner that was regionally specific under section 771(5A)(D)(iv) of the Act.

²⁷ The GOC notes that prior to the public listing which lead to Eastfound Material’s purchase of Land A in 2008, a professional appraiser conducted an appraisal on behalf of the local government, assessing the merits of the site, including available infrastructure (roads, water, sewage, power, heating and telecommunications), and providing an appraised value for Land A.

In their rebuttal brief, Petitioners assert that the GOC and Eastfound Material acknowledged at verification that Eastfound Material acquired land-use rights for land in 2008 (Land A) and in 2006 (Land B) that are located in a designated zone, the Jinzhou IT Industrial Zone. See Eastfound Material Verification Report at 1, and GOC Dalian Verification Report at 2. Petitioners contend that the record belies respondents' claims and establishes that both parcels of land are located in a designated zone, benefit from regional preferences that meet the specificity criteria of sections 771(5A)(D)(i) and (iv) of the Act, and were provided for LTAR. Petitioners contend that given the record evidence, Eastfound Material and the GOC now argue that Land A and Land B were not provided on a specific basis as required under section 771(5A)(D)(iv) of the Act because the parcels of land were acquired before the Jinzhou IT Industrial Zone was established. Petitioners note that in response to the Department's request for documentation demonstrating that Eastfound Material was "grandfathered" into the high-tech zone because it was established at its location prior to the creation of the zone, the GOC could provide no such documentation. See GOC Dalian Verification Report at 2.

Petitioners add that they submitted information to the Department that refutes respondents' claim that the land-use rights were acquired before a preferential zone existed. See Petitioners' March 3, 2010, submission. Petitioners argue that other record evidence corroborates the contentions made in their March 3, 2010, submission, i.e., that the Department verified that the Jinzhou IT Industrial Zone was established on October 15, 2006, as the "Jinzhou Shihe Micro-Electronics Subzone in the Dalian High-Tech Industrial Zone." See GOC Dalian Verification Report at Exhibit 1. Petitioners state that both parcels of land were purchased by Eastfound Material after that date. Petitioners further add that information obtained at verification indicates that the Jinzhou IT Industrial Zone is part of a larger and older designated zone, the Dalian Hi-Tech Industrial Park, which was established in 1991. See GOC Dalian Verification Report at Exhibit 1, and Petitioners' March 3, 2010, submission. They assert that the Department has consistently found that "when the land is in an industrial park located within the seller's (e.g., country's or municipality's) jurisdiction, the provision of the land-use rights is regionally specific under section 771(5A)(D)(iv) of the Act." See, e.g., LWS from the PRC Decision Memorandum at Comment 8 and 9.

Petitioners further argue that, consistent with the Preliminary Determination, the Department should continue to find that the GOC also provided land-use rights for Land A to Eastfound Material on a specific basis under section 771(5A)(D)(i) of the Act. Petitioners discuss that the Department verified that the public notice issued in 2008 listed Land A as being for sale in the Jinzhou IT Industrial Zone and limited the parcel's use to the "metal products industry." See GOC Dalian Verification Report at 2.

Regarding the respondents' claims that Land A and Land B were not acquired for LTAR based on a Chinese valuation report, Petitioners state that the Department has found the land market in the PRC to be distorted by the GOC's significant role in the market. See, e.g., LWTP from the PRC Decision Memorandum at Comment 12. Therefore, Petitioners assert an appraisal that is based on comparisons with distorted land prices yields a distorted appraisal price that has no meaningful value. As such, Petitioners argue that respondents' claims provide no basis to conclude that Eastfound Material's land transactions did not occur at LTAR. Further, contrary to the respondents' claims that there are no special benefits provided to companies in the Jinzhou IT Industrial Zone, Petitioners submitted on the record media reports indicating that "land can be provided at a discounted rate" in Jinzhou. See Petitioners' October 23, 2009, submission at Exhibit 2.

Additionally, rebutting respondents' claims that Eastfound Material has not benefitted from Land B because Land B has not been used, Petitioners assert that whether the land is used or not is irrelevant to the determination as to the existence of a subsidy. Citing to Fabrique, Petitioners note that the courts have found that it does not matter if the party used subsidized equipment to produce the subject merchandise in the POI so long as the equipment could be used for such a purpose. See Fabrique, 166 F. Supp. 2d., at 567, 576-77. In the instant investigation, Petitioners assert that the land could have been used to produce subject merchandise. Petitioners also rebut the respondents' claim that Eastfound Material was precluded from using the land because it did not possess a land-use certificate. Petitioners assert that this argument is belied by Eastfound Material's experience with Land A, where the lack of land-use rights did not stop the company from building and operating a factory for three years before receiving the land-use rights certificate in 2008.

Eastfound Material disagrees with Petitioners' statement that because the company is located in the Jinzhou IT Industrial Zone means that the Department must countervail its land acquisitions. Eastfound Material states that the Department verified that the zone was established after Eastfound Material acquired its land and that the company did not benefit from its location in the newly created zone. See Eastfound Material Verification Report at 1-2. Eastfound Material adds that the Department also verified this issue with the GOC and learned that Eastfound Material was incorporated before the Jinzhou IT Industrial Zone was created. Also, because the company existed on the land before the creation of the zone, Eastfound Material was "grandfathered" and allowed to remain on the land even though the company is not a high-tech firm. See GOC Dalian Verification Report at 1-4. In addition, Eastfound Material notes that Exhibit 1 of the GOC Dalian Verification Report states that the Jinzhou Shihe Macro Electronics Subzone was established in 2006, which was after Eastfound Material acquired its land. With regard to Petitioners' March 3, 2010 submission in which they state the Dalian High-Tech Zone (or High-Tech Industrial Park) was established in 1991, Eastfound Material claims that the Macro Electronics Subzone is different and distinct from the original High-Tech Zone. Eastfound Material states that its facilities are confined to the Marco Electronic Subzone (later named the IT Zone). Eastfound Material argues that the Macro Electronic Subzone was established after the company's land acquisitions. Therefore, Eastfound Material argues that the land acquisitions are not regionally specific.

Additionally, with regard to Land B, Eastfound Material states that the Department verified that Eastfound Material was denied the land-use rights and was prohibited from developing the land. See Eastfound Material Verification Report at 11. Eastfound Material argues that no matter what the company paid for the land, it would be unreasonable for the Department to countervail the acquisition because it did not obtain consideration (land-use rights) in return for its payment. Eastfound Material asserts that, as the Department preliminarily determined that the provision of land-use rights is a good, the Department must now conclude based on the record evidence that no such good was provided to Eastfound Material.

Department's Position: We agree with Petitioners and Nucor that the two parcels of land, Land A and Land B, which Eastfound Material acquired in 2008 and 2006, respectively, are countervailable. At verification, government officials and Eastfound Material confirmed, respectively, that Eastfound Material's production facilities are located on Land A and that both Land A and Land B are located in a designated zone, the Jinzhou IT Industrial Zone (IT Zone). See Eastfound Material Verification Report at 1, and GOC Dalian Verification Report at 2.

Both the GOC and Eastfound Material assert that the IT Zone was established after Eastfound Material acquired both parcels of land and that the company did not benefit from its location in the newly created zone. We disagree. With regards to Land A, Eastfound Material made its first attempt to acquire Land A in 2005. However, as detailed below in Comment 13, the 2005 purchase deal for Land A was not complete and the regional land authority refunded the entire payment to Eastfound Material in December 2008, after Eastfound Material successfully participated in a public notice process and consummated a new acquisition contract for Land A in May 2008. Therefore, we find that Eastfound Material did not successfully acquire Land A and obtain Land A's use rights until 2008. See Eastfound Material Verification Report at 8-11 and the Eastfound Material's December 8, 2009, supplemental questionnaire at Exhibit 3.

Eastfound Material and the GOC also cite to the GOC Dalian Verification Report, arguing that Eastfound Material was "grandfathered" into the High-Tech Zone because it was established at its location (Land A) prior to the creation of the zone. However, as noted in the verification report, the GOC officials could not provide such documentation at verification. See GOC Dalian Verification Report at 2. Rather, the evidence provided at Exhibit 1 of the GOC Dalian Verification Report indicates that the IT Zone is actually a part of a larger designated zone, which turns out to have been established prior to the establishment of Eastfound Material. Specifically, page 3 of Exhibit 1 of the DOC Dalian Verification Report indicates that on October 15, 2006, Dalian Municipal Government approved the establishment of Jinzhou Shihe Micro-electronic Sub-park, which is "part of" and "subject to the guidance of Dalian High-Tech Industrial Park (High-Tech Park)." Subsequent to the establishment of Jinzhou Shihe Micro-electronic Sub-park, on June 18, 2007, the Dalian Municipal Government renamed it to the IT Zone. See id. at 2. With respect to Land B, as indicated in the GOC Verification Report at Exhibit 2, Land B is physically located next to Land A and therefore, it is also physically located within the IT Zone.

We find that information on the record of the investigation demonstrates that the IT Zone, within which both Land A and Land B are located, is an integral part of the High-Tech Park Industrial Zone. See, e.g., GOC Dalian Verification Report at Exhibit 1. We note that information in Petitioners' March 3, 2010 submission further confirms that the IT Zone is indeed a part of the High-Tech Park and that the High-Tech Park was established in 1991.

We further disagree with Eastfound Material's rebuttal arguments that the Micro Electronics Subzone is a zone that is different and distinct from the original High-Tech Zone and that Eastfound Material is only located in this Micro Electronic Subzone which was later changed to IT Zone. As stated above, page 3 of Exhibit 1 of the DOC Dalian Verification Report clearly states that Jinzhou Shihe Micro-electronic Sub-park, the predecessor of IT Zone, is part of and subject to the High-tech Park. Eastfound Material did not provide any contrary evidence. Therefore, for purposes of this final determination, we determine that both Land A and Land B are located in the IT Zone and that the IT Zone is part of the High-Tech Park. Because the High-Tech Park was established in 1991, we find that both Land A and Land B were acquired after the establishment of a designated zone, the High-Tech Park.

Regarding the GOC's argument that Eastfound Material is not an IT company, and the fact that it is grandfathered into an IT Zone does not make its acquisition of land-use rights regionally specific, we disagree. We also disagree with the GOC's claim that there are no specific special benefits provided to companies located in the IT zone and that the types of incentives that are available to companies in the zone are the same as those available to companies under the Northeast Revitalization Program and other types of programs in the PRC.

As stated at the GOC Dalian Verification Report at 2, the Department verified that the public notice issued in 2008 that listed Land A as being for sale in the IT Zone and limited the parcel's use to the "metal products industry." Thus, the fact that the sale of land to Eastfound Material was contingent upon the firm being a member of the steel industry belies Eastfound Material's claims that it was not eligible for preferential treatment within the zone. Further, contrary to respondents' claims that there are no special benefits provided to companies in the IT Zone, Petitioners submitted information on the record indicating that "land can be provided at a discounted rate" in Jinzhou District. See Petitioners' October 23, 2009 submission at Exhibit 2. Thus, consistent with the Department's Preliminary Determination and practice we find that Eastfound Material's land acquisitions of Land A and Land B are regionally specific under section 771(5A)(D)(iv) of the Act. See 74 FR at 57639; see also LWS from the PRC Issue and Decision Memorandum at Comment 8 and 9 (where the Department found that "when the land is in an industrial park located within the seller's (e.g., country's or municipality's) jurisdiction, the provision of the land-use rights is regionally specific under section 771(5A)(D)(iv) of the Act.") We further find that because the GOC limited the parcel's use to the metal products industry, we find, consistent with the Preliminary Determination, that Eastfound Material's land acquisitions of land Land A is limited to an enterprise or industry within the meaning of section 771(5A)(D)(i) of the Act. See 74 FR at 57639.

We also disagree with respondents' claims that Land A and Land B were not acquired for LTAR based on a Chinese valuation report. As stated in the Preliminary Determination, the Department has found the land market in the PRC to be distorted by the GOC's significant role in the market. See 74 FR at 57640; see also LWTP from the PRC and LWTP from the PRC Issues and Decision Memorandum at Comment 12. In the instant case, the appraisal was conducted by a PRC firm, which drew its conclusion based on comparisons with distorted land prices in the PRC which in turn could yield a distorted appraisal price that has no meaningful value. See Eastfound Material's October 15, 2009, supplemental questionnaire response at Exhibit 10. Accordingly, we determine that the respondents' claims provide no basis to conclude that Eastfound Material's land transactions did not occur at LTAR.

With respect to respondents' claims that Eastfound Material has not benefitted from Land B because Land B has not been used, we agree with Petitioners in that whether the land is used or not is irrelevant to the determination as to the existence of a subsidy. See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products From India, 71 FR 45034 (August 8, 2006) (Lined Paper from India) and accompanying Issues and Decision Memorandum (Lined Paper from India Decision Memorandum) at Comment 2. Further, in its decision in Fabrique, the courts has found that it does not matter if the party used subsidized equipment to produce the subject merchandise in the POI so long as the equipment could be used for such a purpose. See Fabrique, 166 F. Supp. 2d at 603. In this case, the land could have been used to produce subject merchandise. Regarding respondents' claim that Eastfound Material was precluded from using the land because it did not possess a land-use certificate, we find that Eastfound Material's experience with Land A contradicts its claim. As stated in the Eastfound Material Verification Report at 8, the lack of land-use rights for Land A did not prevent the company from building and operating a factory for three years before receiving the land-use rights certificate in 2008.

Based on the foregoing, we determine that the two parcels of land, Land A and Land B, which Eastfound Material acquired in 2008 and 2006, respectively, are countailable.

Comment 13: Whether the Department Should Countervail Eastfound Material's Alleged Unreported Land Payment Refund Discovered at Verification

Petitioners argue that the Department verified that Eastfound Material received a refund from a local government authority in connection with its purchase of a parcel of land (Land A) in 2005. Petitioners claim that this refund was then used by Eastfound Material to produce subject merchandise between 2005 and 2008. In addition, Petitioners assert that this payment from this particular local government authority is a direct transfer of funds conferring a benefit upon Eastfound Material under section 771(5)(D)(i) of the Act. Alternatively, Petitioners also claim that the subsidy provided by this particular local government authority represents revenue forgone under section 771(5)(D)(ii) of the Act, conferring a benefit upon Eastfound Material in the amount of lease payments that should have been paid to this particular local government authority in 2008. Moreover, Petitioners argue that the subsidy is provided on a specific basis within the meaning of section 771(5)(D)(i) of the Act because the land-use rights were the result of negotiations between this particular government agency and Eastfound Material. Accordingly, Petitioners argue that the Department should countervail the favorable treatment that Eastfound Material enjoyed during the POI.

Eastfound Material rebuts Petitioners' claim of an unreported subsidy in the form of a free-acquisition or rent-free lease for land obtained by Eastfound Material from a local government authority. Eastfound Material states that, as discussed in the verification report, it was confronted by regional land authorities that informed the company that certain procedures were not properly followed in the initial acquisition in 2005 and that the proper steps to take included participation in a public listing and full payment of a new higher price for the land in 2008. Eastfound Material claims that only after the new higher price was paid and satisfying the balance owed on the initial acquisition did it obtain a refund. Eastfound Material states that it was entitled to get the refund because just as the collective owner cannot sell the same piece of land twice, the company cannot pay for the same piece of land twice. Eastfound Material adds that after making full payment of the land based on the public listing, the company received the land-use rights for the land. Contrary to Petitioners' claims, Eastfound Material states that it never received a free lease. Rather, the collective owner ultimately received the payment from the state instead of Eastfound Material and, therefore, no revenue was foregone.

Department's Position: We disagree with Petitioners' allegation that the refund received by Eastfound Material from the regional land authority in 2008 constitutes a direct transfer of funds conferring a benefit under section 771(5)(D)(i) of the Act, or it represents revenue forgone under section 771(5)(D)(ii) of the Act, conferring a benefit in the amount of lease payments that should have been paid to the land authority in 2008. The refund that Eastfound received in 2008 was intended to be the payment for the land acquisition that initially took place in 2005. However, because certain procedures were not properly followed in the initial 2005 acquisition, the 2005 land acquisition was never completed. See Eastfound Material Verification Report at 8-9.

As stated in the Eastfound Material Verification Report at 9-10, in 2008 Eastfound Material participated in a public notice (or auctioning) process and paid a higher price for the same piece of land than what was initially required under the 2005 contract. It was only after Eastfound Material fully paid for the land at the higher price and consummated the land acquisition contract in 2008 that Eastfound Material actually acquired the land-use right. See Eastfound Material Verification Report at 9-10. After Eastfound Material completed the land

acquisition under the 2008 contract, the regional land authority informed Eastfound Material to pay for the remaining balance required under the 2005 land contract. In December 2008, subsequent to its payment for the remaining balance, Eastfound Material received a refund in the exact amount as it had paid to the regional land authority for the initial, unconsummated land purchase deal in 2005. See id. at 10.

We disagree with Petitioners' claim that the refund constitutes a direct transfer of funds conferring a benefit upon Eastfound Material under section 771(5)(D)(i) of the Act, or it represents revenue forgone under section 771(5)(D)(ii) of the Act. The amount refunded to Eastfound Material is equal to the amount that Eastfound Material initially paid. See Eastfound Material Verification Report at 9. Thus, no excessive refund amount was paid by the GOC to the company. Accordingly, for purposes of this final determination, we determine that the refund received by Eastfound Material in 2008 neither constitutes a direct transfer of funds conferring a benefit upon Eastfound Material under section 771(5)(D)(i) of the Act, nor does it represent revenue forgone under section 771(5)(D)(ii) of the Act.

Concerning the separate issue of the sale of land-use rights to the Eastfound Companies for LTAR, we find that Eastfound Material received a benefit under this program in 2008 when the first contract for Land A from 2005 was terminated and superseded by the higher-priced second contract in 2008. We note that our approach in this regard, e.g., to assume that the original date of a contract or agreement is superseded by the date in which the terms of the agreement are renegotiated is consistent with the Department's practice. See, e.g., Wire Rod from Italy, 63 FR at 40486: ("We note that Bolzano entered into the loan contract for the loan denominated in U.S. dollars in 1979. However, the interest rate for that loan was renegotiated in 1992. Therefore we have treated it as a new loan from that point and used a 1992 benchmark.").

Comment 14: Whether the Department Should Countervail Eastfound Metal's Land-Use Rights

Eastfound Metal states that the Department verified that the company's land was acquired in 2000, prior to the date from which the Department measures countervailable benefits in the PRC (i.e., prior to December 11, 2001); and that Eastfound Metal is not located in any specially designated zone. See Eastfound Metal Verification Report at 15-16, and GOC Dalian Verification Report at 4 and Exhibit 2. As such, Eastfound Metal argues that there is no factual or legal basis to conclude that the company obtained a countervailable benefit in the acquisition of its land-use rights.

Petitioners argue that Eastfound Metal is leasing the land-use rights. They discuss that in its September 9, 2009, questionnaire response, Eastfound Metal acknowledged that the land-use rights of the company were obtained by "rent" in May 2000. See Eastfound Metal's September 9, 2009, questionnaire response at 17. Petitioners assert that according to Chinese government's rules, Eastfound Metal obtained a lease of state-owned land from the Dalian municipal government in 2000, and that such a transaction is characterized by the use of land for a specific period of time in exchange for rent payments pursuant to a lease contract. According to Petitioners, the transaction described by Eastfound Metal does not conform to any other land-use category identified by the GOC in its 1998 Interim Provisions on Land Use Rights Administration During Reform of State-owned Enterprises.

Petitioners also claim that Eastfound Metal's assertion that the parcel of land was provided rent free in exchange for Eastfound Metal's assumption of a bankrupt company's debts

and obligations in 2000 is not supported by the asset purchase agreement. Specifically, Petitioners suggest that Eastfound Metal was in a positive equity position when it purchased the bankrupt company in May 2000. Citing to the Department's past practice, Petitioners claim that the favorable treatment granted to Eastfound Metal by the Dalian municipal government constitutes countervailable subsidies that benefited Eastfound Metal during the POI. See, e.g., Wire Rod from Italy, 63 FR at 40485, where the Department found that a two-year exemption from rental payments "provides a financial contribution within the meaning of section 775(5)(D)(ii) of the Act, in the form of revenue foregone, which provides a benefit in the amount of rent that would normally have been collected;" see also Tires from the PRC Decision Memorandum at Comment F. 12. Petitioners further claim that the land-use rights were provided on a specific basis within the meaning of 771(5A)(D)(i) of the Act because the land-use rights were the result of negotiations between the government and Eastfound Metal.

In rebuttal, Eastfound Metal reiterates that the Department verified that all terms related to the company's 2000 land acquisition occurred prior to December 11, 2001. Eastfound Metal also asserts that Petitioners have selectively omitted key information from the Eastfound Metal verification report to incorrectly suggest that Eastfound Metal acquired something of net value in purchasing a bankrupt company in 2000. Eastfound Metal states that Article VI.1 of the agreement specifically discusses the land-use rights issue, where it is stated "in the light of the especially tough situation" of the bankrupt company the local government approved Eastfound Metal to acquire the land-use rights for 50 years. Eastfound Metal asserts that it acquired the fullest rights it could receive with respect to the land and it was not "free." Eastfound Metal states that it had to assume extra burdens for the "especially tough situation" of the bankrupt company, which included compensating laid-off and retired workers and assuming bank debts of the bankrupt company. See Eastfound Metal Verification Report at 15. All of these burdens were assumed by Eastfound Metal in 2000. Eastfound Metal asserts that there is no factual basis to determine that it received a "free" lease of land after December 11, 2001. Therefore, the Department should find that Eastfound Metal's acquisition of land in 2000 is not countervailable.

Department's Position: The Department has adopted December 11, 2001, the date on which the PRC became a member of the WTO, as the date to identify and measure subsidies in the PRC for purposes of the CVD law. As such, the Department has determined that any subsidies provided prior to that date are not subject to the CVD law.

Based on the results of verification and our evaluation of parties' comments, we determine that Eastfound Metal acquired its land-use rights as part of the May 2000 asset purchase agreement through which Eastfound Metal acquired the assets of a bankrupt company in exchange for assuming that company's liabilities. At verification, Eastfound Metal was able to demonstrate that the land-use rights in effect for the company during the POI were approved prior to the December 11, 2001, cut-off date. See Eastfound Metal Verification Report at 15-16. Specifically, we verified that the land-use rights were provided to Eastfound Metal in 2000 for a period of 50 years in exchange for assuming the bankrupt company's obligations owed to laid-off and retired workers. Id. at 15. We verified that all of the essential terms and conditions associated with Eastfound Metal's land-use rights were established in the May 2000 agreement. Further, we verified that there were no rent payments that Eastfound Metal was obligated to pay for the land as part of the May 2000 asset purchase agreement. Id.

Consistent with the Department's practice, for land-use transactions, we are not countervailing any transactions whose essential terms and conditions are established prior to the

December 11, 2001, cut-off date. See, e.g., Tires from the PRC Decision Memorandum at “Government Provision of Land to SOEs (GTC and TUTRIC)” and Comment H.2. The date of the land use contract is normally the date on which we will consider that the essential terms and conditions for a land-use rights contract in the PRC are established. In this case, we find that Eastfound Metal’s land-use rights were established in the May 2000 asset purchase agreement.

Because Eastfound Metal’s land-use rights were established prior to December 11, 2001, we have not evaluated whether the government’s provision of land-use rights to Eastfound Metal was countervailable. Therefore, for purposes of this final determination, we find that the Provision of Land for LTAR was not used by Eastfound Metal.

Comment 15: Whether the Department Should Use Year 2001 as the Cut-off Date or Use the AUL Methodology to Value Subsidies

With regard to Eastfound Metal’s land-use rights, Petitioners argue that assuming the Department finds that Eastfound Metal’s land transaction was not a lease, the Department should re-examine its practice of using the year 2001 as the cut-off date for countervailing subsidies, in accordance with the CIT’s opinion in GPX. See GPX, 645 F. Supp. 2d at 1246-50. Petitioners discuss that in GPX, the CIT found that application of a uniform cut-off date would arbitrarily cause it to impose CVDs not actually equal to the net subsidies received. Id. at 1249-50. Petitioners further claim that the CIT also found the application of a uniform cut-off date to be inconsistent with the Department’s rationale for examining NMEs on a case-by-case basis. Id. at 1249. Moreover, Petitioners argue that the CIT concluded that the Department is required to identify and measure subsidies that exist and are measurable at any particular time and that a bright-line test does not accomplish this goal. Id. Therefore, Petitioners argue that the Department should measure subsidies during the AUL allocation period for purposes of the final determination.

Nucor claims that the Department erred in the Preliminary Determination because the Department used the date on which the PRC became a WTO member as the appropriate date from which to measure subsidies. Nucor asserts that there is no authority in the U.S. CVD law to authorize the Department to ignore countervailable duties on the basis of the date of WTO membership. According to Nucor, the AUL regulations are the most appropriate and reasonable approach in addressing long lasting subsidies that were granted in the past but that are still providing benefits to the Chinese industry. Nucor contends that the PRC should not receive any preferential treatment in regard to the subsidies it provides and therefore, Nucor urges the Department to apply the AUL methodology regardless of a country’s date of WTO membership.

The GOC asserts that the Department has repeatedly found that the AUL methodology is unworkable with respect to the PRC and that if subsidies cannot be meaningfully identified and measured then the Department’s AUL regulations are inapplicable.²⁸ Accordingly, the GOC argues that Petitioners’ and Nucor’s arguments must be rejected because their arguments contravene the Department’s precedent of refusing to examine alleged subsidy benefits received prior to when the Department determines that the CVD law applies to a particular country.

Eastfound Metal states that the Department has not adopted the holding of GPX and interested parties may appeal the uniform cut-off date aspect of the GPX decision.

²⁸ GOC cites a number of case precedents, e.g., Racks from the PRC, LWTP from the PRC, Tires from the PRC, LWS from the PRC, and CWP from the PRC.

Department's Position: As discussed in Comment 14, the Department determines that Eastfound Metal's land-use rights were established in the May 2000 asset purchase agreement through which Eastfound Metal acquired the land in exchange for assuming a bankrupt company's liabilities. As such, Eastfound Metal's land-use rights were established prior to December 11, 2001, the cut-off date for measuring countervailable benefits in the PRC.

Consistent with recent PRC CVD determinations we continue to find that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law, and have adopted December 11, 2001, the date on which the PRC became a member of the WTO, as that date. See, e.g., PC Strand from the PRC Decision Memorandum at Comment 4.

We have selected this date because of the reforms in the PRC's economy in the years leading up to that country's WTO accession and the linkage between those reforms and the PRC's WTO membership. See Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001). The changes in the PRC's economy that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Chinese producers. For example, the GOC eliminated price controls on most products; since the 1990s, the GOC has allowed the development of a private industrial sector and, in 1997, the GOC abolished the mandatory credit plan. See Georgetown Steel Memorandum. Additionally, the PRC's Accession Protocol contemplates application of the CVD law. While the Accession Protocol, in itself, would not preclude application of the CVD law prior to the date of accession, the Protocol's language in Article 15(b) regarding benchmarks for measuring subsidies and the PRC's assumption of obligations with respect to subsidies provide support for the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies (e.g., CVDs) were meaningful. We thus have concluded that the cumulative effects of the many reforms implemented prior to the PRC's WTO accession led to economic changes allowing us to identify and to measure subsidies bestowed upon producers/exporters in the PRC after December 11, 2001.

Regarding Nucor's concern that adoption of a December 11, 2001, cut-off date for application of CVD law allows and provides preferential treatment to the PRC, we reiterate that economic changes that occurred leading up to, and at the time of, WTO accession allowed us to identify or measure countervailable subsidies bestowed upon Chinese producers. In this regard, the Department is not providing the PRC with special/preferential treatment. The Department is simply acknowledging its ability to identify and measure subsidies as of December 11, 2001, based on the economic conditions in the PRC. Therefore, the Department is fully within its authority in not applying the CVD law to the PRC prior to December 11, 2001. See Georgetown Steel, 801 F.2d at 1318. We acknowledge that there was not a single moment or single reform law that suddenly permitted us to find countervailable subsidies in the PRC. Many reforms in the PRC, such as the elimination of price controls on most products were put in place before the PRC acceded to the WTO. See Georgetown Steel Memorandum at 5. However, the Department has identified certain areas such as in the credit and land markets where the PRC economy continues to exhibit non-market characteristics. Id. at 3. These examples only serve to demonstrate that economic reform is a process that occurs over time. This process can also be uneven: reforms may take hold in some sectors of the economy or areas of the country before others.

We have rejected the approach of making specific findings for specific programs, opting instead for a uniform date of application based on the economic changes that have occurred across the entire Chinese economy. The cumulative effects of the many reforms implemented prior to the PRC's WTO accession give us confidence that by the end of 2001, subsidies in the PRC could be identified and measured.

Nucor argues that our AUL regulations require that we investigate subsidies given during the AUL period. For the reasons explained above, if subsidies cannot be meaningfully identified and measured before December 11, 2001, then these regulations are inapplicable.

Further, reliance on GPX is misplaced because that decision is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted.

For these reasons, and consistent with OCTG from the PRC and other recent PRC CVD cases, the Department finds that it can determine whether the GOC has bestowed countervailable subsidies on Chinese producers from the date of the PRC's WTO accession. See OCTG from PRC Decision Memorandum at Comment 3; see also CWP from PRC Decision Memorandum at Comment 2; and LWRP from the PRC Decision Memorandum at Comment 4.

Comment 16: Whether the GOC Terminated the Income Tax Exemption for Investors In Designated Geographical Regions Within Liaoning Program

The GOC argues that the income tax program at issue was terminated effective January 1, 2008, pursuant to CS (2008) No. 1 "Notice of Ministry of Finance and State Taxation Administration on Several Preferential Policies in Respect of Enterprise Income Tax," Article 60 of the Enterprise Tax Law of 2007, which repealed the 1991 FIE Tax Law. According to the GOC, CS (2008) No. 1 identifies several preferential tax policies that were still in effect under the Enterprise Tax Law of 2007. However, the GOC asserts that Article V of CS (2008) No. 1 states that the preferential policies other than those stipulated in the notice were repealed and it eliminated the authority of local authorities to provide preferential tax rates. Therefore, contends the GOC, the three percent local tax exemption in Dalian was effective January 1, 2008, regardless of what stage of tax exemptions eligibility an FIE may have been in the previously-allowed seven-year exemption period. The GOC further argues that Article 4 of the Enterprise Tax Law of 2007 sets an income tax rate of 25 percent starting from 2008 for both FIEs and non-FIEs. The GOC claims the Department's verification of the Eastfound Companies confirms the termination of this program. See Eastfound Material Verification Report at 15 – 16. On this basis, the GOC contends the Department should revise the cash deposit rate for this program and base it solely on the amount of benefit attributable to the import duty exemptions as provided under 19 CFR 351.526.

The Eastfound Companies also urge the Department to revise the cash deposit rate due to the termination of the program at issue. It argues that the Department's verification of its companies confirmed that no other program benefits were claimed or received by the time of the Preliminary Determination. See Eastfound Material Verification Report at 15 – 18. The Eastfound Companies contends that the Department's CVD laws are remedial rather than punitive and, as such, any CVD duties imposed after the Preliminary Determination constitute prospective relief against subsidy programs that could no longer confer a benefit. The Eastfound Companies further argues that the SCM Agreement dictates that CVD duties shall not be levied in excess of the amount of the subsidy found to exist. See SCM at Article 19.4. The Eastfound Companies claim that continuing to levy CVD duties against this program violates Article 19.4

of the SCM. It further argues that the Court has directed the Department to calculate duties as accurately as possible, which in this case requires finding that the program at issue has been terminated and revising the cash deposit rate accordingly. See Rhone Poulenc, Inc., v. United States, 899 F. Supp. 2d 1185, 1191 (Fed. Cir. 1990) (Rhone Poulenc).

Petitioners take issue with the arguments of the GOC and the Eastfound Companies. Petitioners assert that despite the repeal of the 1991 FIE Tax Law, beneficiaries under the program at issue continue to receive residual benefits for years after the program's termination. Specifically, Petitioners contend that Article 57 Enterprise Tax Law of 2007, which repealed the 1991 FIE Tax Law, provides that:

Enterprises set up with approval prior to the promulgation of this law that enjoy low preferential tax rates in accordance with the tax laws and administration regulations at the current period may, pursuant to the provisions of the State Council, gradually transit to the tax rate provided herein within five years of the implementation of this Law.

See GOC's September 10, 2009, questionnaire response at Exhibit 22.

Therefore, according to Petitioners, firms that have received tax subsidies may continue to do so over a five-year period beginning January 1, 2008. In the face of such evidence, Petitioners urge the Department not to find that the program at issue underwent a program-wide change that would result in the adjustment of the cash deposit rate.

Department's Position: We agree with Petitioners. Information in the Enterprise Tax Law of 2007 indicates that residual benefits may continue to be provided under this program, including up through the POI. See the GOC's September 10, 2009, questionnaire response at Exhibit 22. As a result, we find that the criteria established under 19 CFR 351.526(d)(1) are not met. Therefore, we conclude that a program-wide change and the accompanying adjustment to the cash deposit rate is not warranted.

Comment 17: Whether the GOC Terminated the Income Tax Benefits for FIEs Based on Geographic Location

The GOC argues that the income tax program at issue was terminated effective January 1, 2008, pursuant to Articles 4 and 60 of the Enterprise Tax Law of 2007. The GOC claims that Article 60 of the Enterprise Tax Law of 2007 repealed the 1991 FIE Tax Law, the legislation that provided the income tax reductions. The GOC further claims that Article 4 of the Enterprise Tax Law of 2007 established a new income tax rate of 25 percent that is applicable to both FIEs and non-FIEs. The GOC further notes that Article 1 of the Guofa (2007) 39, "Notice of State Council for the Implementation of the Transitional Preferential Policy of Enterprise Income Tax," states that enterprises that previously enjoyed a 24 percent tax rate shall be subject to a 25 percent tax rate as of 2008. The GOC claims that the Department's verification of the Eastfound Companies confirms the termination of this program. See Eastfound Material Verification Report at 15. As the program offers no residual benefits, the GOC argues that the Department should revise the cash deposit rate for this program as provided under 19 CFR 351.536.

The Eastfound Companies urge the Department to find the program at issue to have been terminated and revise the cash deposit rate accordingly. On this point, the Eastfound Companies reiterate arguments made in Comment 16.

In their rebuttal, Petitioners make the same arguments as those made in Comment 16.

Department's Position: We agree with Petitioners. Information in the Enterprise Tax Law of 2007 indicates that residual benefits may continue to be provided under this program, including up through the POI. See the GOC's September 10, 2009, questionnaire response at Exhibit 22. As a result, we find that the criteria established under 19 CFR 351.526(d)(1) are not met. Therefore, we conclude that a finding of a program-wide change and the accompanying adjustment to the cash deposit rate is not warranted.

Comment 18: Whether the GOC Terminated the VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment Program

The GOC argues that the VAT exemptions under the "Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries" program were terminated beginning January 1, 2009, pursuant to Notice 43 (2008) of the Ministry of Finance, General Administration of Customs, State Administration of Taxation, Article 1. The GOC notes that Article 4 of the legislation provided that for projects for which companies received confirmation letters prior to November 10, 2008, and which imported the approved equipment prior to June 30, 2009, the VAT exemption would still apply. The GOC argues that any benefits from VAT exemptions received by respondents are so small that they were expensed in the year of the receipt in the Preliminary Determination and, as such, the Department cannot conclude that the program provides residual benefits that would be allocated to years beyond 2009, the year of termination. See 74 FR at 57643. In addition, the GOC asserts that since the amount of VAT and import duty exemptions are separately determined, the Department has the necessary information to revise the cash deposit rate for this program and base it solely on the amount of benefit attributable to the import duty exemptions as provided under 19 CFR 351.526.

The Eastfound Companies urge the Department to find the program at issue to have been terminated and revise the cash deposit rate accordingly. On this point, the Eastfound Companies reiterate arguments made in Comment 16.

Petitioners argue that recipients may continue to receive residual benefits under the program at issue through provisions of the Enterprise Tax Law of 2007 as well as through the Department's treatment of the benefits under this program as non-recurring, allocable subsidies. Petitioners argue that under Article 4, Notice 43 of the Enterprise Tax Law of 2007, VAT and customs duties may still be exempted for projects with a letter of confirmation prior to November 10, 2008 and the imported equipment declared with customs before June 30, 2009. See GOC's September 10, 2009, questionnaire response at Exhibit 29. On this basis, Petitioners urge the Department not to find that the program at issue underwent a program-wide change that would result in the adjustment of the cash deposit rate.

Department's Position: Under 19 CFR 351.526(b), a program-wide change is: (1) not limited to an individual firm or firms; and (2) effectuated by an official act. Moreover, 19 CFR 351.526(a) states that the Department may take a program-wide change into account when establishing the estimated CVD cash deposit rate if: (1) the program-wide change occurred subsequent to the POI, but prior to the preliminary determination; and (2) the change in the amount of countervailable subsidies provided under the program is able to be measured.

However, under 19 CFR 351.526(d)(1), the Department will only adjust the cash deposit rate of a terminated program if there are no residual benefits.

Normally, we treat VAT exemptions as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate a portion of the benefit to the firm in the year of receipt as well as to subsequent years. See 19 CFR 351.524(c)(iii). Under the 19 CFR 351.524(d)(1), the number of years in which the Department allocates the benefit corresponds to the firm's AUL, which in this investigation is 12 years. See Citric Acid Decision from the PRC Memorandum at "VAT Rebate on Purchases by FIEs of Domestically Produced Equipment."

Under the program at issue, VAT exemptions may be tied to the capital structure or capital assets of a firm. Id. Because the program may confer non-recurring benefits that would be allocated in years subsequent to the year of receipt that correspond to the firm's AUL (which in this investigation is 12 years), residual benefits may continue to be bestowed under this program after the termination date. Thus, even assuming benefits to the respondents in this investigation have been exhausted, residual benefits may exist for other users of the program. Consequently, the termination of this program does not meet the standard for making an adjustment to the cash deposit rate. See 19 CFR 351.526(d)(1).

Comment 19: Whether the GOC Terminated the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries Program

The GOC argues that this program has been terminated with respect to the VAT exemption. It claims that, pursuant to the Circular of the State Council on Adjusting tax Policies on Imported Equipment, Guofa (1997) No. 37., both FIEs and certain domestic enterprises were exempted from the 17 percent VAT and applicable import duties on equipment imported for their own use as long as the equipment was not included in the proscribed list of non-eligible equipment. The GOC further claims that, pursuant to Notice No. 43 (2008) of the Ministry of Finance, General Administration of Customs, State Administration of Taxation, Article 1 of that notice terminated the VAT exemption on such imported equipment beginning January 1, 2009, but the import duty exemption continued. The GOC adds that as a transitional measure, Article 4 of the notice provided that for projects for which companies received confirmation letters prior to November 10, 2008, and which imported the approved equipment prior to June 30, 2009, the VAT exemption would still apply. The GOC argues that information collected at verification demonstrates that the VAT exemptions received by Eastfound Metal, the only respondent that reported using this program, were small and did not exceed 0.5 percent of the company's total sales during the POI. Thus, argues the GOC, the Department cannot conclude that Eastfound Metal received residual benefits under the program. On this basis, the GOC argues that the Department should find that the VAT portion of the program has been terminated and that the Department should adjust the cash deposit rate accordingly, as described under 19 CFR 351.526(a).

Petitioners argue that under Article 4 of the Notice No. 43, VAT and customs duties may still be exempted for projects with a letter of confirmation prior to November 10, 2008 and the imported equipment declared with customs before June 30, 2009. Petitioners further argue that

the Department treats VAT subsidies under this program as allocable subsidies. Thus, argue Petitioners, for these reasons, the Department must conclude that residual subsidies continue to be provided under the program and, as such, the Department must determine that the requirements for a program-wide change have not been met.

Department's Position: We agree with Petitioners. We find that respondents' claims of termination do not meet the requirements specified under 19 CFR 351.526(d)(1). Under 19 CFR 351.526(d)(1), the Department will not find a program to be terminated and a program-wide change warranted if it finds that the administering authority continues to provide residual benefits under the program. As discussed above, the Department allocates over time benefits received under this program whose amounts exceed 0.5 percent of the relevant sales denominator in the year of receipt. Therefore, because benefits under this program may continue beyond the POI, we find that residual benefits continue to be provided and, thus, the requirements under 19 CFR 351.526(d)(1) have not been met.

Further, we disagree with the GOC's arguments that a finding of a program-wide change is warranted based on the fact that the VAT exemptions received by Eastfound Metal were small and not allocable, thereby eliminating the possibility of residual benefits being provided under the program. Under 19 CFR 351.526(b)(1), the Department specifies that a program-wide change is a change in a program that is not limited to a single firm. We find the GOC's arguments in favor of a program-wide change are limited to Eastfound Metal and, thus, do not meet the requirements specified under 19 CFR 351.526(b)(1).

Comment 20: Whether the Department Should Initiate an Investigation of the PRC's Currency Manipulation

Citing to the Wire Decking Initiation Notice, where the Department decided not to initiate an investigation of the GOC's currency (RMB) manipulation alleged by Petitioners, Nucor urges the Department to reconsider its previous position and immediately initiate an investigation into this issue. See Wire Decking From the People's Republic of China: Initiation of Countervailing Duty Investigation, 74 FR 31700, 31704 (July 2, 2009) (Wire Decking Initiation Notice) and accompanying Wire Decking Initiation Checklist. Nucor claims that in the petition, Petitioners sufficiently alleged that the GOC not only maintains its exchange rate to prevent its RMB appreciations against the U.S. dollars, the GOC also requires that foreign exchange earned from export activities be converted to RMB at the government-prescribed rate. As a result, Nucor and Petitioners claim that the PRC producers receive more RMBs than they otherwise would if the value of the RMB were set by market mechanisms.

Nucor argues that the PRC's manipulation of its currency to maintain an undervalued RMB represents a direct transfer of funds in accordance with section 771(5)(D)(i) of the Act. Nucor also argues that the undervaluation program is de facto contingent upon export performance and therefore satisfies the specificity requirement under sections 771(5A) and (B) of the Act. Moreover, Nucor claims that to the extent that the exporter receives more RMBs from the GOC in return for the U.S. dollars as a result of the RMB being undervalued relative to the U.S. dollars, a benefit within the meaning of section 771(5)(E)(iv) of the Act is conferred. Accordingly, Nucor urges the Department to immediately initiate an investigation of PRC's enforced undervaluation of its currency.

The GOC counters Nucor's argument stating that the Department determined not to initiate the GOC's alleged currency manipulation on the basis that "{p}etitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information." See Wire Decking Initiation Checklist at 32-33. The GOC argues that neither Nucor nor Petitioners have introduced any new information during the course of this investigation regarding the GOC's alleged enforced undervaluation of its currency. The GOC maintains that the Department correctly refused to investigate the alleged program when the subsidy elements were never sufficiently alleged by Petitioners. Accordingly, the GOC urges the Department not to initiate this alleged program at this late stage and not to countervail it in the final determination.

Citing the Initiation Notice of Racks from the PRC, DHMP submits that the Department's determination not to investigate Petitioners' exchange rate allegation is consistent with its determination in other investigations not to investigate this program. See e.g., Notice of Initiation of Countervailing Duty Investigation: Certain Kitchen Appliance Shelving and Racks From the People's Republic of China, 73 FR 50304, 50307 (August 26, 2008) (Initiation Notice of Racks from the PRC).

Department's Position: As the GOC notes, the Department determined that Petitioners' allegation that the GOC manipulates the value of its currency was insufficient for purposes of the initiation. See Wire Decking Initiation Notice and accompanying Initiation Checklist at "China's Enforced Undervaluation of Its Currency." Since the Wire Decking Initiation Notice Petitioners have not amended or bolstered their allegation. As such, we continue to stand by the Department's decision not to initiate an investigation of the GOC's alleged manipulation of its currency.

Comment 21: Benefit Calculation Under the Two Free, Three Half Income Tax Program

DHMP argues that in the Preliminary Determination, the Department found a net subsidy rate for the "Two Free, Three Half" of 0.49 percent ad valorem for DHMP. For the final determination, DHMP argues the Department should modify this rate to 0.26 percent ad valorem. DHMP notes that in calculating the benefit, the Department treated the income tax savings enjoyed by DHMP as a recurring benefit and divided the company's tax savings received during a period prior to the POI by the company's total sales during the period. This was calculated by using the income tax actually paid by DHMP in 2007, divided by the total sales in 2008. DHMP argues that instead the Department should calculate the benefit by dividing the taxes DHMP paid in 2008 by its total sales for 2008.

DHMP notes that, pursuant to 19 CFR 351.509(b), the Department "normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission." Although the tax return for 2008 was filed in 2009, DHMP prepaid the 2008 enterprise tax quarterly to the national tax agency. In the audited financial report of 2008, DHMP reported its accounting method of income tax is "payable method" – recording the tax expenses in the year they are incurred, regardless of when they are paid. DHMP argues that its payment of the 2008 enterprise tax therefore accrued in 2008. DHMP therefore argues that the Department should modify the final determination countervailable subsidy rate and the cash deposit rate to reflect the taxes DHMP paid during 2008.

Petitioners argue that DHMP's assertion that the Department erred in calculating the benefit of "Two Free, Three Half" program in the Preliminary Determination is premised on information obtained from a tax return filed outside of the POI. They argue that the Department should disregard DHMP's claim and continue to calculate the benefit and net subsidy rate under this program using the methodology from Preliminary Determination. Petitioners argue that under the DOC's practice, tax subsidies are normally assessed based on the tax return filed during the POI. See 19 CFR 351.509(b). Thus, Petitioners argue the Department correctly calculated benefits under the program using information from DHMP's 2007 tax return, which was the return DHMP filed during the POI.

Petitioners further argue that DHMP's proposed benefit and net subsidy rate calculations are based on a tax deduction which was earned in 2008 and claimed outside of the POI in 2009. Therefore, Petitioners argue, DHMP used a tax deduction from the wrong period in calculating its proposed tax subsidy. Petitioners note that DHMP acknowledged in its original questionnaire response that the benefit for 2008 was not received until July 2009. Consequently, the Department should reject DHMP's request that it rely on this figure from outside the POI and should affirm its Preliminary Determination as consistent with its normal practice.

Department's Position: Under 19 CFR 351.509(b)(1), the Department will find benefits under income tax programs to have been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. The regulation further states that the Department will normally interpret this date to be the date on which the recipient firm filed its income tax return. DHMP may have chosen to pre-pay its 2009 income taxes during the 2008 POI (e.g., file estimated taxes for tax year 2009 during 2008), however the amount of taxes that DHMP ultimately owes the GOC for tax year 2009 and, thus, the tax savings that DHMP ultimately realizes under the two free, three half program for tax year 2009, will not be finalized until the firm files its 2009 tax return, which will occur during calendar year 2010. It is for this reason that the Department normally equates the timing of receipt of income tax benefits with the date on which the recipient firm files its tax return because it is at that time that savings under income tax subsidy programs are definitively known. Therefore, for this reason, we have not changed the benefit calculation from that which we did in the Preliminary Determination.

Comment 22: Whether DHMP Received a Subsidy Under the Income Tax Credits for FIEs on Purchases of Domestically Produced Equipment Program

Petitioners contend that when reporting the income tax deduction for FIEs DHMP failed to properly report FIE income tax deductions that it received on purchases of domestic equipment. Petitioners contend that DHMP instead reported these deductions as "other potential subsidies." In addition, Petitioners claim that DHMP reported the "potential" benefit of the subsidy for the wrong period. Specifically, Petitioners claim DHMP reported a tax deduction corresponding to the deduction amount received in 2008 and reported on the 2009 tax return, as opposed to reporting the deduction amount included in the 2007 tax return that DHMP filed during the POI. See DHMP's September 9, 2010, questionnaire response at 44-46 and Exhibit 29. Therefore, Petitioners argue that DHMP improperly reported this particular tax deduction as falling outside the POI.

DHMP disputes Petitioners' allegation that it failed to report its use of an income tax deduction program. DHMP argues that it reported it as an "other" potential subsidies program as part of its response and responded to all of the Department's questions. DHMP listed the benefits for fiscal year 2008 in the narrative portion of its response and provided details for the tax exemptions it received under the program for each tax year starting from 2005. Thus, DHMP contends that it reported all the necessary information and that such information was available for verification.

Finally, DHMP contends that this program was terminated at the end of 2008 and no longer provides benefits. Accordingly, as this program is no longer in effect, even if the Department should find that the program is countervailable, net subsidy rates under the program should not be included in DHMP's cash deposit rate.

Department's Position: The income tax exemption that DHMP received was under the Income Tax Credits for FIEs on Purchases of Domestically Produced Equipment program. The Department found this program countervailable in Citric Acid from the PRC. See Citric Acid from the PRC Decision Memorandum at "Income Tax Credits on Purchases of Domestically Produced Equipment." There is no information on the record of the investigation that warrants the Department to reverse or alter its prior finding that this program is countervailable. Pursuant to 19 CFR 351.509(b), we are equating the timing of receipt of the benefit with the income tax savings DHMP received under this program, as reported in the 2007 tax return that DHMP filed during the POI. For further discussion of this program, see the "Income Tax Credits for FIEs on Purchases of Domestically Produced Equipment" section of this memorandum.

Comment 23: Whether DHMP Failed To Report VAT Deductions on Fixed Assets

Petitioners contend that DHMP failed to report in its questionnaire response VAT deductions it received on fixed assets purchases. See DHMP's September 9, 2009, response at 25. According to Petitioners, DHMP asserted that it "did not benefit from this subsidy program" in responding to the Department's question regarding the VAT deductions on investments in fixed assets. See DHMP's July 16, 2009, supplemental questionnaire at 13.

Petitioners argue that the Department relied on this representation for the Preliminary Determination, but did not specifically address this issue. Petitioners contend that DHMP's claim is contradicted by its financial statements. Specifically, Petitioners argue that information in DHMP's financial statements indicate that DHMP received VAT deductions

DHMP contends that Petitioners took out of context information from its financial statements. DHMP argues that it did not benefit from this program because all VAT credit carries over from year to year and continues to accumulate. DHMP argues that it is an export-oriented company, and as exports are not subject to VAT, the amount of VAT paid by DHMP will always far exceed the amount of VAT collected by DHMP. Thus, any VAT credit will continue to grow and will never be used.

DHMP contends that this is readily apparent from the financial statement as the total VAT tax liability is reported as a negative number, reflecting that DHMP has accumulated credits, and the financial statements show that this credit has grown each year. Finally, DHMP concludes that this program was terminated at the end of 2008 and the last month that DHMP could apply for this benefit was January 2009. Accordingly, DHMP did not benefit from this program because it could never use this credit. It further argues that even if it could have used

this credit, the potential amount of any credit is slight, and representing the amount of input VAT added each year and not the cumulative running total.

Department's Position: We agree with Petitioners that information in DHMP's questionnaire response indicates that it applied to participate under this program and accumulated VAT credits on purchases of fixed assets. See DHMP's September 9, 2009, questionnaire response at Exhibits 8 – 10 and 22. However, we disagree with Petitioners that the credit amount earned or received during the POI, as normally interpreted by the Department, is equal to the amount reported on DHMP's 2007 financial statement. See DHMP's September 9, 2009, questionnaire response at Exhibit 9. Rather, we conclude that the amount reported in the 2007 financial statement is a closing balance that reflects a cumulative amount. Thus, we find that it is more appropriate to determine the amount of credits DHMP received under the program that are attributable to the POI to be equal to the 2007 credit closing balance minus the 2006 credit closing balance, as reported in DHMP's financial statements. See DHMP's September 9, 2009, questionnaire response at Exhibits 8 and 9.

Further, regardless of the amount of credits DHMP received under the program, we find that there is insufficient evidence to conclude that DHMP, by virtue of receiving the tax credit, received a benefit under the program. Under 19 CFR 351.510(a)(1), a benefit exists on an indirect tax program to the extent that the taxes paid by a firm as a result of a program are less than the taxes the firm would have paid in the absence of the program. Though there is evidence that DHMP received and accumulated tax credits under the program, we find there is not sufficient evidence to conclude that DHMP used those credits to reduce its tax burden during the POI. For example, the summary table for VAT exemption, credit, and rebate for 2008 submitted by DHMP does not indicate that DHMP utilized the credits under the program to reduce its VAT tax burden. See DHMP's September 9, 2009, questionnaire response at Exhibit 23. We note our finding in this regard, e.g., that the receipt or accumulation of a tax credit does not necessarily give rise to a countervailable benefit, is consistent with the Department's practice. See, e.g., Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 20251, 20256 (April 20, 2001), where the Department determined that firms in a tax loss position did not benefit from income tax exemptions under the Corporate Income Tax Exemptions Under IPA Section 31 program, unchanged in Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at "Programs Determined Not To Be Used." See also Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea, 67 FR 62102 (October 3, 2002) and accompanying Issues and Decision Memorandum at "Investment Tax Credits," where the Department found that the respondent had outstanding investment tax credits during the POI but that because respondent was in a net tax loss position for the income tax return filed during the POI, the company could not use and did not claim any investment tax credits during the POI.

XII. Recommendation

We recommend that you accept the positions described above.

Agree

Disagree

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

Date