



C-570-944
Administrative Review
POR: 1/1/2011 – 12/31/2011
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February 1, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Decision Memorandum for Preliminary Results of Countervailing
Duty Administrative Review: Certain Oil Country Tubular Goods
from the People's Republic of China

Summary

The Department of Commerce ("the Department") is conducting an administrative review of the countervailing duty ("CVD") order on certain oil country tubular goods ("OCTG") from the People's Republic of China ("PRC"). The period of review ("POR") is January 1, 2011, through December 31, 2011. We preliminarily find that Wuxi Seamless Oil Pipe Co., Ltd. ("Wuxi") and Jiangsu Chengde Steel Tube Share Co., Ltd. ("Jiangsu Chengde") received countervailable subsidies during the POR.

Background

On January 20, 2010, the Department published its CVD order on OCTG from the PRC.¹ On January 3, 2012, we published a notice of "Opportunity to Request Administrative Review" for the CVD order for the calendar year 2011.² Wuxi and Jiangsu Chengde, producers and exporters of subject merchandise, were the only parties to request a review. In accordance with 19 CFR 351.221(c)(1)(i), we published a notice initiating the review on February 27, 2012.³

We are conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the "Act").

¹ *Certain Oil Country Tubular Goods From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 3203 (January 20, 2010).

² *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 77 FR 83, 84 (January 3, 2012).

³ *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 11490, 11491 (February 27, 2012).



We issued initial questionnaires to the Government of the PRC (“GOC”), Wuxi, and Jiangsu Chengde on March 7, 2012. The GOC, Jiangsu Chengde, and Wuxi submitted their responses to the Department’s initial questionnaire on April 27,⁴ April 30,⁵ and May 7, 2012,⁶ respectively.

On May 10, and again on June 12, 2012, the Department extended the deadline for submitting new subsidy allegations.⁷ On June 13, United States Steel Corporation (hereinafter, “Petitioner”) requested the Department investigate whether Wuxi was uncreditworthy during the POR,⁸ and on June 15, 2012, Petitioner submitted new subsidy allegations.⁹ On June 19, 2012, Petitioner made two submissions of new factual information, parts of which were in support of its NSA Letter.¹⁰

Wuxi and Jiangsu Chengde withdrew their requests for an administrative review on July 17, and August 6, 2012, respectively. These withdrawals were filed after the deadline established in 19 CFR 351.213(d)(1) and on October 9, 2012, we denied both Wuxi’s and Jiangsu Chengde’s requests.¹¹ On October 22, 2012, Wuxi asked the Department to reconsider its denial of Wuxi’s withdrawal request.¹² For the reasons stated in the Department’s letter of November 13, 2012, we again denied Wuxi’s request.¹³

On September 25, 2012, the Department extended the time limit for completion of these preliminary results by 120 days to no later than January 30, 2013, in accordance with section

⁴ See Letter from the GOC to the Department, “Oil Country Tubular Goods from China; 2nd CVD Administrative Review Initial CVD Response,” (April 27, 2012) (“GQR”).

⁵ See Letter from Jiangsu Chengde to the Department, “Oil Country Tubular Goods from the People’s Republic of China; Initial Response of Jiangsu Chengde Steel Tube Share Co., Ltd.,” (April 30, 2012) (“CQR”).

⁶ See Letter from Wuxi to the Department, “Certain Oil Country Tubular Goods From The People’s Republic of China: Countervailing Dap Questionnaire Response,” (May 7, 2012) (“WQR”).

⁷ See Letter to United States Steel Corporation from the Department, “Countervailing Duty Administrative Review of *Certain Oil Country Tubular Goods from the People’s Republic of China*,” (May 10, 2012); see also Letter to United States Steel Corporation from the Department, “Countervailing Duty Administrative Review of *Certain Oil Country Tubular Goods from the People’s Republic of China*,” (June 12, 2012).

⁸ See Letter from Petitioner to the Department, “Certain Oil Country Tubular Goods from the People’s Republic of China,” (June 13, 2012) (“Uncreditworthiness Letter”).

⁹ See Letter from Petitioner to the Department, “Certain Oil Country Tubular Goods from the People’s Republic of China,” (June 15, 2012) (“NSA Letter”).

¹⁰ See Letter from Petitioner to the Department, “Oil Country Tubular Goods from the People’s Republic of China,” (June 19, 2012) (“NFI Submission”); see also Letter from Petitioner to the Department, “Oil Country Tubular Goods from the People’s Republic of China,” (June 19, 2012).

¹¹ See Letter from the Department to Wuxi, “Administrative Review of the Countervailing Duty Order on Certain Oil Country Tubular Goods from the People’s Republic of China: Wuxi Seamless Oil Pipe Co., Ltd.’s Withdrawal Request,” (October 9, 2012); see also Letter from the Department to Jiangsu Chengde, “Administrative Review of the Countervailing Duty Order on Certain Oil Country Tubular Goods from the People’s Republic of China: Jiangsu Chengde Steel Tube Share Co., Ltd.’s Withdrawal Request,” (October 9, 2012).

¹² See Letter from Wuxi to the Department, “Countervailing Duty Administrative Review of Oil Country Tubular Goods from China: Withdrawal of Request for Administrative Review – Additional Information and Request for Reconsideration,” (October 22, 2012).

¹³ See Letter from the Department to Wuxi, “Countervailing Duty Administrative Review of Oil Country Tubular Goods from the People’s Republic of China: Withdrawal of Request for Administrative Review – Additional Information and Request for Reconsideration,” (November 13, 2012).

751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).¹⁴ Subsequent to this, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. As a result, the revised deadline for the preliminary results of this administrative review is now February 1, 2013.¹⁵

Based on Petitioner's Uncreditworthiness Letter, on October 19, 2012, the Department initiated an investigation of the creditworthiness of Wuxi during the POR.¹⁶ Based on Petitioner's NSA Letter, the Department initiated on new subsidy allegations on November 5, 2012.¹⁷ On November 13, 2012, new subsidy allegation questionnaires were issued to the GOC, Jiangsu Chengde, and Wuxi. Jiangsu Chengde filed its response on December 4,¹⁸ Wuxi on December 10,¹⁹ and the GOC on December 17, 2012.²⁰

We issued first supplemental questionnaires to Jiangsu Chengde, Wuxi, and the GOC on November 5, November 9, and November 19, 2012, respectively. Jiangsu Chengde filed its response on November 28,²¹ Wuxi on December 10,²² and the GOC on December 17, 2012.²³

We issued second supplemental questionnaires to Wuxi, Jiangsu Chengde, and the GOC on December 6, December 27, and December 28, 2012, respectively. Wuxi filed its response on December 13, 2012,²⁴ Jiangsu Chengde on January 10, 2013,²⁵ and the GOC on January 22,

¹⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Oil Country Tubular Goods from the People's Republic of China: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review," (September 25, 2012).

¹⁵ See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Hurricane Sandy," (October 31, 2012).

¹⁶ See Memorandum to Susan H. Kuhbach, "Uncreditworthiness Allegation for Wuxi Seamless Oil Pipe Co., Ltd.," (October 19, 2012).

¹⁷ See Memorandum to Susan Kuhbach, "New Subsidy Allegations," (November 5, 2012) ("NSA Initiation Memorandum").

¹⁸ See Letter from Jiangsu Chengde to the Department, "Oil Country Tubular Goods from the People's Republic of China, Second Administrative Review (C-570-944): New Subsidy Allegations Questionnaire Response," (December 4, 2012).

¹⁹ See Letter from Wuxi to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: New Subsidy Allegations Questionnaire Response," (December 10, 2012) ("WNSAR").

²⁰ See Letter from the GOC to the Department, "Oil Country Tubular Goods from China; 2nd CVD Administrative Review NSA Response," (December 17, 2012) ("GNSAR").

²¹ See Letter from Jiangsu Chengde to the Department, "Oil Country Tubular Goods from the People's Republic of China, Second Administrative Review (C-570-944): First Supplemental Questionnaire Response," (November 28, 2012) ("C1SR").

²² See Letter from Wuxi to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: First Supplemental Questionnaire Response," (December 10, 2012) ("W1SR").

²³ See Letter from the GOC to the Department, "Oil Country Tubular Goods from China; 2nd CVD Administrative Review 1st Supplemental Response," (December 17, 2012) ("G1SR").

²⁴ See Letter from Wuxi to the Department, "Certain Oil Country Tubular Goods from the People's Republic of China: Second Supplemental Questionnaire Response," (December 13, 2012).

²⁵ See Letter from Jiangsu Chengde to the Department, "Oil Country Tubular Goods from the People's Republic of China, Second Administrative Review (C-570-944): Second Supplemental Questionnaire Response" (January 10, 2013) ("C2SR").

2013.²⁶

We issued third supplemental questionnaires to Wuxi and Jiangsu Chengde, on December 20, 2012, and January 14, 2013, respectively. Wuxi filed its response on January 3,²⁷ and Jiangsu Chengde on January 17, 2013.²⁸

We issued a fourth supplemental questionnaire to Wuxi on January 8, 2013, to which it filed its response on January 14, 2013.²⁹

Scope of the Order

The merchandise covered by the order consists of certain oil country tubular goods (“OCTG”), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (“API”) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. Excluded from the scope of the order are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise covered by the order is currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers:

7304.29.1010, 7304.29.1020, 7304.29.1030, 7304.29.1040, 7304.29.1050, 7304.29.1060, 7304.29.1080, 7304.29.2010, 7304.29.2020, 7304.29.2030, 7304.29.2040, 7304.29.2050, 7304.29.2060, 7304.29.2080, 7304.29.3110, 7304.29.3120, 7304.29.3130, 7304.29.3140, 7304.29.3150, 7304.29.3160, 7304.29.3180, 7304.29.4110, 7304.29.4120, 7304.29.4130, 7304.29.4140, 7304.29.4150, 7304.29.4160, 7304.29.4180, 7304.29.5015, 7304.29.5030, 7304.29.5045, 7304.29.5060, 7304.29.5075, 7304.29.6115, 7304.29.6130, 7304.29.6145, 7304.29.6160, 7304.29.6175, 7305.20.2000, 7305.20.4000, 7305.20.6000, 7305.20.8000, 7306.29.1030, 7306.29.1090, 7306.29.2000, 7306.29.3100, 7306.29.4100, 7306.29.6010, 7306.29.6050, 7306.29.8110, and 7306.29.8150.

The OCTG coupling stock covered by the order may also enter under the following HTSUS item numbers:

²⁶ See Letter from the GOC to the Department, “Oil Country Tubular Goods from China; 2nd CVD Administrative Review 2nd Supplemental Response,” (January 22, 2013) (“G2SR”).

²⁷ See Letter from Wuxi to the Department, “Certain Oil Country Tubular Goods from the People’s Republic of China: Third Supplemental Questionnaire Response,” (January 3, 2013) (“W3SR”).

²⁸ See Letter from Jiangsu Chengde to the Department, “Oil Country Tubular Goods from the People’s Republic of China, Second Administrative Review (C-570-944): Third Supplemental Questionnaire Response” (January 17, 2013).

²⁹ See Letter from Wuxi to the Department, “Certain Oil Country Tubular Goods from the People’s Republic of China: Fourth Supplemental Questionnaire Response,” (January 14, 2013) (“W4SR”).

7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.39.0076, 7304.39.0080, 7304.59.6000, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, 7304.59.8070, and 7304.59.8080.

The HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of the order is dispositive.

Subsidies Valuation Information

Allocation Period

The average useful life period in this proceeding, as described in 19 CFR 351.524(d)(2), is 15 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised.³⁰ No party in this proceeding has disputed this allocation period.

Consistent with other 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.

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) directs that the Department will attribute subsidies received by certain other companies to the combined sales of the recipient and other companies if: (1) cross-ownership exists between the companies; and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned 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 section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in

³⁰ See U.S. Internal Revenue Service Publication 946 (2008), *How to Depreciate Property*, at Table B-2: Table of Class Lives and Recovery Periods, publicly available at <http://www.irs.gov/publications/p946/ar02.html>.

essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.³¹

Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade (“CIT”) has 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.³²

a. Jiangsu Chengde

Jiangsu Chengde was founded in 1998 as a joint stock limited company. In 2005, it was converted into a privately-owned company whose ownership was divided between a number of individuals.³³ The company reported several affiliates, but claimed none was cross-owned within the meaning of 19 CFR 351.525(b)(6).³⁴ Thus, Jiangsu Chengde responded on behalf of itself in this proceeding.

One of these affiliates is Yangzhou Chengde Steel Tube Co., Ltd. (“Yangzhou Chengde”). Yangzhou Chengde is 50 percent owned by an individual (Mr. Zhang Huaide) and 50 percent owned by Chengde Pipe Hong Kong Limited, whose eventual owner is Precision Castparts Company, which is based in Portland, Oregon.³⁵ Mr. Zhang is on the board of directors of Jiangsu Chengde and is chairman of the board for Yangzhou Chengde,³⁶ the nature of his other associations with Jiangsu Chengde is proprietary.

On June 19, 2012, Petitioner submitted pages from Yangzhou Chengde’s website, which suggested that Yangzhou Chengde produces subject merchandise.³⁷ Jiangsu Chengde informed the Department that the website was incorrect, and that Yangzhou Chengde does not produce OCTG.³⁸ Notwithstanding this, Jiangsu Chengde acknowledged that it purchased steel rounds from Yangzhou Chengde during the POR. It claims these steel rounds could not have been used to produce OCTG.³⁹ Furthermore, Jiangsu Chengde argues that its receipt of steel rounds from Yangzhou Chengde is immaterial because it is not cross-owned with Yangzhou Chengde within the meaning of 19 CFR 351.525(b)(vi).⁴⁰

³¹ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998).

³² See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

³³ See CQR at III-5.

³⁴ See CQR at III-2 through III-4.

³⁵ See C2SR at 5.

³⁶ See CQR at Exhibit 2.

³⁷ See NFI Submission at Exhibit 32.

³⁸ See C2SR at 3.

³⁹ See C2SR at 4.

⁴⁰ *Id.* at 5.

Based on our review of Yangzhou Chengde's articles of association, capital verification report, and other documents, we preliminarily find that Jiangsu Chengde and Yangzhou Chengde are not cross-owned within the meaning of 19 CFR 351.525(b)(vi). The documents we examined indicate that Precision Castparts Company and Mr. Zhang Huaide share equal control of the company. In other words, Jiangsu Chengde cannot use or direct Yangzhou Chengde's assets in essentially the same ways it can use its own assets, which is the regulatory standard for cross-ownership.⁴¹ Because we are preliminarily finding that Jiangsu Chengde is not cross-owned with Yangzhou Chengde, we do not reach the question of how to attribute subsidies to the two companies. Therefore, for the preliminary results, we have attributed subsidies to Jiangsu Chengde solely to Jiangsu Chengde's sales.⁴²

b. Wuxi

Wuxi was established on November 17, 1999, in Jiangsu Province, PRC, as a "productive" foreign-invested enterprise ("FIE").⁴³ Wuxi's ownership has transferred multiple times since its establishment, most recently in 2006, when it became wholly-owned by the British Virgin Islands incorporated "First Space Holdings Limited" ("First Space") which, in turn, is wholly-owned by the Cayman Islands incorporated "WSP Holdings Ltd." ("WSP Holdings").⁴⁴ WSP Holdings is publicly-traded on the New York Stock Exchange under the ticker symbol "WH."⁴⁵

Wuxi filed a response on behalf of itself, as well as four separate responses on behalf of its affiliated companies: Liaoyang Seamless Oil Pipes Co. Ltd. ("Liaoyang"), a producer of subject merchandise; Songyuan Seamless Oil Pipes Co. Ltd. ("Songyuan"), a producer of subject merchandise; Mengfeng Special Steel Co. Ltd. ("Mengfeng"), an input supplier; and Chaoyang Seamless Oil Steel Casting Pipes Co., Ltd. ("Chaoyang"), an input supplier.⁴⁶ Wuxi subsequently identified a fifth affiliate, Bazhou Seamless Oil Pipes Co. Ltd. ("Bazhou"), as a producer of subject merchandise, and filed a response on its behalf.⁴⁷

Wuxi wholly-owns Songyuan, Bazhou, and Mengfeng, and owns a 51 percent stake in Chaoyang.⁴⁸ Wuxi's direct parent company, First Space, owns 70 percent of Liaoyang.⁴⁹

We preliminarily find that these companies (hereinafter, "the Wuxi Companies") are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of direct or common ownership.⁵⁰ Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed subsidies received by Wuxi, Liaoyang, Songyuan, and Bazhou, to the combined sales of Wuxi,

⁴¹ See 19 CFR 351.525(b)(vi).

⁴² See Memorandum from Christopher Siepmann, International Trade Compliance Analyst to Yasmin Nair, Program Manager, "Preliminary Results Calculation Memorandum for Jiangsu Chengde Steel Tube Share Co., Ltd." (February 1, 2013) ("Chengde Prelim Calc Memo").

⁴³ See WQR at 4-5.

⁴⁴ *Id.* at 5.

⁴⁵ *Id.*

⁴⁶ *Id.* at 1-3.

⁴⁷ See W1SR.

⁴⁸ See WQR at Exhibit 1.

⁴⁹ *Id.*

⁵⁰ *Id.*

Liaoyang, Songyuan, and Bazhou (exclusive of inter-company sales). Furthermore, since Mengfeng and Chaoyang supply inputs to cross-owned affiliates that are primarily dedicated to the downstream product,⁵¹ pursuant to 19 CFR 351.525(6)(iv), we have attributed subsidies received by Mengfeng to the combined sales of Wuxi, Liaoyang, Songyuan, Mengfeng, and Bazhou (exclusive of inter-company sales). Similarly, for Chaoyang, we have attributed subsidies received by Chaoyang to the combined sales of Wuxi, Liaoyang, Songyuan, Chaoyang, and Bazhou (exclusive of inter-company sales).⁵²

Loan Benchmarks and Discount Rates

The Department is examining loans received by the Wuxi Companies and Jiangsu Chengde from Chinese policy banks and state-owned commercial banks (“SOCBs”), as well as non-recurring, allocable subsidies.⁵³ The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

a. 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 as a benchmark.⁵⁴ If the firm did not have any comparable commercial loans during the period, the Department’s regulations provide that we “may use a national average interest rate for comparable commercial loans.”⁵⁵ As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate.

For the reasons explained in *CFS from the PRC*,⁵⁶ 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. 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). 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

⁵¹ *Id.* at 3 and WISR at 1.

⁵² See Memorandum from Joshua Morris, International Trade Compliance Analyst to Yasmin Nair, Program Manager, “Preliminary Results Calculation Memorandum for Wuxi Seamless Oil Pipe Co., Ltd.” (February 1, 2013) (“Wuxi Prelim Calc Memo”) for further explanation.

⁵³ See 19 CFR 351.524(b)(1).

⁵⁴ See 19 CFR 351.505(a)(3)(i).

⁵⁵ See 19 CFR 351.505(a)(3)(ii).

⁵⁶ See *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (“*CFS from the PRC*”), and accompanying Issues and Decisions Memorandum (“IDM”) at Comment 10. See also Memorandum to the File from Christopher Siepmann, International Trade Compliance Analyst, AD/CVD Operations, Office 1, regarding “Additional Documents for Preliminary Results,” dated January 18, 2013 (“Additional Documents Memo”) at Attachment I (Memorandum from David Neubacher, International Trade Analyst, to the File, “Consultations with Government Agencies,” October 17, 2007 at 2, from the CVD investigation of coated-free sheet paper from the PRC).

benchmark interest rate.⁵⁷ There is no new information on the record of this review that would lead us to deviate from our prior determinations regarding government intervention in the PRC's banking sector.⁵⁸

We first developed in *CFS from the PRC*,⁵⁹ and more recently updated in *Thermal Paper from the PRC*,⁶⁰ the methodology used to calculate the external benchmark. Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. For 2001 through 2009, the PRC fell in the lower-middle income category.⁶¹ Beginning with 2010, however, the PRC is in the upper-middle income category.⁶² Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001 – 2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010 and 2011. As explained in *CFS from the PRC*, by pooling countries in this manner, we capture the broad inverse relationship between income and interest rates.

After identifying the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation – the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.

In each year from 2001-2009, and 2011, the results of the regression-based analysis⁶³ reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group. This contrary result for a single year does not lead the Department to reject the strength of governance as a determinant of interest rates. Therefore, we have continued to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009, and 2011. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories

⁵⁷ See, e.g., *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 IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

⁵⁸ The GOC informed us that "The GOC requests the Department revisit its previous incorrect factual and alleged findings with respect to lending in China. The GOC intends to submit additional information during the course of this investigation, as soon as reasonably feasible, to further demonstrate that the Department's earlier findings are in error." See GQR at 26. To date, the GOC has not submitted such additional information.

⁵⁹ See *CFS from the PRC* and accompanying IDM at Comment 10.

⁶⁰ See *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) ("*Thermal Paper from the PRC*") and accompanying IDM at 8-10.

⁶¹ See World Bank Country Classification, <http://econ.worldbank.org/>.

⁶² *Id.*

⁶³ See Memorandum to All Interested Parties, "Interest Rate Benchmark Memorandum" (January 3, 2013) ("Interest Rate Benchmark Memorandum").

reported lending and inflation rates to the International Monetary Fund, and they 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 "upper middle income" by the World Bank for 2010 and 2011, and "lower middle income" for 2001-2009. First, we did not include those economies that the Department considered to be non-market economies for antidumping 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.⁶⁴ 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.⁶⁵

Because these rates are net of inflation, we adjusted the benchmark rates to include an inflation component before comparing them to the interest rates on loans issued to Wuxi and Jiangsu Chengde by SOCBs. See Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates.

b. Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. 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.⁶⁶

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.⁶⁷ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component. See Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates.

c. Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is following the methodology developed over a number of successive PRC investigations. For U.S.

⁶⁴ For example, in certain years Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L'Este reported dollar-denominated rates; therefore, such rates have been excluded.

⁶⁵ For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country's real interest rate was 34.95 percent and 37.25 percent, respectively. See Interest Rate Benchmark Memorandum.

⁶⁶ See, e.g., *Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) and accompanying IDM at 8.

⁶⁷ 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 IDM at Comment 14.

dollar short-term loans, the Department used as a benchmark the one-year dollar London Interbank Offering Rate (“LIBOR”), plus the average spread between LIBOR and the one-year corporate bond rate for companies with a BB rating. Likewise, for any loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-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* Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates.

d. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used as the discount rate the long-term interest rate calculated according to the methodology described above for the year in which the government agreed to provide the subsidy. These benchmarks are provided in the Interest Rate Benchmark Memorandum.

e. Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources.

In making this determination, according to 19 CFR 351.505(a)(4)(i)(A)-(D), the Department may examine, *inter alia*, the following four types of information: 1) receipt by the firm of comparable commercial long-term loans; 2) present and past indicators of the firm’s financial health; 3) present and past indicators of the firm’s ability to meet its costs and fixed financial obligations with its cash flow; and 4) evidence of the firm’s future financial position. Under 19 CFR 351.505(a)(4)(i)(A), the Department looks to whether the company has received commercial long-term loans in assessing the company’s creditworthiness. According to 19 CFR 351.505(a)(4)(ii), for companies not owned by the government, the Department normally considers a company’s receipt of a long-term loan from a commercial source to be dispositive of its creditworthiness.

Petitioner alleged that Wuxi was uncreditworthy in 2011. Petitioner’s allegation was based on Wuxi’s unconsolidated results for that year: therefore, the analysis below addresses Wuxi only, and not its cross-owned affiliates.

Wuxi

Wuxi entered into a long-term syndicated loan agreement with eight banks in 2011, under which

it received long-term loans during the POR from four of the participating banks. Wuxi has argued that this loan agreement is dispositive of the company's creditworthiness.

Seven of the eight banks that participated in the syndicated loan agreement with Wuxi are SOCBs.⁶⁸ Additionally, the eighth participating bank, Shanghai Pudong Development Bank Co., Ltd., was owned in part by the GOC during the POR.⁶⁹ Consequently, we consider the long-term loans received under the syndicated loan agreement to be "government-provided loans" and not loans from "conventional commercial sources."⁷⁰

Pursuant to 19 CFR 351.505(a)(4)(i), we next examined the present and past indicators of Wuxi's financial health, including its ability to meet its costs and fixed financial obligations with its cash flow. Specifically, we considered and analyzed the company's financial data and trends over the 2008-2011 period.

As detailed in Wuxi's Preliminary Creditworthiness Analysis, we preliminarily find that Wuxi was uncreditworthy during the POR. As a result we have used an uncreditworthy benchmark, calculated in accordance with 19 CFR 351.505(a)(3)(iii), and described in the Interest Rate Benchmark Memorandum, for long-term loans taken out by Wuxi in the POR.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available," subject to section 782(d) of the Act, if necessary information is not on the record or if 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. Section 776(b) of the Act also authorizes the Department to use as adverse facts available ("AFA"), information derived from the petition, the final determination, a previous administrative review, or 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 result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and

⁶⁸ See W1SR at Exhibit S1-68-2; *see also* CFS from the PRC and accompanying IDM at Comments 8 and 10, and Memorandum to Susan H. Kuhbach, "Preliminary Creditworthiness Determination for Wuxi Seamless Oil Pipe Co., Ltd." (February 1, 2013) ("Wuxi's Preliminary Creditworthiness Analysis") at Attachment 2; *see also* Memorandum to the File, "Phone Call with Wuxi Seamless Oil Pipe Co., Ltd. ("Wuxi") Regarding Bracketing of English Translation of Loan Agreement" (January 22, 2013), in which the proprietary treatment of the English Translation of the Comprehensive credit line and Loan Agreement at Exhibit S1-68-2 of the W1SR was lifted.

⁶⁹ See Wuxi's Preliminary Creditworthiness Analysis at Attachment 3.

⁷⁰ See 19 CFR 351.505(a)(4).

accurate information in a timely manner.”⁷¹ 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.”⁷²

GOC – Whether Certain Steel Round Producers Are “Authorities”

As discussed below under the section “Programs Preliminarily Found to be Countervailable,” the Department is investigating whether the GOC provided steel rounds for less than adequate remuneration (“LTAR”). We asked the GOC to provide information regarding the specific companies that produced the steel rounds that the mandatory respondents purchased during the POR. Specifically, we sought information from the GOC that would allow us to analyze whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.

For each producer that the GOC claimed was privately owned by individuals during the POR, we requested the following:

- Translated copies of source documents that demonstrate the producer’s ownership during the POR, such as capital verification reports, articles of association, share transfer agreements, or financial statements.
- Identification of the owners, members of the board of directors, or managers of the producers who were also government or Chinese Communist Party (“CCP”) officials or representatives during the POR.
- A statement regarding whether the producer had ever been a state-owned enterprise (“SOE”), and, if so, whether any of the current owners, directors, or senior managers had been involved in the operations of the company prior to its privatization.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.

For producers owned by other corporations (whether in whole or in part) or with less-than-majority state ownership during the POR, we requested information tracing the ownership of the producer back to the ultimate individual or state owners. Specifically, we requested the following information:

- Translated copies of source documents identifying the company’s owners during the entire POR, such as capital verification reports, articles of association, share transfer agreements or financial statements, along with a chart detailing the name and respective ownership level of each owner of the input producer, up to the ultimate individual or state owners during the entire POR.

⁷¹ See *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).

⁷² See Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

- The nature of all outstanding shares of the companies, e.g., voting, non-voting, controlling, shares with special rights (“golden” shares), *etc.* and a breakdown of these different types of shares by owner.
- The identification of any state ownership of the producer’s shares; and the nature and level of these government entities (*e.g.*, central government ministry, national or sub-central State-Owned Assets Supervision and Administration Commission (“SASAC”), provincial SOE, municipality, township enterprise, *etc.*).
- For each level of ownership, a translated copy of the section(s) of the articles of association showing the rights and responsibilities of the shareholders and, where appropriate, the board of directors, including all decision making (voting) rules for operation of the company.
- For each level of ownership, identification of the owners, directors, or senior managers of the producer who were also government or CCP officials during the POR.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.
- A statement regarding whether any of the shares held by government entities have any special rights, priorities, or privileges with regard to voting rights or other management or decision-making powers of the company; a statement regarding whether there are restrictions on conducting, or acting through, extraordinary meetings of shareholders; a statement regarding whether there are any restrictions on the shares held by private shareholders; and a discussion of the nature of the private shareholders’ interests in the company (*e.g.*, operational, strategic, or investment-related).

The GOC did not provide a complete response to these questions for any producer. Specifically, the GOC informed us that it was “unable to trace all ownership back to the ultimate individual or state owners for each and every input producer... in the limited time allowed for this questionnaire response.”⁷³ In fact, the GOC did not identify the ultimate owners of any producer. It failed to provide this information even though it requested an extension of time to submit the questionnaire,⁷⁴ and we granted the request,⁷⁵ giving the GOC a total of 52 days to respond. The GOC also failed to translate significant portions of the information it placed on the record, including capital verification reports, in accordance with 19 CFR 351.303(e). Finally, the GOC provided some information about the structure of the CCP, but failed to provide information we requested regarding the roles played by CCP officials and CCP Committees in the management or operations of the steel round producers. Instead, the GOC argued that “{e}ven if an owner, a director, or a manager of a supplier is a member or representative of {the CCP, People’s Congress, or Chinese People’s Political Consultative Conferences}, this does not make the management and business operation of the company in which he/she serves subject to

⁷³ See GQR at 14-15.

⁷⁴ See Letter from the GOC to the Department, “Oil Country Tubular Goods from China; 2nd Administrative Review Extension Request for Initial CVD Response” (April 2, 2012).

⁷⁵ See Letter from the Department to the GOC, “Oil Country Tubular Goods from China; 2nd CVD Administrative Review Extension Request for Initial CVD Response” (April 6, 2012).

any intervention of the GOC.”⁷⁶ The GOC concluded that “all the questions in this regard are not relevant to this investigation and the Department has no basis for requesting this information.”⁷⁷

Because the GOC did not provide information we need for our analysis, we asked for this information a second time, in supplemental questionnaires issued on November 19, and December 28, 2012. Regarding certain of the steel round producers, the GOC reiterated that “all the questions {regarding owners, members of the board of directors, or senior managers of the input producers who were government or CCP officials} are therefore not relevant to this investigation and the Department has no lawful basis for requesting this information.”⁷⁸ It also reiterated that “{the} GOC has determined that information permitting the tracing of each level of ownership {for the steel round producers} cannot be obtained within the limited time available.”⁷⁹ The GOC did not translate the untranslated portions of the documentation it placed on the record despite being asked to do so, instead informing us that it had already “translated important information.”⁸⁰ For some producers, the GOC provided only part of the ownership information we requested, and for others, the GOC failed to respond altogether. It informed us that it was still gathering some of the requested information and expected to submit this information at a later date.⁸¹

In the G2SR, regarding additional steel rounds producers, the GOC again failed to trace the ownership of the input producers to their eventual individual, corporate or state owners. For one producer, the GOC failed to provide any information at all, despite having being given two opportunities to do so. For other producers, the GOC failed to provide requested information such as articles of association or capital verification reports. These documents are important because they allow the Department to analyze the extent of each owner’s control over the producer. The GOC again failed to provide the information we requested regarding individual owners, members of the board of directors or senior managers of the producers who were CCP officials during the POR. As with the G1SR, the GOC informed us that it would submit information for some producers at a later date.

In summary, in the questionnaires described above, the GOC identified a number of steel round producers as having no state ownership or less-than-majority state ownership.⁸² However, we cannot confirm the GOC’s claim that these companies are not majority-owned by the state because the GOC did not trace the ownership of any of these producers to their eventual owners. Of the owners that the GOC identified, it did not identify which owners are state entities, further impeding our analysis. Finally, the GOC did not identify the individual owners, members of the

⁷⁶ See GQR at 19-20.

⁷⁷ *Id.* at 20.

⁷⁸ See G1SR at 7.

⁷⁹ See G1SR at 8.

⁸⁰ *Id.* at 5. The Department’s regulations require that submitted documents be fully translated unless the Department waives this requirement in advance. See 19 CFR 351.303(e).

⁸¹ The Department’s questionnaire explicitly informs respondents that if they are unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, the respondents must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response.

⁸² See, e.g., G2SR at S2-1.

board of directors or senior managers of the producers who were CCP officials during the POR for any producer. Regarding the GOC's objections to our questions about the role of CCP officials in the management and operations of the steel rounds producers, we observe that it is the prerogative of the Department, not the GOC, to determine what information is relevant to our investigations and administrative reviews.⁸³ Specifically, the Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in the PRC. This conclusion is supported by a publicly available background report from the U.S. Department of State.⁸⁴ We have also explained our understanding of the CCP's involvement in the PRC's economic and political structures in past proceedings.⁸⁵ Because the GOC did not provide the information we requested regarding this issue, we have no further basis for evaluating the GOC's claim that the role of the CCP is irrelevant. With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.⁸⁶

The GOC also claims that CCP officials cannot serve as employees in enterprises.⁸⁷ According to the GOC, the CCP treats the staff of its administrative organs in the same manner as the government treats civil servants. It cites the "Executive Opinion of the Central Organization Department of Central Committee of CPC on Modeling and Trial Implementation of the Provisional Regulations of State Civil Servants in CCP Organs" (ZHONG FA (1993) No. 8) as evidence of "the CCP's intent to model its personnel management system after law on civil servants, including restrictions on enterprise employment," concluding that "none of the individual owners, members of the board of directors... or senior managers of the Company can also be government or CCP officials during the POI{sic}." ⁸⁸ The GOC's argument, however, is contradicted by the Department's finding in a past proceeding that CCP officials can, in fact,

⁸³ See *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010) (stating that "{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion" and that "Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin"); *NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided").

⁸⁴ See Additional Documents Memo at Attachment III (a State Department report recognizing the significant role the CCP has in the GOC).

⁸⁵ See Additional Documents Memo at Attachment II (the post-preliminary analysis memorandum from the CVD investigation of certain seamless carbon and alloy steel standard, line, and pressure pipe); see also *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010) ("*Seamless Pipe from the PRC*"), and accompanying IDM at Comment 7.

⁸⁶ See Additional Documents Memo, Attachment II, at 16.

⁸⁷ See, e.g., GQR at 12.

⁸⁸ *Id.*

serve as owners, members of the board of directors, or senior managers of companies.⁸⁹

The information we requested regarding the ultimate owners of these producers and the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are “authorities” within the meaning of section 771(5)(B) of the Act. If, as the GOC claims, it was not able to submit the required information in the requested form and manner, it should have promptly notified the Department, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information.⁹⁰ We also asked the GOC what efforts it took to obtain the information we requested. It replied that it “...relied upon capital verification reports, articles of association and business registrations to determine whether or not company owners, members of the board of directors or senior managers were or were not members of any of the above eight entities.”⁹¹ However, these documents customarily do not contain information regarding the CCP affiliations of owners, members of the board of directors or senior managers. The GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC’s responses in prior proceedings demonstrate that it is, in fact, able to access the information we requested.⁹²

We preliminarily find that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on “facts otherwise available” in issuing our preliminary results.⁹³ Moreover, we preliminarily find that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available.⁹⁴ As AFA, we are finding that those non-SOE producers of steel rounds for which the GOC failed to provide ownership information or failed to identify whether the members of the board of directors, owners or senior managers were CCP officials, are “authorities” within the meaning of section 771(5)(B) of the Act.

According to the GOC, the Department found one producer was not an “authority” in *PC Strand from the PRC*.⁹⁵ We have applied AFA to this company and treated it as an “authority” here for

⁸⁹ See *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 IDM at Comment 8 (“{i}n the instant investigation, the information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies.”)

⁹⁰ Section 782(c)(1) of the Act states that “{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority of the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.”

⁹¹ See, e.g., G2SR at 25.

⁹² See, e.g., *High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) and accompanying IDM at 13.

⁹³ See sections 776(a)(1) and 776(a)(2)(A) of the Act.

⁹⁴ See section 776(b) of the Act.

⁹⁵ See *PC Strand from the PRC* and accompanying IDM at Comment 8.

two reasons. First, the period of investigation of *PC Strand from the PRC* was 2008, while the POR of the instant review is 2011. In the intervening period, the ownership of this company may have changed. We cannot confirm that this company's ownership has not changed because, as discussed above, the GOC failed to identify this company's ultimate owners. Second, in *PC Strand from the PRC*, we determined that although certain company officials were also CCP officials, there was not enough information on the record regarding the role that these officials play in directing the companies they own or manage to comply with government policies for us to find that the producer in question was an authority.⁹⁶ We explained that we would "continue to explore this issue in future segments of this proceeding and future CVD proceedings involving the PRC." Consequently, the GOC's failure to provide information about the CCP in this review has left us unable to ascertain the extent to which the CCP directs this producer to act in accordance with government policies.

We intend to give the GOC another opportunity to submit ownership information for a number of other producers that were identified subsequent to the companies' initial questionnaire responses.⁹⁷ For these preliminary results, we have not treated these steel rounds producers as "authorities." We intend to analyze these producers in a post-preliminary analysis.

For details on the calculation of the subsidy rate for the respondents, *see below* at section I.C., "Provision of Steel Rounds for LTAR."

Wuxi Companies – Voltage Class

Wuxi provided electricity user categories and voltage class information for itself and its cross-owned affiliates.⁹⁸ Wuxi reported, *inter alia*, that Liaoyang's voltage class is 66,000 kilovolts ("kv"), and that Chaoyang's voltage class is 37,000kv. These voltage class categories reported for Liaoyang and Chaoyang are inconsistent with our experience and appear to be in error. For example, the highest voltage class categories reported by other companies in this review include 5kv (Jiangsu Chengde), 10kv (Songyuan), and 110kv (Wuxi). By contrast, 66,000 kilovolts seems to be an aberration.

We intend to seek more information about Liaoyang's and Chaoyang's voltage classes after the preliminary results. For purposes of the preliminary results, however, we lack reliable voltage class information for Liaoyang and Chaoyang. Without this information, we are unable to select appropriate benchmark electricity rates for these companies.

Because necessary information is not available on the record, we are relying on facts otherwise available in accordance with section 776(a)(1) of the Act. As facts available, we have selected electricity benchmarks for Liaoyang and Chaoyang in the 1-10kv voltage class. We chose this benchmark by comparing Liaoyang and Chaoyang's total sales (and by extension, production capacity) with other companies in this review for which reliable voltage class information was

⁹⁶ *Id.* at 72. In other words, our determination was not, as the GOC claims, that this company is not an "authority." We found only that there was not enough information on the record to fully analyze the extent of government control.

⁹⁷ *See, e.g.*, G2SR at 10.

⁹⁸ *See* W4SR at Exhibit S4-2.

available.

For details on the calculation of the subsidy rate for the respondents, *see* below at section I.B., “Provision of Electricity for LTAR.”

Analysis of Programs

Based upon our analysis and the responses to our questionnaires, we find the following:

I. Programs Preliminarily Found To Be Countervailable

A. Policy Loans

In the *Investigation Final*,⁹⁹ the Department determined that the GOC had a policy in place to encourage the development of OCTG production through policy lending. Because no information has been provided on the record of the instant review that would cause us to reach a different determination from the *Investigation Final*, we preliminarily find that the GOC’s policy lending program continues.¹⁰⁰

As such, the loans to OCTG producers from Policy Banks and SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans. Furthermore, the loans are *de jure* specific under section 771(5A)(D)(i) of the Act because of the GOC’s policy, as illustrated in government plans and directives, to encourage and support the growth and development of the OCTG industry.

Wuxi and its cross-owned affiliates Liaoyang, Songyuan, Chaoyang and Bazhou each reported receiving loans from SOCBs that were outstanding during the POR.¹⁰¹ Jiangsu Chengde also reported loans from SOCBs that were outstanding during the POR.¹⁰² To calculate the benefit under this program, we compared the amount of interest each company paid on the outstanding loans to the amount of interest it would have paid on comparable commercial loans. We used the benchmarks described above under “Loan Benchmarks and Discount Rates” to calculate each company’s subsidy rate.

On this basis, we find that the Wuxi Companies received a countervailable subsidy of 1.67 percent *ad valorem*, and Jiangsu Chengde received a countervailable subsidy of 1.00 percent *ad*

⁹⁹ *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) (“*Investigation Final*”) and accompanying IDM at 12 and Comments 20-21.

¹⁰⁰ As noted above, the GOC informed us that “The GOC requests the Department revisit its previous incorrect factual and alleged findings with respect to lending in China. The GOC intends to submit additional information during the course of this investigation, as soon as reasonably feasible, to further demonstrate that the Department’s earlier findings are in error.” *See* GQR at 26. To date, the GOC has not submitted such additional information.

¹⁰¹ *See* W1SR at 13-15 and Exhibits S1-67, S1-70, S1-71, S1-72, and B10.

¹⁰² *See* C2SR at Exhibit 29.

valorem under this program.¹⁰³

B. Provision of Electricity for LTAR

In the *Investigation Final*, we determined that this program conferred a countervailable subsidy.¹⁰⁴ Because no information has been provided on the record of the instant review that would cause us to reach a different determination from the *Investigation Final*, we preliminarily find that the GOC's provision of electricity is a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act, and that it is specific.

To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the companies' reported consumption volumes and rates paid,¹⁰⁵ except as explained above under "Use of Facts Otherwise Available and Adverse Inferences: Wuxi Companies – Voltage Class." To calculate the electricity benchmark, in accordance with 19 CFR 351.511(a)(2), we selected the highest non-seasonal provincial rates in the PRC for each user category (*e.g.*, "large industry," "general industry and commerce") and voltage class of the respondents (*e.g.*, 1-10kv), as well as the respondents' "base charge" (either maximum demand or transformer capacity).¹⁰⁶ We then compared what the respondents paid for electricity during the POR to our benchmark prices. Based on this comparison, we find that electricity was provided for LTAR. To calculate the subsidy, we divided the benefit amount by the appropriate sales denominator for each respondent as described above under "Attribution of Subsidies."

On this basis, we find that the Wuxi Companies received a countervailable subsidy of 5.37 percent *ad valorem*, and Jiangsu Chengde received a countervailable subsidy of 0.42 percent *ad valorem* under this program.¹⁰⁷

C. Provision of Steel Rounds for LTAR

In the *Investigation Final*, we determined that this program conferred a countervailable subsidy.¹⁰⁸ Because no information has been provided on the record of the instant review that would cause us to reach a different determination from the *Investigation Final*, we preliminarily find that the GOC's provision of steel rounds is specific under section 771(5A)(D)(iii)(I) of the Act. Also, no evidence has been submitted in this review that would cause us to revisit our finding in the *Investigation Final* that domestic prices in the PRC cannot be used as benchmarks due to the government's extensive involvement in the Chinese steel rounds market.¹⁰⁹ Our analyses of financial contribution and benefit, which depend on the producers of the steel rounds purchased during the POR and the prices paid during the POR follows.

¹⁰³ See Wuxi Prelim Calc Memo; *see also* Chengde Prelim Calc Memo.

¹⁰⁴ See *Investigation Final* and accompanying IDM at 5-6 and 22-23.

¹⁰⁵ For the Wuxi Companies, *see* WQR at Exhibits 11, 14, C6, C7, L7, L8, M6, M7, S7, S8, and W1SR at B7; *see also* W4SR at Exhibit S4-2. For Jiangsu Chengde, *see* CQR at III-15 and Exhibit 8.

¹⁰⁶ We provide additional discussion of these benchmarks in the "Electricity Rate Benchmark Memorandum" issued concurrently with these preliminary results.

¹⁰⁷ See Wuxi Prelim Calc Memo; *see also* Chengde Prelim Calc Memo.

¹⁰⁸ See *Investigation Final* and accompanying IDM at 3-4 and 13-15.

¹⁰⁹ *Id.*

We preliminarily find that steel round producers that are majority owned by the government are “authorities” within the meaning of section 771(5)(B) of the Act. Further, as described above under “Use of Facts Otherwise Available and Adverse Inferences: GOC – Whether Certain Steel Round Producers Are “Authorities,” we are relying on AFA to find that a number of other steel round producers are also “authorities” within the meaning of section 771(5)(B) of the Act.¹¹⁰ Because these producers are government authorities, we find that Wuxi and Jiangsu Chengde received a financial contribution in the form of the provision of a good, within the meaning of section 771(5)(D)(iii) of the Act.

To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for steel rounds. The potential benchmarks listed in this regulation, in order of preference are:

(1) market prices from actual transactions within the country under investigation for the government-provided good (*e.g.*, actual sales, actual imports, or competitively run government auctions) (“tier one” benchmarks); (2) world market prices that would be available to purchasers in the country under investigation (“tier two” benchmarks); or (3) prices consistent with market principles based on an assessment by the Department of the government-set price (“tier three” benchmarks).¹¹¹

As explained above, consistent with the *Investigation Final*, we preliminarily determine that domestic prices in the PRC cannot serve as viable, “tier one” benchmark prices. Instead, we are relying on “tier two prices,” *i.e.*, world market prices.

In this review, Petitioner provided Steel Business Briefing free-on-board export prices for steel rounds from Turkey, Black & Baltic Sea ports, and Latin America.¹¹² The Wuxi Companies provided London Metal Exchange prices.¹¹³ The average of the prices provided by Petitioner and the Wuxi Companies represents an average of commercially available world market prices for steel rounds that would be available to purchasers in the PRC. Also, 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, we have averaged the prices to calculate a single benchmark by month.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under “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. Regarding ocean freight, Petitioner placed quotes from Maersk Line on the record of this review.¹¹⁴ However, we have not used these quotes to adjust the benchmark because they are for shipping “flat rack” containers. In the *Investigation Final*, the Department excluded surcharges for

¹¹⁰ We plan to address the remaining steel round producers in a post-preliminary analysis.

¹¹¹ See 19 CFR 351.511(a)(2).

¹¹² See NFI Submission at Exhibit 60.

¹¹³ See WQR at Exhibit 22.

¹¹⁴ See NFI Submission at Exhibits 61-64.

shipping flat racks.¹¹⁵ We observed that “these charges are not necessarily reflective of what a firm would pay to import the product, in accordance with 19 CFR 351.511(a)(2)(iv).”¹¹⁶ The Department continued to exclude surcharges for flat racks in the subsequent investigation of *Seamless Pipe from the PRC*.¹¹⁷ There is no evidence on the record of this review that would lead us to depart from these earlier determinations.

Jiangsu Chengde also provided quotes for ocean freight. It stated that these quotes were from its freight forwarder and corresponded to destinations matching the billet benchmarks on the record. Additionally, it argued that the Department used similar information from Zhejiang Jianli Company Limited (“Jianli”) in the *Investigation Final*. We reviewed the record of the investigation, and found that the information we used in the *Investigation Final* consisted of shipping contracts between Jianli’s shipper and third parties.¹¹⁸ These contracts listed the actual shipping costs incurred by the third parties. It is apparent from the contracts themselves that they were applicable to the period of investigation (*i.e.*, 2008), and were accompanied by a statement from an employee of Jianli’s shipper affirming the same. However, it is unclear whether the quotes provided by Jiangsu Chengde apply to the POR of this proceeding or whether they reflect costs actually incurred. There is no indication that the rates were the same for the 2011 POR.

Therefore, instead of using the ocean freight information submitted by parties, the Department obtained its own ocean freight quotes from Maersk Line.¹¹⁹ These quotes are for shipping a standard 20 foot container from locations corresponding to the steel rounds benchmark prices currently on the record. We used the average of these ocean freight prices to adjust the benchmark. We also added inland freight in the PRC based on information supplied by Jiangsu Chengde and the Wuxi Companies,¹²⁰ import duties as reported by the GOC in the OCTG investigation, and the value added tax (“VAT”) applicable to imports of steel rounds into the PRC.¹²¹

We compared these prices to the respondents’ actual purchase prices, including taxes and delivery charges. Wuxi, Liaoyang, and Jiangsu Chengde reported purchasing steel rounds during the POR and identified the producers of the inputs they purchased.¹²² Based on this comparison, we preliminarily find that steel rounds were provided for LTAR.

On this basis, we find that the Wuxi Companies received a countervailable subsidy of 0.29 percent *ad valorem*, and Jiangsu Chengde received a countervailable subsidy of 0.42 percent *ad*

¹¹⁵ See *Investigation Final* and accompanying IDM at 85.

¹¹⁶ *Id.*

¹¹⁷ See *Seamless Pipe from the PRC* and accompanying IDM at 71-72.

¹¹⁸ See Memorandum to the File from Christopher Siepmann, International Trade Compliance Analyst, “Additional Documents for Preliminary Results (Second Set)” (February 1, 2013) (“Second Additional Documents Memo”) at Attachment II.

¹¹⁹ See Second Additional Documents Memo at Attachment III.

¹²⁰ See WISR at Exhibit S1-61-2; see also CISR at 5-6 and Exhibit 22.

¹²¹ The GOC reported that there were no changes to this program since the investigation. Therefore, we have placed import duty and VAT information from the investigation on the record of this review. See Second Additional Documents Memo at Attachment I.

¹²² See WISR at Exhibits S1-61-1, S1-64, S1-65, S1-66, and B9. We note that Bazhou reported purchasing steel rounds during the POR, but was not included in this subsidy program for reasons addressed in the Wuxi Prelim Calc Memo; see also CISR at Exhibit 21.

valorem under this program.¹²³

II. Programs For Which More Information is Required

A. Export Restraints on Coke

Petitioner alleged that the respondents received countervailable subsidies as a result of the GOC's export restraints on coke.¹²⁴ Although the Department found this alleged subsidy not countervailable in the *Investigation Final*, Petitioner provided new information in this review that warrants re-investigating this program.¹²⁵

Wuxi reported its cross-owned affiliate Mengfeng purchased coke during the POR.¹²⁶ However, the GOC did not reply to our request for information that would allow us to analyze whether this program is countervailable, arguing instead that "the alleged export restrictions on coke do not constitute a subsidy within the meaning of the SCM and the WTO framework."¹²⁷ We intend to provide the GOC with an additional opportunity to provide this information, and will address the program in a post-preliminary analysis.

B. Land for LTAR in Kazuo County

Chaoyang is one of Wuxi's cross-owned affiliates, and is located in Kazuo County.¹²⁸ It reported purchasing land-use rights in 2009,¹²⁹ but the Wuxi Companies and the GOC claim that Chaoyang did not use this program because these land-use rights "{were} transferred from the company which used to have it."¹³⁰ Neither party provided further details about this transfer.¹³¹ We intend to gather more information and address whether Chaoyang received a countervailable subsidy in a post-preliminary analysis.

C. Provision of Land for LTAR in the Wuxi New District

Wuxi is located in the Wuxi New District. It reported purchasing land-use rights in 2001 and 2004 from the local land bureau. It acquired the 2001 land-use rights before the December 11, 2001, cut-off date, but the 2004 land-use rights may have given rise to a countervailable subsidy.

The GOC argues that "Wuxi previously purchased the land use right...in 2001 and 2004 respectively and paid the full amount as agreed by Land Use Right Assignment Contracts for these pieces of land. Wuxi New District did not provide any preferential price to Wuxi for the land use right. Therefore, Wuxi did not receive any land use right for less than adequate

¹²³ See Wuxi Prelim Calc Memo; see also Chengde Prelim Calc Memo.

¹²⁴ See NSA Letter at 32-37.

¹²⁵ See NSA Initiation Memorandum at 7-10.

¹²⁶ See WNSAR at 11.

¹²⁷ See GNSAR at 16.

¹²⁸ See WNSAR at 4.

¹²⁹ *Id.*; see also WISR at 8.

¹³⁰ See GNSAR at 8-9.

¹³¹ See WNSAR at 4.

remuneration.”¹³² However, the GOC did not respond to our questions for this program.¹³³ We intend to request this information a second time, and will address whether this program is countervailable in a post-preliminary analysis.

D. Grant Programs

The Wuxi Companies reported receiving a number of grants during the POR.¹³⁴ For some of these, the GOC has not yet provided a response. When we asked the GOC to provide information regarding newly-reported programs in the W3SR, the GOC replied that “{n} either Wuxi nor Chengde report any new programs.”¹³⁵ Since the GOC has not yet responded for these programs, we are unable to analyze whether they are countervailable. We intend to request this information from the GOC a second time, and will address these grants in a post-preliminary analysis.

III. Programs Found to Be Not Used or that Provided No Benefit During the POR

A. “Bail-Out” Loans from SOCBs

As stated under section I.A. “Policy Loans” above, we have preliminarily found Wuxi’s loans outstanding during the POR to be countervailable, including the “Bail-Out” loans received during the POR under the syndicated loan agreement from the SOCBs. Consequently, we preliminarily find that during the POR, this program provided no additional benefit to Wuxi beyond that found under “Policy Loans.”

B. Export Incentive Payments Characterized as “VAT Rebates”

Wuxi reported receiving benefits under this program during the POR.¹³⁶ However, 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.”¹³⁷

Because no information has been provided that would cause us to reach a different determination from the *Investigation Final*,¹³⁸ we preliminarily find that the VAT exempted upon the export of OCTG does not confer a countervailable benefit.

C. Preferential Tax Program for FIEs Recognized as High or New Technology Enterprises

Wuxi reported being eligible for benefits under this program.¹³⁹ However, Wuxi was

¹³² See GNSAR at 12-13.

¹³³ *Id.*

¹³⁴ See WQR at Exhibit 8 at page 36, W1SR at 4, and W3SR at 3-9.

¹³⁵ See G2SR at 6.

¹³⁶ See WQR at 19 and Exhibit 21.

¹³⁷ See 19 CFR 351.517(a), *see also* 19 CFR 351.102 (for a definition of “indirect tax”).

¹³⁸ See *Investigation Final* at 25 and accompanying IDM at Comment 33.

¹³⁹ See WQR at 10.

unprofitable during the POR and, therefore, did not apply for, use, or benefit from this program during the POR.¹⁴⁰

D. Jiangsu Province Famous Brands

Wuxi reported benefiting from this program in the WQR, having received a grant in 2008.¹⁴¹ However, in the *Investigation Final*,¹⁴² we determined that the benefit to Wuxi from the 2008 grant under this program was *de minimis*. As such, there is no countervailable benefit to Wuxi which would allocate to the POR.

- E. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
- F. “Two Free/Three Half” Program
- G. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
- H. State Key Technology Project Fund
- I. Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area – *Science and Technology Fund*
- J. Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area – *Accelerated Depreciation Program*
- K. Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area – *Land*
- L. Export Loans from the Export-Import Bank of China
- M. Loan and Interest Forgiveness for State-Owned Enterprises (“SOEs”)
- N. Sub-central Government Programs to Promote Famous Export Brands and China World Top Brands
- O. Treasury Bond Loans to Northeast
- P. Preferential Loans for SOEs
- Q. Preferential Loans for Key Projects and Technologies
- R. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
- S. Debt-to-Equity Swap for Pangang
- T. Equity Infusions
- U. Exemptions for SOEs From Distributing Dividends to the State
- V. Preferential Income Tax Policy for Enterprises in the Northeast Region
- W. Forgiveness of Tax Arrears For Enterprises in the Old Industrial Bases of Northeast PRC
- X. Stamp Exemption on Share Transfers Under Non-Tradable Share Reform
- Y. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund
- Z. Provision of Land Use Rights for LTAR to Huludao
- AA. Provision of Land to SOEs for LTAR
- BB. Provision of Hot-Rolled Steel (flat products) for LTAR
- CC. Provision of Coking Coal for LTAR
- DD. Foreign Trade Development Fund (Northeast Revitalization Program)
- EE. Export Assistance Grants

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 18.

¹⁴² See *Investigation Final* and accompanying IDM at 24.

- FF. Program to Rebate Antidumping Fees
- GG. Subsidies for Development of Famous Export Brands and China World Top Brands
- HH. Grants to Loss-Making SOEs
- II. Export Interest Subsidies
- JJ. Five Points, One Line Program
- KK. High-Tech Industrial Development Zones
- LL. Reduced Income Tax Rates for Export-Oriented FIEs
- MM. VAT Rebates from the Government of Liaoyang County ("GLC")
- NN. Western China Regional Subsidies
- OO. Land Fee Exemptions from the GLC

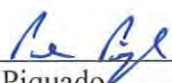
Recommendation

We recommend applying the above methodology for these preliminary results.

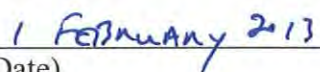


Agree

Disagree



Paul Piquado
Assistant Secretary
for Import Administration



(Date)