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September 8, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Countervailing Duty Investigation of Chlorinated Isocyanurates
from the People's Republic of China: Issues and Decision
Memorandum for the Final Determination

I. BACKGROUND

The Department of Commerce (“Department”) determines that countervailable subsidies have been provided to producers and exporters of chlorinated isocyanurates (“isos”) in the People’s Republic of China (“PRC”), as provided in section 705 of the Tariff Act of 1930, as amended (“Act”).

On February 24, 2014, the Department published its *Preliminary Determination* in the countervailing duty (“CVD”) investigation of isos from the PRC.¹ Between May 22 and July 18, 2014, we conducted a verification of the questionnaire responses of the Government of the PRC (“GOC”), Hebei Jiheng Chemicals Co., Ltd. (“Jiheng”)² and Juancheng Kangtai Chemical Co.,

¹ See *Countervailing Duty Investigation of Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Determination and Alignment of Final Determination with Final Antidumping Determination*, 79 FR 10097 (February 24, 2014) (“*Preliminary Determination*”).

² Including its cross-owned affiliates Hebei Jiheng Baikang Chemical Industry Co., Ltd. (“Baikang”) and the Hebei Jiheng Group Co., Ltd. (the “Jiheng Group”).



Ltd. (“Kangtai”).³ Between July 31, 2014 and August 5, 2014, interested parties submitted case and rebuttal briefs.

General Issues

Comment 1: Appropriate High Peak, Peak, Normal and Valley Electricity Benchmarks

Comment 2: Jiheng’s Electricity Consumption

Comment 3: Kangtai’s Electricity Consumption

Comment 4: Specificity Issue for the Provision of Urea for Less than Adequate Remuneration (“LTAR”)

II. SUBSIDIES VALUATION INFORMATION

A. Period of Investigation

The period of investigation (“POI”) for which we are measuring subsidies is January 1, 2012, through December 31, 2012.

B. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (“AUL”) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 9.5 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System.⁴ (Because the AUL is 9.5 years, we allocated benefits from non-recurring subsidies over a 10-year period.) The Department notified the respondents of the AUL in the

³ See Memorandum to James Doyle, Director, from Matthew Renkey, David Neubacher and Alexander Montoro, Case Analysts, “Countervailing Duty Investigation, Chlorinated Isocyanurates from the People’s Republic of China: Verification Report, Government of the People’s Republic of China,” dated July 16, 2014 (“GOC Verification Report”); Memorandum to James Doyle, Director, from Matthew Renkey, David Neubacher and Alexander Montoro, Case Analysts, “Countervailing Duty Investigation, Chlorinated Isocyanurates from the People’s Republic of China: Verification Report, Hebei Jiheng Chemicals Co., Ltd., Hebei Jiheng Baikang Chemical Industry Co., Ltd. and Hebei Jiheng Group Co., Ltd.,” dated July 22, 2014 (“Jiheng Verification Report”); Memorandum to James Doyle, Director, from Matthew Renkey, David Neubacher and Alexander Montoro, Case Analysts, “Countervailing Duty Investigation, Chlorinated Isocyanurates from the People’s Republic of China: Verification Report for Juancheng Kangtai Chemical Co., Ltd.,” dated July 14, 2014 (“Kangtai Verification Report”); Memorandum to the File, from Matthew Renkey and Alexander Montoro, Case Analysts, “Countervailing Duty Investigation, Chlorinated Isocyanurates from the People’s Republic of China: Verification Report for [***], a U.S. Customer of Juancheng Kangtai Chemical Co., Ltd.,” dated July 14, 2014 (“Kangtai Customer Verification Report”); and Memorandum to the File, from Paul Walker, Case Analyst, “Countervailing Duty Investigation of Chlorinated Isocyanurates from the People’s Republic of China: Verification Report for a Customer of the Jiheng Companies, [***],” dated July 22, 2014 (“Jiheng Customer Verification Report”).

⁴ See *Preliminary Determination*, and accompanying Decision Memorandum at 4.

initial questionnaire and requested data accordingly.⁵ No party in this proceeding disputed this allocation period.

Furthermore, for non-recurring subsidies, we applied the “0.5 percent test,” as 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 relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

C. *Attribution of Subsidies*

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

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 another corporation in essentially the same ways it can use its own assets. This standard will normally be met when there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations.⁶ In certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross-ownership.⁷ The Court of International Trade (“CIT”) 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 ways it could use its own subsidy benefits.⁸

1. *Jiheng*

Jiheng, Baikang and the Jiheng Group submitted responses to the Department’s CVD questionnaire. Jiheng reported the following roles for each of these companies:

Jiheng – producer of subject merchandise;

⁵ As stated in the *Preliminary Determination*, regardless of the AUL chosen, we will not countervail subsidies conferred before December 11, 2001, the date of the PRC’s accession to the World Trade Organization. *See Preliminary Determination*, and accompanying Decision Memorandum at 4-5, n.17 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012), and accompanying Issues and Decision Memorandum at “Subsidies Valuation Information”).

⁶ *See, e.g., Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998).

⁷ *Id.*

⁸ *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

Jiheng Group – a holding company and majority shareholder of Jiheng, which provides raw materials (sulfuric acid and steam) to Jiheng and other affiliated companies; Baikang – producer of subject merchandise and a subsidiary company of Jiheng.⁹

Jiheng reported that it is owned by the Jiheng Group, and that Jiheng owns Baikang.¹⁰ Based on information on the record, we find that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), between Jiheng, Baikang, and Jiheng Group through the Jiheng Group’s ultimate ownership of Jiheng and Baikang.¹¹ Because the Jiheng Group is a parent company, we are attributing subsidies received by the Jiheng Group to its consolidated sales (net of intercompany sales), in accordance with 19 CFR 351.525(b)(6)(iii). The Jiheng Group combines its subsidiaries’ results in its consolidated financial statements.¹²

Jiheng and Baikang are producers of subject merchandise, therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we are attributing subsidies received by Jiheng and Baikang to the combined sales of Jiheng and Baikang.¹³ We note that Jiheng’s Jiheng and Baikang’s sales are combined in Jiheng’s consolidated financial statements, and that the only subsidiary included in these statements is Baikang.¹⁴

In addition, Hebei Jiheng (Group) Fertilizer Co., Ltd. (“Jiheng Fertilizer”) submitted a response to the Department’s CVD questionnaire. Jiheng Fertilizer, a subsidiary of Jiheng Group, provided raw materials to Jiheng.¹⁵ While record evidence indicates that Jiheng and Jiheng Fertilizer are affiliated, we determine that Jiheng Group cannot use or direct the assets of Jiheng Fertilizer in essentially the same way it can use its own assets.¹⁶ Therefore, we determine that Jiheng Fertilizer is not cross-owned with the responding Jiheng companies (*i.e.*, Jiheng, Jiheng Group, and Baikang), pursuant to 19 CFR 351.525(b)(6)(vi).

⁹ See, e.g., Jiheng’s December 23, 2013, submission at 3.

¹⁰ *Id.*, at Appendix 2.

¹¹ The Department’s regulations at 19 CFR 351.525(b)(6)(vi) state that cross-ownership exists when one corporation can use or direct the assets of another corporation in essentially the same way it can use its own. Normally, however, “this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.”

¹² See the Jiheng Group’s December 23, 2013 submission at Appendix 6.

¹³ See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010) (“*Coated Paper*”) and accompanying Issues and Decision Memorandum at 9 & Comment 35 (where we discuss application of the attribution regulations at 19 CFR 351.525(b)(6) to a company that is both a parent company and a producer of subject merchandise).

¹⁴ See Jiheng’s December 23, 2013 submission at Appendix 5.

¹⁵ *Id.*, at 3.

¹⁶ See Memorandum from Paul Walker, Case Analyst, to Scot T. Fullerton, Program Manager, “Countervailing Duty Investigation of Chlorinated Isocyanurates from the People’s Republic of China: Cross-ownership of Hebei Jiheng Chemicals Co., Ltd., Hebei Jiheng Group Co., Ltd. and Hebei Jiheng Baikang Chemical Industry Co., Ltd.,” dated February 11, 2014.

2. *Kangtai*

In its initial questionnaire response, Kangtai reported that it was affiliated with Juancheng Ouya Chemical Co., Ltd. (“Ouya”), but that cross-ownership did not exist between the two companies.¹⁷ According to Kangtai, the two companies do not have common shareholders nor are voting rights shared between the two companies. The two companies operate independently and have different plants at different locations. Kangtai also stated that the two companies have never shared directors or management officers. Our review of the Articles of Association reveals that control of the respective companies is exercised through voting rights.¹⁸ Kangtai also reported that the companies do not share, nor have they transferred liabilities and/or assets. Based upon the verified record evidence, we determine that the companies are not cross-owned because neither company can use or direct the individual assets of the other company in essentially the same way that it could use its own assets, as required under 19 CFR 351.525(b)(6)(vi).¹⁹

Kangtai responded to the Department’s original and supplemental questionnaires on behalf of itself, a producer and exporter of the subject merchandise during the POI. While Kangtai reported that it had one affiliated company during the POI, as noted immediately above, we find that there was no cross-ownership. Therefore, we are attributing subsidies received by Kangtai to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

D. *Denominators*

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondents’ receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents’ export or total sales, or portions thereof. In the “Analysis of Programs - Programs Determined to Be Countervailable” section below, we describe the denominators that we used to calculate the countervailable subsidy rates for the various subsidy programs.²⁰

III. BENCHMARK INTEREST RATES

The Department investigated loans received by the respondents from PRC policy banks and state-owned commercial banks, as well as non-recurring, allocable subsidies.²¹ The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

¹⁷ See Kangtai’s December 20, 2013 submission at 2-4; Kangtai’s January 31, 2014 submission at 1-5.

¹⁸ *Id.*, at Exhibit 5.2.

¹⁹ See Memorandum from Matthew Renkey, Case Analyst, to Scot T. Fullerton, Program Manager, “Countervailing Duty Investigation of Chlorinated Isocyanurates from the People’s Republic of China: Cross-ownership of Juancheng Kangtai Chemical Co., Ltd. and Juancheng Ouya Chemical Co., Ltd.” dated February 11, 2014.

²⁰ See also Memorandum to the File, through Scot T. Fullerton, Program Manager, from Paul Walker, Case Analyst, “Countervailing Duty Investigation of Chlorinated Isocyanurates from the People’s Republic of China: Hebei Jiheng Chemicals Co., Ltd. Final Calculation Memo,” dated concurrently with this memorandum (“Jiheng Final Calculation Memo”). Because there are no changes to the calculation for Kangtai, we hereby adopt for this final determination the Memorandum to the File, through Scot T. Fullerton, Program Manager, from Matthew Renkey, Case Analyst, “Countervailing Duty Investigation of Chlorinated Isocyanurates from the People’s Republic of China: Juancheng Kangtai Chemical Co., Ltd. Prelim Calculation Memo,” dated February 11, 2014.

²¹ See 19 CFR 351.524(b)(1).

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.²² 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.”²³

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. Based on the evidence on the record and for the reasons first explained in *CFS*, 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.²⁴ Because of this, any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, 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 *Canadian Lumber*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.²⁵

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *CFS*²⁶ and more recently updated in *Thermal Paper*.²⁷ 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. As explained in *CFS*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003

²² See 19 CFR 351.505(a)(3)(i).

²³ See 19 CFR 351.505(a)(3)(ii).

²⁴ See *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (“*CFS*”) and accompanying Issues and Decision Memorandum at Comment 10; see also Memorandum to the File from Paul Walker, Case Analyst, “Countervailing Duty Investigation of Chlorinated Isocyanurates from the People’s Republic of China: Banking Memoranda,” dated February 11, 2014 (“Banking Memoranda”).

²⁵ 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) (“*Canadian Lumber*”), and accompanying Issues and Decision Memorandum at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

²⁶ See *CFS*, and accompanying Issues and Decision Memorandum at Comment 10.

²⁷ See *Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (“*Thermal Paper*”), and accompanying Issues and Decision Memorandum at 8-10.

through 2009, the PRC fell in the lower-middle income category.²⁸ Beginning in 2010, however, the PRC is in the upper-middle income category and remained there from 2011 to 2012.²⁹ Accordingly, as explained further below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2012. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.³⁰

After the Department identifies the appropriate interest rates, the next step in constructing the benchmark has been 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 of the years from 2003-2009 and 2011-2012, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.³¹ For 2010, however, the regression does not yield that outcome for the PRC's income group.³² This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS* to compute the benchmarks for the years from 2001-2009 and 2011-2012. 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 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 used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010-2012 and "lower middle income" for 2001-2009.³³ 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. For example, Jordan reported a

²⁸ See World Bank Country Classification, <http://econ.worldbank.org/>; see also Memorandum to the File from Paul Walker, Case Analyst, "Countervailing Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China: Benchmark Memo," dated February 11, 2014 ("Prelim Benchmark Memo").

²⁹ See World Bank Country Classification.

³⁰ See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying Decision Memorandum at "Benchmarks and Discount Rates," unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) ("*Shrimp*").

³¹ See Banking Memoranda.

³² See Prelim Benchmark Memo.

³³ *Id.*

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 also excluded any countries with aberrational or negative real interest rates for the year in question.³⁴ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.³⁵

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 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.³⁶

In the *Citric Acid Investigation*, 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.³⁷ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.³⁸

C. *Discount Rates*

Consistent with 19 CFR 351.524(d)(3)(i)(A), we 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 non-recurring subsidies.³⁹ The interest rate benchmarks and discount rates used in our final calculations are provided in the preliminary calculations memoranda.⁴⁰

IV. 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” 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

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See, e.g., Thermal Paper*, and accompanying Issues and Decisions Memorandum at 10; *see also* Prelim Benchmark Memo at 1-2 and Attachments 3-4.

³⁷ *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 Investigation*”), and accompanying Issues and Decision Memorandum at Comment 14.

³⁸ *See* Memorandum to the File, through Scot T. Fullerton, Program Manager, from Paul Walker, Case Analyst, “Countervailing Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China: Hebei Jiheng Chemicals Co., Ltd. Prelim Calculation Memo,” dated February 11, 2014 (“*Jiheng Prelim Calculation Memo*”) and Kangtai Prelim Calculation Memo.

³⁹ *Id.*

⁴⁰ *Id.*

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 fails to cooperate by not acting to the best of its ability to comply with a request for information. 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 adverse facts available ("AFA") rule to induce respondents to provide the Department with complete and accurate information in a timely manner.⁴¹ 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."⁴² For purposes of this final determination, we find it necessary to apply AFA with respect to the GOC's responses to questions on the alleged provision of electricity for less than adequate remuneration ("LTAR"), and with respect to Jiheng's electricity consumption.

A. GOC

In the *Preliminary Determination*, we found that the GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR.⁴³ Specifically, the questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act and whether such a provision was specific with the meaning of section 771(5A) of the Act. In both the Department's original questionnaire and the January 23, 2014, supplemental questionnaire, for each province in which a respondent is located, the Department asked the GOC to provide a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no provincial-specific information in response to these questions in its initial questionnaire response.⁴⁴ The Department reiterated these questions in a supplemental questionnaire and the GOC did not provide the requested information in its supplemental questionnaire response.⁴⁵

Consequently, in the *Preliminary Determination* we determined that the GOC withheld necessary information that was requested of it, and thus, that the Department must rely on facts

⁴¹ 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).

⁴² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

⁴³ See *Preliminary Determination*, and accompanying Decision Memorandum at 10-12.

⁴⁴ See the GOC's December 20, 2013 submission at 22-26.

⁴⁵ See the GOC's January 31, 2014 submission at 25.

otherwise available in making our preliminary determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act.⁴⁶ Moreover, we preliminarily determined that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information.⁴⁷ In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. For those same reasons, we continue to find for this final determination that an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.⁴⁸ The benchmark rates we selected are derived from information from the record of the instant investigation and are the highest electricity rates on this record for the applicable rate and user categories.⁴⁹ Although, as noted below in Comment 1, parties commented upon the appropriate electricity benchmarks for the final determination, we note that no party challenged the application of AFA to the benchmark selection. As no party has challenged this finding, and as no new information concerning electricity has been placed on the record since the *Preliminary Determination*, we continue to find that the application of AFA to the GOC is warranted for this program.

In the *Preliminary Determination*, the Department found that the GOC did not provide complete responses to the Department's questions, asked twice, about the Special Fund for Energy Saving Technology.⁵⁰ Accordingly, we found that the GOC withheld necessary information that was requested of it and relied on facts otherwise available in making our *Preliminary Determination* with respect to these programs pursuant to sections 776(a)(1) and (a)(2)(A) of the Act.⁵¹ Moreover, we found that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information concerning this program and applied an adverse inference pursuant to section 776(b) of the Act.⁵² As no party has challenged this finding, and as no new information concerning this program has been placed on the record since the *Preliminary Determination*, we continue to find that the application of AFA to the GOC is warranted for this program.

In the *Preliminary Determination* we also found that the GOC did not provide complete responses to the Department's questions regarding the specificity of following programs: Grants

⁴⁶ See *Preliminary Determination*, and accompanying Decision Memorandum at 10-12.

⁴⁷ *Id.*

⁴⁸ 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 accurate information in a timely manner." 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). 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 accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

⁴⁹ See Prelim Benchmark Memo.

⁵⁰ See *Preliminary Determination*, and accompanying Decision Memorandum at 12-14.

⁵¹ *Id.*

⁵² *Id.*

under the Haixing County Science and Technology Research & Development Plan Project, Special National Bond Fund for Energy Conservation and Waste Recycling Projects, and Value Added Tax (“VAT”) Tax Rebate for Comprehensive Utilization of Resources. Accordingly, we found that the GOC withheld necessary information that was requested of it, and thus, the Department relied on facts otherwise available in making our *Preliminary Determination* with respect to these programs pursuant to sections 776(a)(1) and (a)(2)(A) of the Act.⁵³

After the *Preliminary Determination*, we provided the GOC with another opportunity to provide the requested information for these programs.⁵⁴ In its response, the GOC did not provide key information that the Department requested.⁵⁵ This key information, for example, translated copies of the laws and regulations relating to the program, is relied upon by the Department to determine the *de jure* and *de facto* specificity of this program. In past cases the Department determined that for each program for which the GOC did not provide the relevant laws or regulations, as AFA, that the programs are *de jure* specific.⁵⁶ As a result, for this final determination, because the GOC did not provide us with necessary information required to conduct our specificity analysis under section 771(5A)(D) of the Act, we are required to make specificity determinations for the above-named programs on the basis of the facts available under sections 776(a)(1) and (a)(2)(A) of the Act. Additionally, because the GOC did not act to the best of its ability in complying with our requests for information concerning those programs, we conclude that an adverse inference is warranted under section 776(b) of the Act to find those programs specific within the meaning of section 771(5A) of the Act. For more information on each program, *see* the “Analysis of Programs” section, below.

B. *Jiheng*

For this final determination, we determine that it is appropriate to apply partial AFA to the Jiheng Group’s under-reported consumption of electricity during the POI. The Department found at verification that the Jiheng Group failed to report electricity for one of its two branch companies, Jiheng Lantian Chemical Branch Company (“Lantian”).⁵⁷ Therefore, we find that necessary information is not available on the record and that the Jiheng Group withheld information requested by the Department; therefore, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act, we determine that the use of facts otherwise available is warranted in calculating the Jiheng Group’s electricity benefit. Moreover, because the Jiheng Group failed to provide the full POI consumption of electricity, despite the Department’s request

⁵³ *See Preliminary Determination*, and accompanying Decision Memorandum at 12.

⁵⁴ *See* the Department’s April 9, 2014 letter to the GOC.

⁵⁵ *See* the GOC’s April 23, 2014 submission at 2. The GOC, for example, did not provide “translated copies of the laws and regulations relating to the program and any internal or external reports pertaining to the program that were applicable during the POI. *Id.* at 2.

⁵⁶ *See Aluminum Extrusions From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) and accompanying Issues and Decision Memorandum at “Grant Programs for Which the GOC Did Not Provide the Requested Laws, Regulations, and Specificity Information” (“*Aluminum Extrusions*”) (where the Department found that because the GOC failed to provide necessary information pursuant to section 776(a) of the Act and failed to cooperate by not acting to the best of its ability to comply with the request for information, pursuant to section 776(b) of the Act, for each program for which the GOC did not provide the relevant laws or regulations that the program is *de jure* specific).

⁵⁷ *See* Jiheng Verification Report at 8.

that it do so, we find that the Jiheng Group failed to act to the best of its ability in providing the requested information that was in its possession, and that the application of an adverse inference in identifying the benefit within the meaning of section 771(5)(E)(iv) of the Act is appropriate, pursuant to section 776(b) of the Act. For more information on each program, *see* Comment 2, below.

V. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, responses to our questionnaires and our verification of factual information, for the final determination we find the following:

A. *Programs Determined To Be Countervailable*

1. *Grants for Export Credit Insurance*

Jiheng reported receiving a grant for this program in 2012.⁵⁸ Kangtai reported that it did not use this program. According to the GOC, Jiheng applied for, and received benefits from this program.⁵⁹ This program is a grant from the Henghsui Finance Bureau which provides a subsidy for 30 percent of the insurance premium if an export company's exports are valued at less than five million U.S. dollars ("USD"), and 20 percent for exports valued above 5 million USD.⁶⁰ There are no restrictions on the types of goods covered by this program, and the eligibility criteria for Jiheng to receive benefits was contingent on the fact that it purchased export credit insurance from the China Export and Credit Insurance Corporation ("Sinosure").⁶¹

We determine that these reimbursements are grants that constitute a financial contribution, and confer a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Because receipt of the grants were contingent upon export performance, as explained in the previous paragraph, we determine that they are specific under section 771(5A)(A) and (B) of the Act. We also note that the Department found a similar program in Zhejiang Province countervailable in a prior CVD investigation.⁶²

Under 19 CFR 351.520(a)(2) benefits from export insurance are expensed in the year in which they are received; and, thus are considered to be recurring benefits under 19 CFR 351.524. Because the benefits from this program reimburse exporters for costs incurred in purchasing export insurance, grants under this program will be expensed in the year of receipt. Therefore, we divided the amount of the grants received by Jiheng under this program during the POI by the

⁵⁸ *See* Jiheng's December 23, 2013 submission at Appendices 10 & 11.

⁵⁹ *See* the GOC's December 20, 2013 submission at 9.

⁶⁰ *See* Jiheng's December 23, 2013 submission at Appendices 10 & 11.

⁶¹ *Id.*

⁶² *See, e.g., Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17017 (March 23, 2012) ("*Steel Wheels*"), and accompanying Issues and Decision Memorandum at Section I.O ("*Local and Provincial Government Reimbursement Grants on Export Credit Insurance Fees*").

Jiheng Companies' free-on-board value of total exports. Based on this methodology, we calculated a total net subsidy rate of 0.05 percent *ad valorem* for the Jiheng Companies.⁶³

2. *Special Fund for Energy Saving Technology*

Jiheng reported receiving grants under this program in 2010 and 2012, while the Jiheng Group reported receiving a grant under this program in 2012.⁶⁴ Kangtai reported that it did not use this program. According to the GOC, Jiheng and the Jiheng Group applied for, and received benefits from this program.⁶⁵ In order to popularize energy saving technology and equipment and improve energy efficiency, *i.e.*, reduce the amount of coal consumption, the GOC provides grants to companies for renovations which improve energy efficiency.⁶⁶ Jiheng and the Jiheng Group applied for, and received, grants from the Hengshui Finance Bureau for their energy saving technology renovations.

We determine that these grants were provided by the GOC, and that they constitute financial contributions under section 771(5)(D)(i) of the Act. We also find that these grants confer a benefit equal to the amount of the funds provided under 19 CFR 351.504.

In order to conduct the analysis of whether a program is specific under section 771(5A)(D) of the Act, it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire because it is only the government that has access to the information required in the analysis of both *de jure* and *de facto* specificity.⁶⁷ The GOC did not provide a response to the specificity questions related to this program even though the Department twice requested such information.⁶⁸ Because the GOC did not provide us with necessary information required to conduct our specificity analysis under section 771(5A)(D) of the Act and thus failed to cooperate by not acting to the best of its ability, we are required to make our specificity determination on the basis of the facts available and to make an adverse inference under sections 776(a) and (b) of the Act. On this basis, we are finding this program to be *de jure* specific under section 771(5A)(D)(i) of the Act. We note that the Department found a similar program in Guangdong Province countervailable in a prior CVD investigation.⁶⁹

To calculate the benefit for the grant that Jiheng received in 2010, we divided the benefit by Jiheng's sales in 2010, pursuant to 19 CFR 351.524(b)(2). Because the result was greater than 0.5 percent, we allocated the benefit over the AUL, using the discount rate described in the

⁶³ See Jiheng Prelim Calculation Memo.

⁶⁴ See Jiheng's December 23, 2013 submission at Appendix 12; the Jiheng Group's December 23, 2013 submission at Appendix 11.

⁶⁵ See the GOC's December 20, 2013 submission at 9.

⁶⁶ See, e.g., Jiheng's December 23, 2013 submission at Appendix 12.

⁶⁷ See, e.g., *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1370 (Fed. Cir. 2014) ("*Fine Furniture*").

⁶⁸ See the GOC's December 20, 2013 submission at 9; the GOC's January 31, 2014 submission at 8.

⁶⁹ See, e.g., *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying Issues and Decision Memorandum at Section VII.N.

“Benchmarks and Discount Rates” section above, and divided the allocated amount by Jiheng’s total sales during the POI.

To calculate the benefit for the grant that Jiheng received during the POI, we divided the amount received by Jiheng by Jiheng’s total POI sales. The grant that Jiheng received during the POI was less than 0.5 percent of its total POI sales. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI.

To calculate the benefit for the grant that Jiheng Group received during the POI, we divided the amount received by the Jiheng Companies’ consolidated POI sales, as described above under the “Attribution of Subsidies” section. The grant that Jiheng Group received during the POI was less than 0.5 percent of consolidated POI sales. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI.

On this basis, we determine that the Jiheng companies received a net countervailable subsidy of 0.58 percent *ad valorem*.⁷⁰

3. *Export Seller’s and Buyer’s Credits from Export-Import Bank of China (“China ExIm”)*

Jiheng reported that it had outstanding financing under the export seller’s program during the POI.⁷¹ Kangtai reported that it did not use this program. The purpose of this program provided by China ExIm is to support the export of PRC products and improve their competitiveness in the international market.⁷² The export seller’s credit as a loan with a large amount, long maturity, and preferential interest rate.⁷³

The record evidence described above supports finding this program countervailable. In addition, the Department previously found the export seller’s program countervailable,⁷⁴ and the parties did not provide any new information on the record that would cause us to reexamine this countervailability of this program. Therefore, consistent with *Citric Acid Investigation*, we conclude that these loans provided by the GOC under this program constitute financial contributions under section 771(5)(B)(i) and 771(5)(D)(i) of the Act. The loans also provided a benefit under 771(5)(E)(ii) of the Act in the amount of the difference between the amounts Jiheng paid and would have paid for a comparable commercial loan. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(A) and (B) of the Act.

To calculate the benefit conferred by these loans, we used the benchmarks described in the Preliminary Benchmarks Memo and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit by the export sales reported by the Jiheng Companies during the

⁷⁰ See Jiheng Prelim Calculation Memo.

⁷¹ See Jiheng’s December 23, 2013, submission at Appendix 18.

⁷² See Petition for the Imposition of Antidumping Duties on Chlorinated Isocyanurates from Japan and Countervailing Duties on Chlorinated Isocyanurates from the People’s Republic of China, dated August 29, 2013, at 59-61.

⁷³ *Id.*

⁷⁴ See, e.g., *Citric Acid Investigation* and accompanying Issues and Decision Memorandum at “Policy Lending.”

POI. On this basis, we determine that the Jiheng Companies received a countervailable subsidy of 0.87 percent *ad valorem* under this program.⁷⁵

Regarding the export buyer's program, while the Department was unable to conduct a complete verification of non-use of this program at China ExIm, both Jiheng and Kangtai in their questionnaire responses provided statements from each of their U.S. customers in which each customer certified that they did not receive any financing from China ExIm.⁷⁶ We conducted verification on May 22 and July 18, 2014 in the United States of the customers of Jiheng and Kangtai, and confirmed through an examination of each selected customers' accounting and financial records that no loans were received under this program.⁷⁷

4. *Corporate Income Tax Law Article 33: Reduction of Taxable Income for the Revenue Derived from the Manufacture of Products that Are in Line with State Industrial Policy and Involve Synergistic Utilization of Resources*

Jiheng reported that it applied for, and received, benefits under this program.⁷⁸ Kangtai reported that it did not use this program. According to the GOC, Jiheng applied for, and received benefits from this program.⁷⁹ The eligibility criteria for Jiheng to receive benefits under this program were contingent on the fact that it produced and sold products, *i.e.*, hydrogen and ammonium sulfate, that are in line with state industrial policy and involve synergistic utilization of resources.⁸⁰ The particular amount of assistance is calculated by multiplying the sales revenue of the products that are in line with state industrial policy and involve synergistic utilization of resources by 10 percent.⁸¹ The assistance is a deduction from taxable income, rather than a credit toward taxes payable.⁸²

This tax reduction is a financial contribution in the form of revenue forgone by the GOC under section 771(5)(D)(ii) of the Act, and it provided a benefit to Jiheng in the amount of tax savings under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). According to Article 33 of the Enterprise Tax Law that was provided in the GOC response, this tax benefit is available only to enterprises that are producing products conforming to the industrial policies of the state in a way of comprehensive utilization of resources.⁸³ Therefore, we find this program to be *de jure* specific under 771(5A)(D)(i) of the Act.

To calculate the benefit from this program, we treated the income tax reduction claimed by Jiheng as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the tax rate paid on the tax return filed during the POI to the rate that would have been paid by Jiheng otherwise, and multiplied the difference by Jiheng's taxable

⁷⁵ See Jiheng Prelim Calculation Memo.

⁷⁶ See Jiheng's December 23, 2013, submission at 22-24; Kangtai's December 20, 2013, submission at 17-18.

⁷⁷ See Jiheng Customer Verification Report; Kangtai Customer Verification Report.

⁷⁸ See Jiheng's December 23, 2013, submission at Appendix 21.

⁷⁹ See the GOC's December 20, 2013, submission at 14.

⁸⁰ See Jiheng's December 23, 2013, submission at Appendix 21.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

income from the income tax return filed during the POI. In accordance with 19 CFR 351.525(b)(6)(i), we attributed the benefit received to the total sales of the Jiheng Companies. On this basis, we calculated a net countervailable subsidy rate of 0.14 percent *ad valorem* for the Jiheng Companies.⁸⁴

5. *Grants under the Haixing County Science and Technology Research & Development Plan Project*

One of Jiheng's cross-owned companies, Baikang, received a grant from the Government of Haixing County under this program in 2012.⁸⁵ Kangtai stated that it did not use this program. The criteria for Baikang to receive the assistance provided by the Haixing County was that it had to complete required research and development ("R&D") work in accordance with its project application, regardless of what kind of merchandise it produced.⁸⁶ The Haixing County Finance Bureau and Haixing County Science & Technology Bureau approved Baikang's R&D work on water treatment for pharmaceutical products. We find that this grant was provided by the Government of Haixing County and that it constitutes a financial contribution under section 771(5)(D)(i) of the Act. We also determine that this grant confers a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504.

In order to conduct the analysis of whether a program is specific under section 771(5A)(D), it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire because it is only the government that has access to the information required in the analysis of both *de jure* and *de facto* specificity.⁸⁷ In the *Preliminary Determination* we noted that the GOC had not yet provided a complete response to the specificity questions related to this program, and that the Department intended to provide the GOC a second opportunity to provide this information.⁸⁸ On April 9, 2014, the Department issued the GOC a supplemental questionnaire, requesting that it provide a complete response to the specificity questions related to this program.⁸⁹ In its response, the GOC did not provide key information regarding specificity requested of it.⁹⁰ As a result, for this final determination, because the GOC did not provide us with necessary information required to conduct our specificity analysis under section 771(5A)(D) of the Act and failed to cooperate by not acting to the best of its ability, we are required to make our specificity determination on the basis of the facts available and to make an adverse inference under sections 776(a) and (b) of the Act. On this basis, we are finding this program to be *de jure* specific under section 771(5A)(D)(i) of the Act.

⁸⁴ See Jiheng Prelim Calculation Memo.

⁸⁵ See Baikang's December 23, 2013 submission at Appendix 13.

⁸⁶ *Id.*

⁸⁷ See, e.g., *Fine Furniture*, 748 F.3d at 1370 (Fed. Cir. 2014).

⁸⁸ See the GOC's January 31, 2014 submission at 32; Prelim Decision Memo at 16.

⁸⁹ See the Department's April 9, 2014 letter to the GOC.

⁹⁰ See the GOC's April 23, 2014 submission at 2. The GOC, for example, did not provide "translated copies of the laws and regulations relating to the program and any internal or external reports pertaining to the program that were applicable during the POI." *Id.* at 2.

To calculate the benefit for the grant that Baikang received during the POI, we divided the amount received by Baikang by the Jiheng Companies' total POI sales, as described above under the "Attribution of Subsidies" section. The grant that Baikang received during the POI was less than 0.5 percent of total POI sales, and pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. Therefore, we divided the amount of the grant received under this program by the Jiheng Companies' total sales of the POI. On this basis, we find that the Jiheng Companies received a countervailable subsidy of 0.02 percent *ad valorem*.⁹¹

6. *Special National Bond Fund for Energy Conservation and Waste Recycling Projects*

The Jiheng Group, which is cross-owned with Jiheng, reported receiving a grant for this program in 2007.⁹² Kangtai reported that it did not use this program. The eligibility criteria for the Jiheng Group to receive benefits was that it had to invest in a technological renovation project encouraged by the state, approved by the Development and Reform Commission, and included in the *State Key Technical Renovation Programs Plan*.⁹³ The Jiheng Group applied for this grant from the Development and Reform Commission of Hengshui City, and it was approved by the Government of Hengshui City.⁹⁴ Specifically, the Jiheng Group constructed a series of devices to save energy and recycling waste.⁹⁵ According to the policy documents, benefits received shall not be recorded as assets of the company. Instead, after the project is finished, the GOC will inspect the project to ensure it achieved the intended effect, and then benefits received should be recorded in the company's capital reserve.⁹⁶ The Jiheng Group recorded the program benefits in a special payable account, where it remained during the POI.⁹⁷

We determine that the funds provided by the government under this program constitute a financial contribution under section 771(5)(D)(i) of the Act. Moreover, we conclude that this program confers a benefit under section 771(5)(E)(ii) of the Act.

In order to conduct the analysis of whether a program is specific under section 771(5A)(D), it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire because it is only the government that has access to the information required in the analysis of both *de jure* and *de facto* specificity.⁹⁸ In the *Preliminary Determination* we noted that the GOC had not yet provided a complete response to the specificity questions related to this program, and that the Department intended to provide the GOC a second opportunity to provide this information.⁹⁹ On April 9, 2014, the Department issued the GOC a supplement questionnaire, requesting that it provide a complete response to the specificity questions related to this program.¹⁰⁰ In its response, the GOC did not provide key

⁹¹ See Jiheng Prelim Calculation Memo.

⁹² See the Jiheng Group's December 23, 2013 submission at Appendix 17.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ See, e.g., *Fine Furniture*, 748 F.3d at 1370 (Fed. Cir. 2014).

⁹⁹ See the GOC's January 31, 2014 submission at 33; Prelim Decision Memo at 17.

¹⁰⁰ See the Department's April 9, 2014 letter to the GOC.

information regarding specificity requested of it.¹⁰¹ As a result, for this final determination, because the GOC did not provide us with necessary information required to conduct our specificity analysis under section 771(5A)(D) of the Act and failed to cooperate by not acting to the best of its ability, we are required to make our specificity determination on the basis of the facts available and to make an adverse inference under sections 776(a) and (b) of the Act. On this basis, we are finding this program to be *de jure* specific under section 771(5A)(D)(i) of the Act.

Although the Jiheng Group received these funds per an application for a grant, the government has not conducted an inspection of this project, and thus, the funds are subject to repayment by the Jiheng Group. Because there is a possibility that the funds provided under this program may have to be returned to the government, we are treating the balance of these funds as a contingent liability. Therefore, until the government conducts its inspection of the project and gives final approval, the outstanding balance of the funds provided under this program is, in essence, equivalent to an interest-free loan. Accordingly, we treated the amount of the funds provided under the program as a contingent liability interest-free loan using the methodology set forth under 19 CFR 351.505(d)(1).¹⁰² To calculate the benefit conferred by this program, we used the benchmarks described in the Prelim Benchmark Memo and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit by the Jiheng Group's total sales for the Jiheng Companies during the POI. On this basis, we find that the Jiheng Companies received a countervailable subsidy of 0.03 percent *ad valorem*.¹⁰³

7. *VAT Tax Rebate for Comprehensive Utilization of Resources*

The Jiheng Group, which is cross-owned with Jiheng, reported receiving a VAT tax rebate for this program during the POI.¹⁰⁴ Kangtai reported that it did not use this program. This program provides a VAT tax rebate to companies which sell energy by-products.¹⁰⁵ In this case, the Jiheng Group used the waste heat generated during production to produce steam and sell steam as a by-product.¹⁰⁶ We note that the merchandise specified in the application and approval documents is steam produced by wasted heat.¹⁰⁷

We conclude that the VAT tax rebates provided under the program constitute a financial contribution, in the form of revenue forgone, and a benefit, in an amount equal to the tax savings, under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively.

¹⁰¹ See the GOC's April 23, 2014 submission at 2. The GOC, for example, did not provide "translated copies of the laws and regulations relating to the program and any internal or external reports pertaining to the program that were applicable during the POI." *Id.* at 7.

¹⁰² See, e.g., *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2010*, 78 FR 19210 (March 29, 2013), and accompanying Issues and Decision Memorandum at 1.A.

¹⁰³ See Jiheng Prelim Calculation Memo.

¹⁰⁴ See the Jiheng Group's December 23, 2013 submission at Appendix 19.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

In order to conduct the analysis of whether a program is specific under section 771(5A)(D), it is essential that the government provides a complete response to the questions of specificity that are contained in the questionnaire because it is only the government that has access to the information required in the analysis of both *de jure* and *de facto* specificity.¹⁰⁸ In the *Preliminary Determination* we noted that the GOC had not yet provided a complete response to the specificity questions related to this program, and that the Department intended to provide the GOC a second opportunity to provide this information.¹⁰⁹ On April 9, 2014, the Department issued the GOC a supplement questionnaire, requesting that it provide a complete response to the specificity questions related to this program.¹¹⁰ In its response, the GOC did not provide key information regarding specificity requested of it.¹¹¹ As a result, for this final determination, because the GOC did not provide us with necessary information required to conduct our specificity analysis under section 771(5A)(D) of the Act and failed to cooperate by not acting to the best of its ability, we are required to make our specificity determination on the basis of the facts available and to make an adverse inference under sections 776(a) and (b) of the Act. On this basis, we are finding this program to be *de jure* specific under section 771(5A)(D)(i) of the Act.

To calculate the net subsidy rate, we divided the amount of the tax rebates received by the Jiheng Group during the POI by the Jiheng Companies' total sales for the POI. On this basis, we calculated a net countervailable subsidy rate of 0.06 percent *ad valorem* for the Jiheng Companies.¹¹²

8. *Shandong Industrial Structure Adjustment Entrusted Loan*

Kangtai reported that it had outstanding financing under this program during the POI.¹¹³ Jiheng reported that it did not use this program. This program was promulgated by the government of Shandong province to assist manufacturing companies in certain key industries.¹¹⁴

Because this loan was provided under a government program, we find that this loan constitutes a financial contribution under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. We also determine that this loan confers a benefit under section 771(5)(E)(ii) of the Act because Kangtai paid less than it would for a comparable commercial loan. Based upon the GOC's response, this program is limited by law to six "pillar industries" producing a "key product" in Shandong.¹¹⁵

¹⁰⁸ See, e.g., *Fine Furniture*, 748 F.3d at 1370 (Fed. Cir. 2014).

¹⁰⁹ See the GOC's January 31, 2014 submission at 35; *Preliminary Determination*, and accompanying Decision Memorandum at 18-19.

¹¹⁰ See the Department's April 9, 2014 letter to the GOC.

¹¹¹ See the GOC's April 23, 2014 submission at 13. The GOC, for example, did not provide "translated copies of the laws and regulations relating to the program and any internal or external reports pertaining to the program that were applicable during the POI." *Id.* at 7.

¹¹² See Jiheng Prelim Calculation Memo.

¹¹³ See Kangtai's December 20, 2013 submission at 15-16, Exhibits 15 & 16; see also Kangtai's rebracketed portions of its questionnaire response pertaining to this program submitted on January 27, 2014.

¹¹⁴ See the GOC's January 31, 2014 submission at Exhibit S1-10.

¹¹⁵ *Id.*

Therefore, we are finding this program *de jure* specific under 771(5A)(D)(i) because benefits under this program are limited to “pillar industries” producing “key products.”

To calculate the benefit conferred by this loans, we used the benchmarks described in the Prelim Benchmark Memo and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit by Kangtai’s total reported sales during the POI. On this basis, we observe that Kangtai received a countervailable subsidy of 0.13 percent *ad valorem* under this program.¹¹⁶

9. *Enterprise Income Tax Reduction for High and New Technology Enterprises*

Under Article 28.2 of the Enterprise Income Tax Law (“EITL”), the income tax a firm pays is reduced to a rate of 15 percent from the standard 25 percent rate if the enterprise is recognized as a High or New Technology Enterprise.¹¹⁷ The Department previously found this program to be countervailable.¹¹⁸ During the course of this investigation we discovered that Jiheng used this program and requested additional information from the respondent and the GOC. Kangtai did not use this program.

Based upon the information submitted by Jiheng and the GOC, Jiheng paid a reduced income tax rate on the tax return it filed during the POI.¹¹⁹ In accordance with Article 28.2 of the EITL, Jiheng paid an income tax rate of 15 percent instead of the standard corporate income tax rate of 25 percent.¹²⁰

Consistent with our determination in *Shrimp*,¹²¹ we find that this program constitutes a financial contribution in the form of revenue foregone by the GOC and confers a benefit in the amount of the tax savings, as provided under sections 771(5)(D)(ii) and 771(5)(E) of the Act. We further determine that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises whose products are designated as being in “high-tech fields with state support,” and, hence, is *de jure* specific under section 771(5A)(D)(i) of the Act.

We calculated the benefit as the difference between taxes Jiheng would have paid under the standard 25 percent tax rate and the taxes that the company actually paid under the preferential 15 percent tax rate, as reflected on the tax return filed during the POI, as provided for under 19 CFR 351.509(a)(1) and (b)(1). We treated the tax savings as a recurring benefit consistent with 19 CFR 351.524(c)(1). We then divided the benefit by the Jiheng Companies total sales during the POI. On this basis, we determine a countervailable subsidy of 0.68 percent *ad valorem* for the Jiheng Companies.¹²²

¹¹⁶ See Kangtai Prelim Calculation Memo.

¹¹⁷ See Jiheng’s January 31, 2014 submission at 9-10, Appendix S-11.

¹¹⁸ See, e.g., *Shrimp*, and accompanying Issues and Decision Memorandum at 25.

¹¹⁹ See, e.g., Jiheng’s January 31, 2014 submission at 9-10, Appendix S-11.

¹²⁰ *Id.*

¹²¹ See *Shrimp*, and accompanying Issues and Decision Memorandum at 25.

¹²² See Jiheng Prelim Calculation Memo.

10. *Electricity for LTAR*

Both of our respondents used this program during the POI. For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the government’s provision of electricity, in part, on AFA. In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific.¹²³ However, where possible, the Department will 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 usable and verifiable.¹²⁴ Jiheng and Kangtai provided data on the electricity the companies consumed and the electricity rates paid during the POI.¹²⁵

As noted above, the GOC did not provide the information requested by the Department as it pertains to the provision of electricity for LTAR program despite multiple requests for such information. We find that, in not providing 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 pursuant to section 776(b) of the Act 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) of the Act. To determine the existence and amount of any benefit from this program, we relied on the respondents’ reported information on the amounts of electricity used, and the rates the respondents paid for that electricity, during the POI. We compared the rates paid by the respondents for their electricity to the highest rates that they could have paid in the PRC during the POI.

To calculate the benchmark, we selected the highest rates in the PRC for the type of user (*e.g.*, “General Industry,” “Lighting,” “Base Charge/Maximum Demand”) for the general, high peak, peak, normal, and valley ranges, as provided by the GOC.¹²⁶ The electricity rate benchmark chart is included in the Prelim Benchmark Memo. This benchmark reflects an adverse inference, which we drew as a result of the GOC’s failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.

¹²³ See, *e.g.*, *Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 11397, 11399 (March 7, 2006), unchanged in *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006) (relying on adverse inferences in determining that the government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of sections 771(5)(D) and 771(5A)(D)(iii) of the Act, respectively).

¹²⁴ See, *e.g.*, *Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013) (“*Hardwood Plywood*”) and accompanying Issues and Decision Memorandum at “Provision of Electricity for LTAR.”

¹²⁵ See, *e.g.*, Jiheng’s December 23, 2013 submission at Appendix 28; Kangtai’s December 20, 2013, submission at 24-25, Exhibits 12-14; Kangtai’s January 31, 2013 submission at Exhibits SQ1-7 & 1-8.

¹²⁶ See the GOC’s December 20, 2013 submission at Exhibit E2-3.

To measure whether the respondents received a benefit under this program, we first calculated the electricity prices the respondents paid by multiplying the monthly kilowatt hours or kilovolt amperes consumed for each price category by the corresponding electricity rates charged for each price category. Next, we calculated the benchmark electricity cost by multiplying the monthly consumption reported by the respondents for each price category by the highest electricity rate charged for each price category, as reflected in the electricity rate benchmark chart. To calculate the benefit for each month, we subtracted the amount paid by the respondents for electricity during each month of the POI from the monthly benchmark electricity price. We then calculated the total benefit for each company during the POI by summing the monthly benefits for each company.¹²⁷

Jiheng reported “efficiency adjustments” in its electricity rate charts.¹²⁸ We treated these efficiency adjustments as a benefit and added the amounts of these adjustments to the total benefit for purposes of calculating the benefit for this program.

For this final determination, we determine that it is appropriate to apply partial AFA to the Jiheng Group’s under-reported consumption of electricity during the POI. The Department found at verification that the Jiheng Group failed to report electricity for one of its two branch companies, Jiheng Lantian Chemical Branch Company (“Lantian”).¹²⁹ Therefore, we find that necessary information is not available on the record and that the Jiheng Group withheld information requested by the Department; therefore, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act, we determine that the use of facts otherwise available is warranted in calculating the Jiheng Group’s electricity benefit. Moreover, because the Jiheng Group failed to provide the full POI consumption of electricity, despite the Department’s request that it do so, we find that the Jiheng Group failed to act to the best of its ability in providing the requested information that was in its possession, and that the application of an adverse inference in identifying the benefit within the meaning of section 771(5)(E)(iv) of the Act is appropriate, pursuant to section 776(b) of the Act. For further information on the calculation of the AFA benefit for Lantian, *see* Comment 2, below.

To calculate the subsidy rate pertaining to the GOC’s provision of electricity for LTAR, we divided the benefit amount calculated for each respondent by the appropriate total sales denominator, as discussed in the “Subsidy Valuation Information” section above, and in the Prelim Calculation Memoranda. On this basis, we calculated a countervailable subsidy of 20.06 percent *ad valorem* for the Jiheng companies, and 1.55 percent *ad valorem* for Kangtai.¹³⁰

For additional discussion of the methodology used to calculate the benefit for this program, *see* Comment 1 and 3, below.

¹²⁷ *See* Jiheng Final Calculation Memo; Kangtai Prelim Calculation Memo.

¹²⁸ *Id.*

¹²⁹ *See* Jiheng Verification Report at 8.

¹³⁰ *Id.*

B. *Programs Determined Not to Be Countervailable*

1. *Urea for LTAR*

Both of our respondents purchased urea during the POI.¹³¹ As in the *Preliminary Determination*,¹³² we continue to find that the record evidence does not support a finding of specificity with regard to the provision of urea for LTAR within the meaning of section 771(5A)(D) of the Act. We verified that urea is consumed by a large number of different industries in the PRC, including agriculture (both as fertilizer and feed additives), chemicals, wood products, textiles, paper, automotive, industrial pollution control, medicine, and cosmetics.¹³³ Petitioners in its case brief stated that urea is also consumed by the plastics industry.¹³⁴ We also verified that producers of the subject merchandise were not a predominant or disproportionately large user of urea. Therefore, we determine that the provision of urea is not specific under section 771(5A)(D) of the Act. For further discussion of the specificity issue regarding this program, *see* Comment 4 below.

C. *Programs Determined Not to Confer a Benefit or Not Used During the POI*

For the final determination, the Department determines that the following programs did not confer a measurable benefit to Jiheng during the POI (Kangtai reported that it did not use these programs):

1. *Grants for the Application of Patents*

Jiheng applied to the Intellectual Property Office of Hebei Province for this benefit, which it reported receiving in 2012.¹³⁵ The eligibility criterion to receive assistance under this program was that the company had to have made a domestic application for patents for invention between April 1, 2011 and December 31, 2011.¹³⁶

We find that the benefit from this program results in a subsidy rate that is less than 0.005 percent *ad valorem*.¹³⁷ Consistent with the Department's practice, a program with a rate of less than 0.005 percent *ad valorem* is not measureable and thus does not provide a benefit to the company during the POI.¹³⁸ Because the program does not provide a benefit during the POI, there is no need to determine whether the program is otherwise countervailable.

¹³¹ See Jiheng's December 23, 2013, submission at 29; Kangtai's December 20, 2013, submission at 23.

¹³² See *Preliminary Determination*, and accompanying Decision Memorandum at 22-23.

¹³³ See GOC Verification Report at 8-9, and Exhibits 2 & 3A-E.

¹³⁴ See Petitioners' July 31, 2014 case brief at 24.

¹³⁵ See Jiheng's December 23, 2013 submission at 35, Appendices 32 & 33.

¹³⁶ *Id.*

¹³⁷ See Jiheng Calculation Memo.

¹³⁸ See, e.g., *Steel Wheels*, and accompanying Issues and Decision Memorandum at Section II.C.

2. *Export Credit Insurance from Sinasure*

During the POI, Jiheng reported that it purchased export insurance from Sinasure; however, we verified that the company did not receive any payouts of claims under its export insurance policy from Sinasure during the POI.¹³⁹ Under 19 CFR 351.520(a)(b), a benefit is only provided under a government export insurance program if a firm receives payouts under the program during the POI; therefore, we determine that Jiheng received no benefits under this program during the POI.

The Department finds that the following programs were not used by respondents during the POI:

1. *Land and Land Usage for Foreign Invested Enterprises (“FIEs”) in National Economic and Technological Zones at Preferential Rates*
2. *“Two Free/Three Half” Program for FIEs*
3. *Income Tax Benefits for FIEs Based on Geographic Location*
4. *Value Added Tax and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries*
5. *VAT refunds for FIEs on purchases of Chinese-made equipment*
6. *Preferential direct tax treatment on purchases of domestically produced equipment for FIEs*
7. *Policy Loans under the Chlor-alkali Industry Second Five Year Plan*
8. *Stamp Tax exemption on share transfers under Non-Tradable Share Reform*
9. *State Key Technology Renovation Project Fund*
10. *Shareholder loans (debt forgiveness)*
11. *Discounted Loans for Export-Oriented Enterprises*
12. *VAT rebate on domestically produced equipment*
13. *VAT exemption on imports by encouraged industries*
14. *Preferential lending for industrial readjustment*
15. *Export credit insurance from Sinasure*
16. *Preferential loans provided by China ExIm “Going-out” for Outbound Investments*
17. *Foreign Trade Development Fund*
18. *“Famous Brands” program*
19. *Preferential policies to attract foreign investment in Jiangsu Province*
20. *Outline of light industry restructuring and revitalization plan in Jiangsu Province*
21. *Jiangsu province grants for legal fees in foreign trade remedy proceedings*
22. *Shandong Province: grants to enterprises exporting key product*
23. *Grants for export credit insurance*
24. *Special Fund for Energy Saving Technology Reform*
25. *The Clean Production Technology Fund*
26. *Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies*

¹³⁹ See Jiheng’s January 29, 2014 submission at 7.

VI. ANALYSIS OF COMMENTS

Comment 1: Appropriate High Peak, Peak, Normal and Valley Electricity Benchmarks

Petitioners¹⁴⁰

- The GOC reported electricity rates for various provinces, including South Hebei and Zhejiang.¹⁴¹ Jiheng and Kangtai reported electricity usage divided into four categories: high peak, peak, normal and valley.¹⁴² However, the rate schedules submitted by the GOC for several provinces only included rates for three of four categories.¹⁴³
- As the GOC did not cooperate to the best of its ability with regard to the investigation of electricity subsidies, the Department applied AFA, assigning the highest rate reported for any province in the user and rate categories applicable to Jiheng and Kangtai.¹⁴⁴ Using rates from South Hebei as the high peak electricity benchmarks, and rates from Zhejiang for the peak, normal and valley electricity benchmarks, resulted in high peak benchmark rates which were lower than peak benchmark rates. Consequently, the high peak benchmarks selected by the Department lack an incentive to deter non-compliance by the GOC.¹⁴⁵
- For the final determination, the Department should calculate high peak electricity benchmarks that are adverse and comport with commercial reality¹⁴⁶ by applying the ratio between high peak and normal rates in South Hebei to the normal rates reported for Zhejiang.¹⁴⁷ Put another way, the high peak rate benchmarks should be approximately 150 percent the normal benchmark rates. The calculation of high peak benchmark rates that are greater than the peak benchmark rates is not a means of punishing the GOC or respondents, but is a reflection of the record evidence that high peak rates in the PRC exceed peak rates, and thereby provides a “remedy” for the GOC’s failure to cooperate.¹⁴⁸
- Jiheng’s proposed benchmarks would reward the GOC for failing to cooperate by assigning benchmarks that are lower than the highest electricity rates applied during a given period. In cases where the ultimate antidumping duty or CVD assigned to a cooperating party depends in part upon information submitted by a non-cooperating party, the Department considers both the accuracy of the facts available and the “deterrent effect” arising from the use of particular data.¹⁴⁹ The Court of Appeals for the Federal Circuit (“Federal Circuit”) has ruled that, without the ability to enforce full compliance with its questions, the Department runs the

¹⁴⁰ Clearon Corp. and Occidental Chemical Corporation (collectively, “Petitioners”).

¹⁴¹ See the GOC’s December 20, 2013 submission at Exhibit E2-3.

¹⁴² See Jiheng’s December 23, 2013 submission at Appendix 14; Kangtai’s December 20, 2013, submission at Exhibit 12.

¹⁴³ See the GOC’s December 20, 2013 submission at Exhibit E2-3.

¹⁴⁴ See *Preliminary Determination*, and accompanying Decision Memorandum at 12. The Department used rates from South Hebei for high peak benchmark rates and rates from Zhejiang for the peak, normal and valley rates.

¹⁴⁵ See *Gallant Ocean (Thai.) Co. v. United States*, 602 F.3d 1319, 1323 (Fed. Cir. 2010) (“*Gallant Ocean*”).

¹⁴⁶ See *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370, 1378 (Fed. Cir. 2013) (“*Yangzhou Bestpak*”); see also *Dongguan Sunrise Furniture Co., Ltd. v. United States*, Slip Op. 14-83 at 9-11 (CIT July 18, 2014).

¹⁴⁷ See the GOC’s December 20, 2013 submission at Exhibit E2-3.

¹⁴⁸ See *Fine Furniture*, 748 F.3d at 1372-73.

¹⁴⁹ See, e.g., *Mueller Comercial de Mexico v. United States*, 753 F.3d 1227, 1234 (Fed. Cir. 2014) (“*Mueller*”); *Fine Furniture*, 748 F.3d at 1372.

risk of gamesmanship and lack of finality in its investigations.¹⁵⁰ At the same time, when the facts available are selected based on record evidence that is consistent with commercial reality, the result is a combination of accuracy and deterrence.¹⁵¹ Numerous cases applying this same rationale used the highest electricity rates in the same manner described above.¹⁵²

- The electricity rate schedules submitted by the GOC for the province with the highest rates, Zhejiang, only included separate rates for three periods; high peak, peak and valley. Following its practice in prior cases,¹⁵³ the Department used the Zhejiang high peak, peak and valley rates as the peak, normal and valley benchmark rates because these correspond to the business hours identified in other provinces.¹⁵⁴ Jiheng’s interpretation of the Zhejiang electricity rates relies solely on the translations of headings in the rate table, headings that even Jiheng and the GOC do not consistently translate.¹⁵⁵ Regardless of the label, the rates in effect in Zhejiang for the large majority of the daytime and early evening workday were the rates used by the Department for the normal benchmark rates.

¹⁵⁰ See *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012).

¹⁵¹ See *Mueller*, 753 F.3d at 1233 (“Commerce may rely on {both} policies as part of a margin determination for a cooperating party like Mueller, as long as the application of those policies is reasonable on the particular facts and the predominant interest in accuracy is properly taken into account as well.”).

¹⁵² See, e.g., *Steel Wheels*, and accompanying Issues and Decision Memorandum at “Provision of Electricity at LTAR” (relying “on an adverse inference by selecting the highest electricity rates that were in effect during the POI as our benchmarks because of the GOC’s failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation”).

¹⁵³ In past cases the Department rejected arguments that the names of the rate categories in Zhejiang - or the translations of those category names - justified resorting to lower benchmarks. For example, in *Cylinders*, a respondent argued that the Zhejiang rate schedule did not include normal or valley rates due to a faulty translation, and went on to argue that a correct translation indicated there were four rate categories in Zhejiang. See *High Pressure Steel Cylinders from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (“*Cylinders*”), and accompanying Issues and Decision Memorandum at Comment 11 (“The Appropriate Rush, Peak, Normal and Valley Benchmark”). In that case, the Department treated daytime hours during which the middle rates were in effect as the normal benchmark, regardless of the translation. *Id.*

¹⁵⁴ Hainan for example, has separate rates for peak, normal and valley periods. Hainan defines the periods as follows: the peak period 10:00-12:00, 16:00-22:00; the normal period 7:00-10:00, 12:00-16:00, 22:00-23:00; and the valley period 23:00-7:00 of the next day. See the GOC’s December 20, 2013 submission at Exhibit E2-3, “Electricity Sales Schedule of Hainan Province Grid.” Comparing the rate schedules, normal rates are assigned to morning, midday and evening; peak rates are assigned to the lunch and dinner hours; and, valley rates are assigned to late night and pre-dawn hours. *Id.*; Jiheng’s December 23, 2013 submission at Appendix 28. The Zhejiang rate table notes that Large industrial electricity, normal industrial & Commercial electricity breakdown to six periods, critical peak (19:00-21:00), peak (8:00-11:00, 13:00-19:00; 21:00-22:00), valley (11:00-13:00, 22:00-8:00 of the following day). *Id.*

¹⁵⁵ For example, the translation provided by Jiheng identified a “shoulder period” in South Hebei; the same document translated by the GOC identified a “normal” period. See the GOC’s December 20, 2013 submission at Exhibit E2-3, “Electricity Sales Schedule of Hainan Province Grid”; Jiheng’s December 23, 2013 submission at Appendix 28.

- In *Drill Pipe* and *Wind Towers*, the Department rejected the argument that it had selected the wrong benchmark rates for each rate category, and rejected the argument that there were four rate categories, because of incorrect translations submitted by the GOC for Zhejiang.¹⁵⁶
- Jiheng’s suggestion to use the Zhejiang KWH Electricity Tariff as the normal electricity benchmark is flawed, as these rates do not apply to Large Industry or General Industrial users, such as Jiheng and Kangtai. As noted in the Zhejiang rate schedule, this special category applies to certain users, *e.g.*, the PRC Army, prisons, *etc.*¹⁵⁷ Moreover, this special category does not identify any time during the day that it would be applied, unlike Large Industry and General Industry users, which are assigned rates that cover 24 hours a day.¹⁵⁸
- Jiheng’s contention to use rates specific to the chlor-alkali industry for its electricity consumption in the preferential treatment category ignores the fundamental purpose of a benchmark - to identify a market-based rate in order to measure the amount of preference awarded. In Zhejiang and South Hebei, the electricity rate schedules indicate that the chlor-alkali industry receives preferential rates that are uniformly lower than other large industry users. In other words, Jiheng is proposing that the Department adopt preferential electricity rates from one province to measure the amount of the subsidy bestowed by another province.
- Jiheng’s argument to average the peak and valley electricity rates in Zhejiang, is equally flawed. Jiheng ignores that the peak rates, as labelled by Zhejiang, are not the rates applied during peak hours in South Hebei or other provinces. As noted above, the Zhejiang peak rates are the normal rates in other provinces.

Jiheng

- The Department incorrectly used the Zhejiang high peak rates as the peak benchmark rates, and used the Zhejiang peak rates for the normal benchmark rates. For the final determination, the Department should use the Zhejiang high peak rates as the high peak benchmarks, and the Zhejiang peak rates for the peak benchmark rates.
- Because there is no rate labelled normal in Zhejiang, the Department should use the Zhejiang KWH Electricity Tariff for the normal benchmark rates, as it is equivalent to the normal rates for South Hebei province.¹⁵⁹
- Should the Department decline to use the KWH Electricity Tariff for the normal benchmark rates, the average of the Zhejiang peak and valley rates could be used to calculate a normal electricity benchmark.
- Jiheng reported consuming electricity under “preferential treatment” categories because Jiheng is in the chlor-alkali industry, *i.e.*, Jiheng produces caustic soda and chlorine through electrolysis NaCl solution.¹⁶⁰ The rates listed in the South Hebei rate schedule for these

¹⁵⁶ See *Drill Pipe from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 47275 (August 5, 2013) (“*Drill Pipe*”), and accompanying Issues and Decision Memorandum at Comment H (“Provision of Electricity at LTAR”); *Utility Scale Wind Towers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 24, 2012) (“*Wind Towers*”) and accompanying Issues and Decision Memorandum at “Provision of Electricity for LTAR.”

¹⁵⁷ See the GOC’s December 20, 2013 submission at Exhibit E2-3 (“Zhejiang Rate Schedule”).

¹⁵⁸ *Id.*

¹⁵⁹ The Department verified that Baikang, one of Jiheng’s affiliates, does not pay electricity fees according to the normal, high peak, or valley ranges, but paid its electricity fees based on the rates for only the normal category during the POI.

¹⁶⁰ See Jiheng’s December 23, 2013 submission at Appendix 3.

categories are identical to the rates found on Jiheng's electricity bills.¹⁶¹ For the final determination, the Department should select chlor-alkali industry benchmark rates from Zhejiang province for the "preferential treatment" categories Jiheng reported, which are specific to the chlor-alkali industry, to render the most accurate results.

- Although Jiheng recognizes that there is a gap between high peak and peak rates, it rejects Petitioners' methodology for calculating high peak benchmark rates. As noted above, the appropriate method is to use the Zhejiang high peak rates as the high peak benchmarks, and use the Zhejiang peak rates as the peak benchmarks.

GOC

- Petitioners' assertion that an appropriately chosen benchmark is not punitive enough - since the South Hebei high peak rate is lower than the Zhejiang peak rate - is not consistent with Department practice. In determining the adequacy of remuneration, the Department's regulations focus on what prices companies do, or would, pay.¹⁶² Even where the Department seeks to create a tier three benchmark, that benchmark must be based on market principals with due consideration made for factors impacting comparability.¹⁶³ Moreover, in accordance with 19 USC 1677e(c), the Department must be able to corroborate information relied on for AFA. Petitioners' proposed constructed rate category cannot be corroborated as there is no entity in the PRC that pays such a high peak rate in any province. The selection of an AFA rate must have some grounding in commercial reality and the creation of rate categories that simply do not exist, as proposed by Petitioners, clearly do not.¹⁶⁴ Because the record contains a number of different high peak rates, there is no reason to construct a fictitious high peak benchmark rate in this case, as the South Hebei high peak rate is a reflection of actual transactions for high peak electricity.
- For the final determination, the Department should use the Zhejiang high peak rates as the high peak benchmarks, and the Zhejiang peak rates for the peak benchmark rates. Also, because there is no rate labelled "normal" in Zhejiang, the Department should use the "KWH Electricity Tariff" for the normal benchmark rates, as these rates are between the Zhejiang peak and valley rates.¹⁶⁵

Kangtai

- In Shandong province, where Kangtai is located, the tariff schedule provided four electricity category rates (high peak, peak, normal and valley). Kangtai paid these rates, except where meters did not permit that detail of reading, in which case Kangtai paid the normal rate.¹⁶⁶

¹⁶¹ Jiheng provided the electricity rate schedule for South Hebei Province which listed the electricity rate for the production of "electrolytic caustic soda" under the Large Industry schedule. Jiheng's electricity bills indicated that three types of large industrial preferential treatments were applied to Jiheng. See Jiheng's December 23, 2013 submission at Exhibits 27 & 28.

¹⁶² See 19 CFR 351.511(a)(2)(i), (ii).

¹⁶³ See 19 CFR 351.511(a)(2)(iii); see also section 771(5)(E)(iv) of the Act (requiring that the "prevailing market conditions" be taken into account when determining the adequacy of remuneration).

¹⁶⁴ See *Gallant Ocean*, 602 F.3d at 1323-1324.

¹⁶⁵ The Department verified that Baikang, one of Jiheng's affiliates, does not pay electricity fees according to the normal, high peak, or valley ranges, but paid its electricity fees based on the rates for only the normal category during the POI.

¹⁶⁶ See Kangtai's December 20, 2013 submission at Exhibits 12 & 13.

- In the *Preliminary Determination*, the Department incorrectly relied on the Zhejiang high peak rates as the peak rate benchmarks, and the Zhejiang peak rates as the normal rate benchmarks. As suggested by Jiheng, and contrary to the arguments of Petitioners, that approach is significantly flawed. In particular, since Zhejiang province and Kangtai have the same category for high peak and peak, the Department should rely on the same time period categories for the benchmarks. As such, Petitioners' argument for an upward adjustment to the benchmarks for the high peak rates would be moot because the record already reflects the high peak rates in Zhejiang.
- In addition, as Zhejiang did not provide normal electricity rates, the Department should rely on the KWH Electricity Tariff rates for the normal benchmark rates.¹⁶⁷ This category best represents the equivalent to the normal rates in Shandong.
- Alternatively, if the Department does not accept the KWH Electricity Tariff rates as the normal benchmark rates, the normal benchmark rates should be an average between peak and valley rates for Zhejiang province. Another reasonable approach might be to base the normal benchmark rates on the ratios between the peak rate and valley rates as applied to Kangtai in the *Preliminary Determination*.

Department's Position: For this final determination, we continue to use the highest electricity rates in each respective tariff category as our benchmark, comparing these rates to those Jiheng and Kangtai paid during 2012, thereby using the actual usage information supplied by the respondent companies, as we did in the *Preliminary Determination*.

As noted above, we applied facts available to the Electricity for LTAR program because the GOC did not provide a complete response to the Department's December 20, 2013 questionnaire regarding this program.¹⁶⁸ Specifically, we requested that the GOC provide the original provincial price proposals because the requested proposals were part of the GOC's electricity price adjustment process, and the documents were necessary for the Department's analysis of this program.¹⁶⁹ In response, the GOC stated that it was unable to provide the proposals because they were drafted by the provincial governments and submitted to the NDRC¹⁷⁰ as working documents for the NDRC's review only.¹⁷¹ On January 23, 2014, the Department issued a supplemental questionnaire to the GOC and reiterated our request for this information. In response, the GOC stated that it "reconfirms what has been provided in its response to the questions concerning this program" in its original questionnaire response."¹⁷²

¹⁶⁷ As noted by Jiheng in its case brief, this rate is consistently between the peak rate and valley rate in the Zhejiang Province tariff schedules.

¹⁶⁸ See the GOC's December 20, 2013 submission at 23.

¹⁶⁹ See, e.g., *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying Issues and Decision Memorandum at Comment 8 (quoting the GOC as reporting that these price proposals "are part of the price setting process within China for electricity.").

¹⁷⁰ The NDRC ("National Development and Reform Commission") is the price authority at the central government level. See the GOC's December 23, 2013 submission at Exhibit E2-2.

¹⁷¹ See the GOC's December 20, 2013 submission at 23.

¹⁷² See the GOC's January 31, 2014 submission at 25.

Consequently, in the *Preliminary Determination*, we determined that the GOC withheld necessary information that was requested of it, and thus, we relied on facts available under sections 776(a)(1), 776(a)(2)(A), and 776(a)(2)(B) of the Act. Moreover, we determined that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information as it did not respond by the deadline dates, nor did it explain to the Department's satisfaction why it was unable to provide the requested information. Consequently, we applied an adverse inference in the application of facts available under section 776(b) of the Act. In drawing this adverse inference, we found that the GOC's provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, and was specific within the meaning of section 771(5A) of the Act. We also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit under sections 776(b)(2) and 776(b)(4) of the Act. The benchmark rates we selected are the highest applicable electricity rates for the user categories reported by Jiheng and Kangtai.¹⁷³

Accordingly, we compared the highest, non-specific electricity rates for the appropriate user categories to Jiheng and Kangtai's electricity prices.¹⁷⁴ The Department's practice is to apply the highest transmitter capacity rate (*i.e.*, Basic Electricity Tariff and/or Maximum Demand Tariff), and highest electricity rates on record (*i.e.*, tiered or consolidated rates dependent on the respondent's user category), as a basis for comparison for this program.¹⁷⁵ Moreover, we relied on the highest rates for both the transmitter capacity and electricity rates, regardless of province, as a benchmark for comparison.¹⁷⁶ Consequently, in accordance with our practice, we continue to use the highest electricity rates in each respective tariff category as our benchmark, comparing these rates to those Jiheng and Kangtai paid during 2012, thereby using the actual usage information supplied by the respondent companies, with the adverse inference relating solely to the GOC for its continued failure to provide sufficient answers to the Department's Electricity Appendix.¹⁷⁷

Regarding the argument put forth by Jiheng, Kangtai and the GOC that we incorrectly applied the high peak and peak rates in Zhejiang as the benchmark peak and normal rates, respectively, we disagree. As in other cases in which we examined the GOC's provision of electricity for LTAR,¹⁷⁸ the benchmarks on this record for Zhejiang province include three different electricity rates, a demand-based valley, normal, and peak rate structure.¹⁷⁹ In this investigation, the

¹⁷³ See the GOC's December 20, 2013 submission at Exhibit E2-3; see also Jiheng Final Calculation Memo and Kangtai Prelim Calculation Memo.

¹⁷⁴ See, e.g., *Hardwood Plywood* and accompanying Issues and Decision Memorandum at "Provision of Electricity for LTAR;" see also *Drill Pipe* at "Provision of Electricity for LTAR."

¹⁷⁵ See *Hardwood Plywood*, and accompanying Issues and Decision Memorandum at "Provision of Electricity for LTAR;" *Drill Pipe*, and accompanying Issues and Decision Memorandum at "Provision of Electricity for LTAR;" *Coated Paper*, and accompanying Issues and Decision Memorandum at "Provision of Electricity."

¹⁷⁶ *Id.*

¹⁷⁷ See, e.g., *Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review*; 2011, 79 FR 45178 (August 4, 2014) ("*Wood Flooring*"), and accompanying Issues and Decision Memorandum at Comment 3.

¹⁷⁸ *Id.*, at Comment 4; see also *Hardwood Plywood* at "Provision of Electricity for LTAR;" *Drill Pipe* at "Provision of Electricity for LTAR;" *Wind Towers* at "Provision of Electricity for LTAR;" and *Coated Paper* at "Provision of Electricity."

¹⁷⁹ See the GOC's submission at Exhibit E2-3.

English translation of the Zhejiang province benchmark chart uses the labels “sharp, peak, and off-peak” in the tariff table, and “critical peak, peak and valley” in the footnotes.¹⁸⁰ In addition, the footnotes state that “Large industrial electricity, normal industrial & commercial electricity break downs to six periods, critical peak (19:00-21:00), peak (8:00-11:00, 13:00-19:00; 21:00-22:00), valley (11:00-13:00, 22:00-8:00 of the following day).”¹⁸¹ Based on past practice, and our understanding of the PRC’s multi-tiered electricity system, we have consistently interpreted these labels, including slightly varied translations thereof, to be a three-tiered “valley, normal, and peak” rate structure and selected the highest rates from the “sharp” category for the “peak” benchmark rate.¹⁸² Moreover, we note that apart from the reference to a “critical peak” period, there is no evidence on the record to demonstrate that this is a higher rate than “peak.” Thus, it appears that the arguments put forth by Jiheng, Kangtai and the GOC are a result of translation differences and do not impact the comparability of the benchmarks used in the calculations. As a result, we continue to apply the same benchmarks we did in the *Preliminary Determination*.

Regarding the argument put forth by Jiheng, Kangtai and the GOC that we value the normal benchmark rates using the Zhejiang KWH Electricity Tariff, we disagree. As noted above, we continue to use the Zhejiang “peak” rates as the normal benchmark rates. As such, there is no need to use the KWH Electricity Tariff as the normal benchmark rates. Furthermore, the record is silent as to what the KWH Electricity Tariff represents. The footnotes in the Zhejiang tariff schedule make no mention of this rate category, however, it appears to be a rate applicable to specialized customers, for example, the PRC’s army, prisons, *etc.*¹⁸³ As noted above, the Zhejiang critical peak, peak, and valley categories cover all 24 hours of a day.¹⁸⁴ Therefore, it is unclear as to what time period the KWH Electricity Tariff covers. Assuming, *arguendo*, that there were no “normal” rates for Zhejiang, we have no basis to assume that the KWH Electricity Tariff would be representative of a normal rate.

Jiheng contends that the Department should select the chlor-alkali industry electricity rates from Zhejiang province as benchmark rates for its electricity consumed under the preferential treatment category, because Jiheng is a part of the chlor-alkali industry. The chlor-alkali industry rates are lower than the rates that apply to large industries in Zhejiang.¹⁸⁵ As such, Jiheng has essentially argued that the Department should select a preferential industry-specific rate as the electricity benchmark. We disagree, as the Department is applying AFA in this case in accordance with section 776(b) of the Act. As noted above, the GOC’s refusal to respond to the Department’s questions rendered the provincial electricity rates unreliable. Section 776(b) of the Act clearly states that the Department “in reaching the applicable determination . . . may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available” and provides the basis for which an adverse inference may be made. The

¹⁸⁰ *Id.*

¹⁸¹ *Id.* This is the only reference to time periods in the rate schedule for Zhejiang province.

¹⁸² The “sharp” category rate was also used as the “peak” benchmark rate in *Wind Towers* and *Wood Flooring*. See *Wind Towers*, and accompanying Issues and Decision Memorandum at Comment 16; *Wood Flooring*, and accompanying Issues and Decision Memorandum at Comment 4.

¹⁸³ See the GOC’s submission at Exhibit E2-3.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

statute also describes the various sources upon which the Department may rely to obtain the information for making the adverse inference, including information placed on the record of the proceeding. The Department's selection of the highest, non-seasonal electricity rate for each electricity category benchmark is, therefore, reasonable and permissible under section 776(b) of the Act.¹⁸⁶ The chlor-alkali rate proposed by Jiheng is a preferential electricity rate specific to that industry. To select the preferential chlor-alkali industry rate for Jiheng's consumption would result in electricity benchmark rates that are not consistent with an adverse inference.¹⁸⁷ Therefore, because the Department appropriately applied AFA to the selection of the electricity benchmark, we reject Jiheng's argument to use the preferential electricity rates for the chlor-alkali industry as the benchmark.

Moreover, selecting a preferential industry-specific rate is not even consistent with the determination of a non-facts available benchmark. The selection of a non-specific electricity rate benchmark is consistent with the Department's past practice regarding the provision of electricity for LTAR.¹⁸⁸ As the Department stated in *Magnesium from Canada*: "As a general matter, the first step the Department takes in analyzing the potential provision of electricity – assuming a finding of specificity – is to compare the rate charged with the applicable rate on the power company's non-specific rate schedule."¹⁸⁹

Several parties proposed making adjustments to electricity benchmark rates. Jiheng, Kangtai and the GOC proposed averaging peak and valley benchmark rates to calculate normal rates, while Kangtai and Petitioners proposed using ratios between benchmark rates to make adjustments for the normal and high peak rates, respectively. We disagree with parties' requests that the Department adjust electricity benchmarks because doing so would be inconsistent with past practice, as such adjustments are not appropriate given the application of AFA following the GOC's failure to act to the best of its ability in providing to the Department the requested information concerning the provision of electricity in the PRC.¹⁹⁰ In addition, parties proposed

¹⁸⁶ The Federal Circuit affirmed the use of the highest electricity rates where the GOC similarly refused to provide information concerning "how {provincial electricity} rates were determined." See *Fine Furniture*, 748 F.3d at 1372.

¹⁸⁷ See *Wood Flooring*, and accompanying Issues and Decision Memorandum at Comment 4.

¹⁸⁸ See, e.g., *Cylinders*, and accompanying Issues and Decision Memorandum at Comment 10; *Oil Country Tubular Goods from Argentina; Preliminary Results of Countervailing Duty Administrative Review*, 62 FR 32307 (June 13, 1997) at "New Program Preliminarily Found to Confer Subsidies Preferential Electricity Tariff Rates," unchanged in *Oil Country Tubular Goods From Argentina; Final Results of Countervailing Duty Administrative Review*, 62 FR 55589 (October 27, 1997); *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946 (July 13, 1992) at "Preferential Electric Rates."

¹⁸⁹ See, e.g., *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946 (July 13, 1992) at "Preferential Electric Rates."

¹⁹⁰ See, e.g., *Wood Flooring*, and accompanying Issues and Decision Memorandum at Comment 4 (declining to make an adjustment to a benchmark where the electricity provider adjusts the respondent's charges); *Wind Towers* and accompanying Issues and Decision Memorandum at "Provision of Electricity for LTAR" (making no adjustments to the benchmark for any adjustment fees or discounts because such adjustments were not appropriate given that the GOC failed to act to the best of its ability in providing to the Department the requested information concerning the provision of electricity in the PRC); *Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 13 (declining to average electricity benchmark prices upon applying AFA to the selection of the electricity benchmark) .

these adjustments in order to create benchmarks, which as noted above, already exist on the record.

Comment 2: Jiheng’s Electricity Usage Rate

Petitioners

- At verification, the Department found that one of the Jiheng Group’s two branch companies, Jiheng Lantian Chemical Branch Company (“Lantian”), failed to report its electricity usage, thereby understating the electricity usage for the Jiheng Group.¹⁹¹
- Lantian produces sulfuric acid, fertilizer compound, ammonium benzoyl and other chemicals; as such, it is not merely a holding company but is a manufacturing entity.¹⁹² It follows that the Lantian branch of Jiheng Group would have electricity usage consistent with that of a chemical manufacturer, such as Jiheng.
- It is well established that the Department shall rely upon “facts otherwise available” where an interested party “failed to provide information within the deadlines established” by the Department.¹⁹³ In addition, the Department may make an adverse inference when parties have “failed to cooperate by not acting to the best of their ability” to supply requested information as Jiheng has done in this case.¹⁹⁴ Therefore, for the final determination, the Department should apply AFA to the Jiheng Group’s electricity usage.
- Absent any evidence to indicate the magnitude of Lantian’s electricity usage, it is reasonable at a minimum to assign to Jiheng Group the *ad valorem* rate calculated with respect to Jiheng. This approach bases the subsidy rate on contemporaneous record data supplied by the same respondent. At the same time, this approach avoids the result that Jiheng benefits from withholding data or failing to supply requested information.

Jiheng

- An adverse inference should not be made with respect to the electricity consumed by Lantian. The circumstances of this case dictate that neutral facts available should be applied to account for Lantian’s electricity usage. Under the statute, an adverse inference can be applied only if an “interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority . . .”¹⁹⁵ In this case, Jiheng acted to the best of its ability with respect to Lantian’s electricity usage.
- As stated in the verification report, Lantian’s electricity bills were sent directly from the power company to the Jiheng Group. Consequently, Lantian did not report the electricity usage to the Jiheng Group, because the bill from the power company was sent directly to the Jiheng Group’s office. The Jiheng Group did not report the electricity to the Department because it did not consume the electricity. In addition, Lantian sold electricity to other companies, *i.e.*, Lantian did not consume it, and because this electricity was not entered into the costs or accounting of Lantian, it was not reported to the Department. In other words, there was no deliberate attempt to conceal information from the Department.

¹⁹¹ See Jiheng Verification Report at 8.

¹⁹² *Id.*

¹⁹³ See section 776(a)(1) and (2) of the Act.

¹⁹⁴ See section 776(b) of the Act.

¹⁹⁵ *Id.*

- Jiheng reported the situation noted above on its own initiative to the verification officials prior to the beginning of verification. Jiheng prepared all the missing bills, invoices and ledgers for inspection at verification, and expressed a willingness to revise the electricity appendix to include the inadvertently missing information.
- As neutral facts available, the Department should use the information gathered at verification to increase the Jiheng Group's calculated subsidy benefit to account for Lantian's unreported electricity.
- The Department's use of an adverse inference is tempered by the requirement that AFA must have some rational connection with the operations of the company to which the adverse inference is being applied.¹⁹⁶ In *Gallant Ocean*, the respondent challenged the AFA rate as having no rational relationship to its commercial practices.¹⁹⁷ Therein, the Department incorrectly applied the petition rate as AFA despite the existence of much more reliable information. The Federal Circuit noted that, instead of relying on the petition rate as AFA, the Department should have used more reliable facts such as the representative dumping rates of similarly sized and similarly situated exporters in the original investigation and administrative review.¹⁹⁸ The Department must establish that its use of AFA is reliable and relevant to a particular respondent and that it used reliable facts with some grounding in commercial reality.¹⁹⁹ If the Department decides to assign an adverse inference to the Jiheng Group's electricity benefit for the final determination, it would not be appropriate to adopt Petitioners' suggestion that to use the net benefit calculated for Jiheng.
- In this case, Jiheng's electricity usage is at an extremely high level because it incorporates an electrolytic production process for caustic soda, while Lantian is a conventional chemicals producer that does not incorporate any electrolytic production processes.²⁰⁰ Consequently, with respect to electricity consumption, the two companies are simply not comparable and use of Jiheng's electricity net subsidy rate, even as AFA for Jiheng Groups' electricity net subsidy rate, is not appropriate.
- If an adverse inference were used for purposes of the final determination, an appropriate adverse inference would be to assign to Lantian the highest rate of any other producer subject to investigation that does not incorporate an electrolytic production process, *i.e.*, Kangtai.

Department's Position: We agree with Petitioners, in part. We find that Jiheng withheld from the Department information regarding the electricity usage of its cross-owned company, which merits application of facts available under sections 776(a)(1) and 776(a)(2)(A) of the Act. Our initial questionnaire requested that respondents report the rates they paid for electricity, by month, during the POI, and provide invoices for June 2012 and December 2012.²⁰¹ The Jiheng Group, because it is cross-owned with Jiheng, submitted a response to the Department's original

¹⁹⁶ See *De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed Cir. 2000).

¹⁹⁷ See *Gallant Ocean*, 602 F.3d at 1319.

¹⁹⁸ *Id.* at 1323.

¹⁹⁹ See *Yangzhou Bestpak*, 716 F.3d. at 1378.

²⁰⁰ Other producers of the subject merchandise who purchase, rather than self-produce, caustic soda through an electrolytic production process had substantially lower net benefits attributable to their electricity usage. For example, the net benefit for Kangtai's electricity usage was 1.42% at the *Preliminary Determination*. See Prelim Decision Memo at 21. The electricity benefit calculated for Baikang at the *Preliminary Determination* was lower than Kangtai's. See Jiheng Prelim Calculation Memo at Attachment 1.

²⁰¹ See the Department's initial questionnaire, dated October 30, 2014, at "Section III."

questionnaire.²⁰² In its response, the Jiheng Group stated that it has two branch companies, Dianhua Branch Company and Lantian, and that the two branch companies are not independent, legal entities.²⁰³ The Jiheng Group also stated that its questionnaire response covers both branch companies.²⁰⁴ With respect to electricity, the Jiheng Group provided a completed electricity template, which purports to provide the electricity consumption of the whole of the Jiheng Group.²⁰⁵ Although Jiheng attempted to provide the missing information for Lantian as a minor correction at verification, the Department declined to accept this minor correction.²⁰⁶

Lantian failed to report the totality of its electricity usage, thereby understating the electricity usage for the Jiheng Group. Unlike a genuine minor correction, *i.e.*, “minor errors in any of the Jiheng companies’ responses {found} while preparing for verification,”²⁰⁷ which must be reported at the outset of verification, the complete failure to report the additional electricity bills for Lantian is more than a mere revision or correction (such as Jiheng’s reporting of certain sales in U.S. dollars instead of RMB, which Jiheng reported at the outset of verification).²⁰⁸ Instead, as explained in the Verification Report, company officials provided an explanation of why they thought this information should not be reported, although they stated they “were prepared to revise” the data.²⁰⁹ As further explained in the Verification Report, “we declined and also stated the time for presenting minor corrections had passed.”²¹⁰ As to Jiheng’s argument that they did not seek to conceal any information from the Department, we recall that the “statutory trigger for Commerce’s consideration of an adverse inference is simply a failure to cooperate to the best of respondent’s ability, regardless of motivation or intent.”²¹¹

We determine that it is appropriate to apply partial AFA to the Jiheng Group’s under-reported POI consumption of electricity. Notwithstanding Jiheng’s assertion that the omission was inadvertent, the Department found at verification that the Jiheng Group failed to report Lantian’s consumption of electricity. We find that the Jiheng Group withheld necessary information requested by the Department; therefore, in accordance with section 776(a)(2)(A) of the Act, for the final determination, we determine that the use of facts otherwise available is warranted in calculating the Jiheng Group’s electricity benefit. As described above, although the Jiheng Group attempted to provide the information at the minor correction stage of the proceeding, it failed to put forth the maximum effort to provide the full POI consumption of electricity, despite the Department’s request that it do so earlier in the proceeding, and instead only produced the information in the face of verification. Consequently, we find that the Jiheng Group failed to act

²⁰² See the Jiheng Group’s December 23, 2013 submission.

²⁰³ *Id.* at 3 & 4.

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 22 & Appendix 14. The completed electricity template submitted by the Jiheng Group does not distinguish between the Jiheng Group or either branch company.

²⁰⁶ See Jiheng Verification Report at 8.

²⁰⁷ See Verification Agenda at 4.

²⁰⁸ See Verification Report at 8.

²⁰⁹ *Id.*

²¹⁰ *Id.*; see also *Tianjin Magnesium Int’l Co., Ltd. v. United States*, 33 Int’l Trade Rep. (BNA) 1150 at *10-11, n.6 (Ct. Int’l Trade 2011) (“Moreover, when verification is pending, a respondent must alert Commerce, prior to verification, to problems it discovered with data while preparing for verification.”).

²¹¹ *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003).

to the best of its ability in providing the requested information that was in its possession, and that the application of an adverse inference is appropriate, pursuant to section 776(b) of the Act.

As an adverse inference, we used the highest benchmark, compared to the lowest rate that would have been paid by Lantian, according to the South Hebei tariff schedule, for each month of the POI in applying a proxy benefit for the Jiheng Group's unreported electricity.²¹² We disagree with Petitioners that Jiheng's *ad valorem* rate should be applied to the Jiheng Group's unreported electricity. The monthly electricity bill collected for Lantian at verification indicates that Lantian is not a heavy user of electricity compared to Jiheng Chemical.²¹³ Thus, the use of Jiheng's rate for Lantian's would not be grounded in Lantian's commercial reality as a non-heavy user of electricity. Likewise, the Department's adverse inference is preferable than Jiheng's suggestion to use Kangtai's electricity rate because it is based on the limited consumption information available for Lantian and on benchmarks for electricity that are already on the record. Therefore, we based Lantian's unreported electricity usage on a monthly electricity bill during the POI for Lantian collected at verification and then applied that usage to each of the other 11 months of the POI.²¹⁴ The Department collected information during verification regarding Lantian's consumption of electricity; therefore, it is more appropriate to use this verified information as the basis for our AFA calculation for Lantian.

Comment 3: Kangtai's Electricity Usage Rate

Petitioners

- At verification, the Department found that one of Kangtai's meters was upgraded at a certain point during the POI, and that before this time the company only reported electricity usage at one rate.²¹⁵
- Because Kangtai did not report its electricity usage by rate category until a certain date, as AFA, all electricity units (kWh) for which the rate category was not separately identified should be assigned to the rate category that produces the highest net benefit.²¹⁶ The highest net benefit would be the result of the Department calculating a high peak benchmark rate, as noted above. This approach will create an incentive for Kangtai to comply with Department requests for information.²¹⁷

Kangtai

- Petitioners' allegation that Kangtai did not comply with the Department's requests for information in reporting its electricity usage for one of its meters, for January – April 2012, is significantly flawed and misstates the record.
- There are two ways to calculate the electricity payment in the normal business of operation: (1) the "peak-normal-off peak" method, or (2) the uniform normal rate method, depending on

²¹² See the Jiheng Final Analysis memo for more details.

²¹³ Compare Jiheng Verification Report at Exhibit 4 (pages 30-31) with Jiheng's December 23, 2013 submission at Appendices 26 and 27.

²¹⁴ See Jiheng Verification Report at Exhibit 4; see also Jiheng Final Calculation Memo.

²¹⁵ See Kangtai Verification Report at 6.

²¹⁶ Because the company-specific information concerning Kangtai's electricity is proprietary, see Kangtai Prelim Calculation Memo.

²¹⁷ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

the meters' readings. One of Kangtai's meters was not set up by the Shandong Electricity Authority to read high peak, peak, normal or valley hours until it was upgraded in May 2012, as verified by the Department.²¹⁸ Kangtai paid against the uniform normal rate as per the Shandong Electricity Schedule as reported to the Department.²¹⁹ All quantities of electricity consumed and payments were fully verified by the Department.²²⁰

- Paying against the uniform normal rate generally would be neutral because it inflates the rate for the valley hours, while deflating the rates for high-peak or peak hours. In fact, it is a normal or common practice to apply the uniform normal rate in previous cases.²²¹
- There is no basis to apply an adverse inference based merely on a limitation on the meter's capacity for reading as set up by the Shandong Electricity Authority independently of the investigation. Kangtai never withheld information from the Department, and did not provide misleading information; and Kangtai cooperated to the best of its ability, providing all the data that the meters were capable of providing.²²²

Department's Position: We disagree with Petitioners and determine that Kangtai has complied with the Department's information requests and acted to the best of its ability to report accurate information in the investigation. The Department applies facts available, pursuant to section 776(a) of the Act, when necessary information is not available on the record or an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides such information that cannot be verified.

Kangtai has not withheld requested information, failed to provide information in a timely manner, significantly impeded this proceeding, nor has it provided information that could not be verified. The Department notes that Kangtai provided the Department with information concerning Kangtai's electricity usage in a timely manner.²²³ Kangtai reported that for a particular meter it was charged the normal rate for all hours.²²⁴ At verification, Kangtai noted that the "electricity company upgraded {this meter}, and before that, {this meter} just recorded all usage at one rate."²²⁵ At verification, the Department logged onto Kangtai's account with the Shandong Electricity Authority, verified Kangtai's electricity consumption, and noted no discrepancies from what Kangtai reported.²²⁶ As such, we find that Kangtai has cooperated to

²¹⁸ See Kangtai Verification Report at 6.

²¹⁹ See Kangtai's December 20, 2013 submission at Exhibit 14.

²²⁰ See Kangtai Verification Report at 5-7.

²²¹ See *Hardwood Plywood*, and accompanying Issues and Decision Memorandum at "Provision of Electricity for LTAR" and Comment 3.

²²² Kangtai contends that if the Department applied a reasonable facts available inference based on the portion of high-peak, peak, normal and valley usages for meter 1, based on the percentage actually realized from May to December 2012, and then calculated the benefits as per the benchmark relied upon in the *Preliminary Determination*, the benefits received by Kangtai for this meter would be much lower than the benefit calculated in the *Preliminary Determination*. See Kangtai's August 5, 2014 rebuttal brief at Attachment I.

²²³ See Kangtai's December 20, 2013 submission at 24-25; Kangtai's January 31, 2014 submission at 14.

²²⁴ See Kangtai's December 20, 2013 submission at Exhibit 12.

²²⁵ See Kangtai Verification Report at 6.

²²⁶ *Id.*, at 5-7.

the best of its ability in providing information concerning its electricity consumption, and we have not applied AFA with regard to the electricity recorded by this specific meter.

With regard to the calculation of the benefit, we continue to follow our normal practice used in the *Preliminary Determination*.²²⁷ Because the meter in question only recorded electricity consumption at a normal rate and did not record electricity consumption specific to any time period within the day, we used the normal rate benchmark in calculating the benefit in conjunction with Kangtai's reported electricity usage.

Comment 4: Specificity Issue for the Provision of Urea for Less than Adequate Remuneration (“LTAR”)

Petitioners

- The Department should determine that the GOC provisioned urea for LTAR, as the direct beneficiaries are actually limited in number.
- Overall, verification established that fertilizer and chemical applications account for over 80 percent of urea usage.²²⁸
- Within the meaning of the statute, the GOC provided urea to a specific industry or group of industries. Within agriculture, its use is limited to nitrogen fertilizers and animal feed. Within the chemicals industry, its used is limited to specific applications, including, *inter alia*, isos. The largest users, the fertilizer and chemical industries, are closely related.
- The GOC attempted to broaden the number of industries using urea to include downstream users of urea-containing products, and such downstream users cannot be considered as actual recipients of the subsidy. Specifically, the wood products, automotive and industrial pollution industries are downstream users of products containing urea.
- Given the breadth and scope of the PRC economy, the Department should therefore find that the provision of urea is specific to a small group of end users, and therefore specific.
- In comparison to other CVD cases, the universe of urea-consuming industries is at least as limited as in other instances where the Department determined that the provision of an input for LTAR satisfies the specificity criterion.²²⁹
- Regardless, the provision of urea for LTAR is otherwise specific inasmuch as the fertilizer is the predominant user of urea (*i.e.*, the subject merchandise industry need not be among those users for whom the program is specific).
- This program fulfills the other two criteria (financial contribution, government-provided benefit) to be found countervailable.

²²⁷ See, e.g., *Hardwood Plywood*, and accompanying Issues and Decision Memorandum at “Provision of Electricity for LTAR; see also Kangtai Prelim Calculation Memo.

²²⁸ See GOC Verification Report at 9-11.

²²⁹ See, e.g., *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 72323 (December 5, 2012) (“*Citric Acid Review*”), and accompanying Issues and Decision Memorandum at Comment 4; *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), and accompanying Issues and Decision Memorandum at Comment D.1; *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), and accompanying Issues and Decision Memorandum at Comment 7.

GOC

- Specificity depends on the makeup of the eligible users, not just the overall number, and if they represent a diverse group of industries, a program cannot be specific.²³⁰
- Petitioners' attempt to delineate narrower user categories within the broad number of industries that consume urea does not support their specificity argument, and in fact undermines it.
- Petitioners' assertion that certain industries are not actual recipients is not supported by the record, and is further contravened by documentary evidence from the verification.
- Additionally, while fertilizers and chemicals do account for 80 percent of urea usage, Petitioners themselves acknowledge that fertilizer usage provides the overwhelming component of that combined figure (*i.e.*, 92 percent).²³¹
- Petitioners' reliance on other case precedents is unavailing because none of those cases had consumption data on the record.
- Contrary to Petitioners' argument, it is self-evident that a respondent must belong to the grouping for which specificity is found.

Jiheng

- The Department properly determined in the *Preliminary Determination* that nine broad industries used urea. Petitioners attempt to lump the chemicals industry together with the agricultural sector in order to assert that the two combined are the predominant users of urea, and that the program is therefore specific.

Kangtai

- Verification confirmed that a variety of industries use urea in the PRC. Petitioners' claim that the fact that urea has specific applications within each industry does not create a "limited use" theory.
- Petitioners fail to support their claim that certain industries only use downstream urea-based products.
- The Department must reject Petitioners' interpretation that if any industry is a predominant user, the consumption of urea is thus specific for purposes of the statute.
- If the Department finds this program to be countervailable, it should use the World Bank Commodity Index as the benchmark for urea.

Department's Position: As noted above in the "Programs Determined Not to Be Countervailable" section, we continue to find that this program is not specific under section 771(5A)(D) of the Act. We verified that urea is consumed by at least nine different industries in the PRC, including (1) agriculture (both as fertilizer and feed additives), (2) chemicals, (3) wood products, (4) textiles, (5) paper, (6) automotive, (7) industrial pollution control, (8) medicine, and (9) cosmetics.²³² Among the industries that consume urea, the agricultural sector is the predominant user, accounting for over 70 percent of urea consumption in the PRC.²³³ While

²³⁰ See, e.g., *Countervailing Duties*, 63 FR 65348, 65357 (November 25, 1998).

²³¹ See Petitioners' July 31, 2014 case brief at 20.

²³² See GOC Verification Report at 8-9, and Exhibits 2 & 3A-E.

²³³ *Id.* at 9-11.

Petitioners state that within each of these broad categories, only specific applications use urea, these are simply subcategories within the aforementioned industrial sectors. Moreover, this fact would simply be the case for many, if not most, material inputs. Simply identifying various subcategories does not contravene the overarching fact that a large number of diverse industrial sectors in the PRC use urea and that the industry producing subject merchandise is not the predominant or disproportionate user of urea.

Petitioners' argument that certain industries only use downstream urea products (*i.e.*, resins or solutions), and not urea itself, is not supported by the available record evidence. At verification, the Department made no such findings regarding downstream users in the various industries that consume urea,²³⁴ and Petitioners did not submit any record evidence to support their assertion. Petitioners state that the wood products and paper industries use only urea resins, and that the automotive and industrial pollution control industries use a urea solution. To substantiate their position, Petitioners cite to certain exhibits in the GOC responses and verification report that contain references to urea formaldehyde ("UF") and melamine urea formaldehyde ("MUF") resins.

As an initial matter, we recognize that there are a few references to UF and MUF resins in certain verification exhibits and response exhibits regarding industries that use urea. However, those same exhibits also reference "urea" specifically and separately.²³⁵ Moreover, Petitioners assert that urea-based resins are not manufactured by the wood products or the paper industries to support their contention that those industries are downstream users of the resin.²³⁶ Petitioners cite to the preliminary determination of the U.S International Trade Commission in the *Hardwood Plywood* investigation as support for the idea that the wood products industry uses a downstream urea-based product, rather than just urea.²³⁷ Nonetheless, citing to one instance in an investigation for a single type of wood product does not substantiate a sweeping conclusion that no wood products manufacturers in the PRC ever use urea in their production. Regarding the papermaking industry, the only hint of evidence in support of Petitioners' contention is the fact that a verification exhibit contains references to UF/MUF resins.²³⁸ It is unclear, though, in what context the papermaking process uses urea and/or UF/MUF resins. Petitioners assert that only the latter are used, precluding any possibility that they are an intermediate step in an overall production process, with urea being one of the initial inputs. The same fact pattern exists with respect to urea in the automotive/pollution control industries, *i.e.*, Petitioners make a similar unsubstantiated assertion that the automotive/pollution control industries use a urea solution, rather than purchasing urea itself to make the solution as part of the production process. In sum, while Petitioners contend that certain industries use only downstream urea products rather than just urea, the record lacks evidence to sustain such a conclusion. In fact, Petitioners in their case brief identified a new industry that uses urea in the PRC: plastics.²³⁹

²³⁴ *Id.* at 8-11.

²³⁵ *Id.* at Exhibits 3A-E.

²³⁶ Petitioners' July 31, 2014 case brief at 23 (citing *Hardwood Plywood from China*, Inv. Nos. 701-TA-490 and 731-TA-1204 (Preliminary), USITC Pub. 4361 (November 2012)).

²³⁷ *Id.*

²³⁸ See GOC Verification Report at Exhibit 3D.

²³⁹ See Petitioners' July 31, 2014 case brief at 24.

With respect to the argument that we should consider the agriculture and chemical industries' use of urea as one "single" predominant user, and thus, find this program *de facto* specific, Petitioner has provided no precedent that the Department has ever found the agriculture and chemical industries to be one industry. In *Citric Acid Review*, the most analogous case among those cited by Petitioner, we found that all of the categories/sub-categories of industries as defined by the interested parties in that case were "closely related to the citric acid industry in terms of processes and output."²⁴⁰ We are unable to reach a similar conclusion in this investigation based upon the lack of information about the similarities in processes/output among the isos, nitrogen fertilizer, and the several other industries in question.

Lastly, Petitioners contend that the subject merchandise industry need not be among those users for which the program is specific to benefit from a subsidy so long as fertilizer is the predominant user of urea. A finding of specificity based on predominant use under section 771(5A)(D)(iii)(II) of the Act is premised on predominant use by a particular "enterprise or industry." For that reason, a common-sense reading of section 771(5A)(D)(iii)(II) of the Act supports an interpretation limiting a finding of countervailability to that enterprise or industry making predominant use of the subsidy.²⁴¹

Because we continue to find that the provision of urea is not specific in the manner described by section 771(5A)(D) of the Act, we determine that this program is not countervailable.

VII. RECOMMENDATION

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

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

8 SEPTEMBER 2014
(Date)

²⁴⁰ See *Citric Acid Review*, and accompanying Issues and Decision Memorandum at Comment 4.

²⁴¹ See, e.g., *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014), and accompanying Issues and Decision Memorandum at "Provision of Natural Gas for LTAR."