



DATE: December 4, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistance Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Certain Cold-Drawn
Mechanical Tubing of Carbon and Alloy Steel from the People's
Republic of China

I. SUMMARY

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

- Comment 1: The Countervailability of the Government Provision of Coking Coal and Steam Coal for Less than Adequate Remuneration (LTAR)
- Comment 2: The Provision of Electricity for LTAR
- Comment 3: The Government Provision of Inputs for LTAR
 - a. Input Producers are "Authorities"
 - b. Inputs are Specific
 - c. Input Industries are Distorted (Tier One Benchmark for Inputs for LTAR)
- Comment 4: Benchmarks for Steel Rounds/Billets, Hot-Rolled and Cold-Rolled Coiled Steel
- Comment 5: The Appropriate Benchmark for Ocean Freight
- Comment 6: External Benchmark Interest Rates for Loans
- Comment 7: GOC Policy Loans during the POI

¹ See also section 701(f) of the Act.

- Comment 8: Huacheng I&E's Bank Acceptance Bills
Comment 9: The Export Buyer's Credit Program
Comment 10: Income Tax Deductions for R&D Expenses
Comment 11: The GOC's Claims Regarding Verification
Comment 12: The Department's Investigation of Uninitiated Programs
Comment 13: Minor Corrections to the Department's Preliminary Benefit Calculation

II. BACKGROUND

The two mandatory respondents in this proceeding are Jiangsu Hongyi Steel Pipe Co., Ltd. (Hongyi) and Zhangjiagang Huacheng Import & Export Co., Ltd. (Huacheng I&E). Hongyi provided a countervailing duty (CVD) questionnaire response on behalf of itself and its cross-owned affiliates, Hongren Precision Pipe Manufacturing Co., Ltd (Hongren) and Changzhou Kemeng Mechanical Equipment Co., Ltd. (Kemeng) (collectively, Hongyi). Huacheng I&E provided a CVD questionnaire response on behalf of itself and its cross-owned affiliates, Zhangjiagang Huacheng Industry Pipe Making Corporation (Huacheng Industry Pipe), Zhangjiagang Salem Fine Tubing Co., Ltd. (Salem), Zhangjiagang Huacheng Investment Holding Co., Ltd. (Huacheng Investment), Zhangjiagang HZB Special Material Technology Co., Ltd. (HZB Special Material), and Zhangjiagang Huacheng Special Materials Corporation (Huacheng SMC). On September 25, 2017, the Department published the *Preliminary Determination* in this proceeding.²

Between September 25 and September 29, we conducted verification of the questionnaire responses submitted by Hongyi and Huacheng I&E.³ The petitioners,⁴ Hongyi, Huacheng I&E, and the Government of the PRC (GOC) timely submitted case and rebuttal briefs between

² See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 44562 (September 25, 2017) (*Preliminary Determination*) and accompanying memorandum, "Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China," dated September 18, 2017 (Preliminary Decision Memorandum).

³ See the Department's memorandum to the file, "Verification of the Questionnaire Responses of Jiangsu Hongyi Steel Pipe Co., Ltd.," dated October 19, 2017 (Hongyi's Verification Report); see also the Department's memorandum to the file, "Verification of the Questionnaire Responses of Zhangjiagang Huacheng Import & Export Co., Ltd. (Huacheng I&E) and Its Cross-Owned Affiliates," dated October 23, 2017 (Huacheng I&E's Verification Report).

⁴ The petitioners are ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, Plymouth Tube Co, USA, PTC Alliance Corp., Webco Industries, Inc, and Zekelman Industries, Inc. Plymouth Tube Co. USA, a domestic producer of subject merchandise, joined these investigations as a domestic interested party after the filing of the Petition. See the petitioners' letter, "Certain Cold-Drawn Mechanical Tubing from the People's Republic of China - APO Amendment," dated June 5, 2017.

October 30 and November 7, 2017.⁵ All parties timely filed, but withdrew, their requests for a hearing.⁶

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2016, through December 31, 2016.

IV. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

A. Background

On October 23, 2017, the petitioners, pursuant to 19 CFR 351.206, filed timely allegations that critical circumstances exist with respect to imports of subject merchandise from the PRC, Italy, and the Republic of Korea.⁷ In accordance with 19 CFR 351.206(b)(e), the petitioners requested that the Department issue a final critical circumstances determination in the countervailing duty investigation involving imports of CDMT from the PRC. On October 25, 2017, the Department requested shipment data from Hongyi and Huacheng I&E with respect to the critical

⁵ See the petitioners' letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Petitioners' Case Brief," dated October 30, 2017 (Petitioners' Case Brief); Hongyi's letter, "Hongyi Case Brief: Countervailing Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China (C-570-059)," dated October 30, 2017 (Hongyi's Case Brief); Huacheng I&E's letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Case Brief," dated October 30, 2017 (Huacheng I&E's Case Brief); the GOC's letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China; CVD Investigation; GOC Case Brief," dated October 30, 2017 (the GOC's Case Brief); the petitioners' letter "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Petitioners' Rebuttal Brief," dated November 7, 2017 (Petitioners' Rebuttal Brief); Hongyi's letter, "Hongyi Rebuttal Brief: Countervailing Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China (C-570-059)," dated November 7, 2017 (Hongyi's Rebuttal Brief); Huacheng I&E's letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Rebuttal Brief," dated November 7, 2017 (Huacheng I&E's Rebuttal Brief); and the GOC's letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China; CVD Investigation; GOC Rebuttal Brief," dated November 7, 2017 (the GOC's Rebuttal Brief).

⁶ See the petitioners' letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China – Petitioners' Request for Hearing," dated October 25, 2017; Hongyi's letter, "Hongyi – Hearing Request: Countervailing Duty Investigation on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China (C-570-059)," dated October 25, 2017; Huacheng I&E's letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Request for a Hearing," dated October 25, 2017; and the GOC's letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from China; CVD Investigation; GOC Request to Participate in Hearing, if Requested," dated October 25, 2017. See also memorandum to the file, "Countervailing Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Parties Decline to Request a Hearing," dated November 14, 2017.

⁷ See the petitioners' letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China, Italy, and the Republic of Korea – Critical Circumstances Allegation," dated October 23, 2017 (Critical Circumstances Allegation).

circumstances allegation.⁸ On November 1, 2017, Hongyi and Huacheng I&E responded to the Department's request for shipment data.⁹ Based on information provided by the petitioners, data placed on the record of this investigation by the mandatory respondents, and data collected by the Department, the Department determines that critical circumstances do not exist for imports of cold-drawn mechanical tubing from the PRC by the mandatory respondents, but critical circumstances do exist for all other producers or exporters in the PRC.¹⁰

B. Legal Framework

Section 705(a)(2) of the Act provides that the Department will determine that critical circumstances exist if the Department makes a finding: (A) that “the countervailable subsidy” is inconsistent with the Subsidies and Countervailing Measures (SCM) Agreement of the World Trade Organization, and (B) that there have been massive imports of the subject merchandise over a relatively short period. Section 19 CFR 351.206 provides that imports must increase by at least 15 percent during the “relatively short period” to be considered “massive” and defines a “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.¹¹ The regulations also provide, however, that if the Department finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.¹²

C. Critical Circumstances Allegation

In a countervailing duty investigation, the statute requires the Department to find critical circumstances where a subsidy is found to be inconsistent with the SCM Agreement. In support of its allegation, the petitioners contend that subsidy programs that are contingent upon export performance or on the use of domestic goods over imported goods, are inconsistent with the SCM Agreement.¹³ The petitioners have alleged that subject producers in the PRC have benefitted from several subsidies that are prohibited by the SCM Agreement and have been

⁸ See letters to Hongyi and Huacheng I&E, “Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Request for Quantity and Value Shipment Data,” dated October 25, 2017.

⁹ See Hongyi’s letter, “Hongyi Response to CVD Critical Circumstances Q&V Questionnaire Countervailing Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China (C-570-059),” dated November 1, 2017, and Huacheng I&E’s letter, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Monthly Shipment Data,” November 1, 2017.

¹⁰ See memorandum, “Critical Circumstances Analysis Memorandum for the Final Determination,” dated concurrently with this memorandum (Critical Circumstances Analysis Memo).

¹¹ See 19 CFR 351.206(i).

¹² *Id.*

¹³ See Critical Circumstances Allegation at 11.

countervailed in previous CVD proceedings.¹⁴ These programs include: (1) preferential access to foreign trade funds and discount loans; (2) export loans with preferential interest rates; (3) export credit guarantees; (4) export assistance grants; and (5) preferential income tax treatment for PRC producers that upgrade their manufacturing operations with domestically-manufactured equipment.¹⁵

The petitioners provided U.S. Census Bureau data obtained from the ITC's DataWeb, which they contend shows an increase in imports of subject merchandise between the "base period" prior to the filing of the Petition, *i.e.*, December 2016 through April 2017, and the "comparison period" after the petition was filed, *i.e.*, May 2017 through September 2017. The petitioners note that the increase in imports shown by this data is well above the 15 percent threshold the Department normally considers massive.

D. Analysis

Section 705(a)(2)(A) of the Act: Whether the Countervailable Subsidy is Inconsistent with the SCM Agreement

To determine whether a countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 705(a)(2)(A) of the Act, the Department considered the evidence currently on the record of this investigation. The petitioners allege that the Department initiated the instant investigation on a large number of countervailable subsidy programs that are either dependent on export performance or on the use of domestic goods over imports.¹⁶ The petitioners further argue that the Department has found many of these programs countervailable in previous countervailing duty proceedings.¹⁷ Upon review of the record, we agree with the petitioners that the instant investigation initiated on a large number of countervailable subsidy programs either dependent on export performance or favoring domestic goods over imports and

¹⁴ See the petitioners' letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China, the Federal Republic of Germany, India, Italy, the Republic of Korea, and Switzerland - Petitions for the Imposition of Antidumping and Countervailing Duties," dated April 19, 2017 (Petition) at Vol. III at 27-35, 46-48, 65-67, 75-79; and Vol. VI at 10-35.

¹⁵ See Critical Circumstances Allegation at 11, citing the "Countervailing Duty Investigation Initiation Checklist: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China," dated May 9, 2017 (Initiation Checklist) at 9-12, 19-20, 28-29, and 33-35.

¹⁶ *Id.*

¹⁷ See *e.g.*, *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (*Line Pipe from the PRC*), and accompanying Issues and Decision Memorandum at 15, *Certain Seamless Carbon and Alloy Steel Standard. Line. and Pressure Pipe from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 75 FR 69052 (November 11, 2010) and accompanying Issues and Decision Memorandum at 16-17, *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) (*CORE*), and accompanying Issues and Decision Memorandum at 7-10 and 11-12, and *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015) (*Passenger Tires*) and accompanying IDM at 28-29.

which have been found countervailable in prior proceedings. Therefore, the Department finds that the following subsidy program identified by the petitioners and found to be utilized by Huacheng I&E is inconsistent with the SCM Agreement: SME International Market Exploration/Development Fund.¹⁸ The Department also finds that Hongyi did not utilize any export subsidy programs; therefore, the Department finds that critical circumstances do not exist with respect to Hongyi.¹⁹

Section 705(a)(2)(B) of the Act: Whether There Have Been Massive Imports of the Subject Merchandise Over a Relatively Short Period

In determining whether there are “massive imports” over a “relatively short period,” pursuant to sections 705(a)(2)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

In order to determine whether there has been a massive surge in imports for the cooperating mandatory respondents, we have used a comparison period starting with the month after the petition was filed (*i.e.*, May 2017), up to the most recent month we have import data (*i.e.*, September 2017). We then selected a base period with the same number of months, ending in the month the petition was filed (*i.e.*, December 2016 through April 2017).

Huacheng I&E

In determining whether there were massive imports from Huacheng I&E, we examined its reported shipment data for the period December 2016 through September 2017. Because this shipment data is business proprietary, our analysis can be found in a memorandum issued concurrently with this final determination.²⁰ Our analysis of the shipment data submitted by Huacheng I&E leads us to conclude that there was not a massive increase in shipments of subject merchandise to the United States by Huacheng I&E. Therefore, we determine that critical circumstances do not exist with respect to Huacheng I&E.

All Other Producers/Exporters

With regard to whether imports of subject merchandise by the “all other” producers/exporters of subject merchandise from the PRC, we determine that because there is evidence of countervailable subsidies that are inconsistent with the Subsidies Agreement, an analysis is warranted of whether there was a massive increase of shipments by all other companies, in accordance with section 705(a)(2)(B) of the Act and 19 CFR 351.206(h). Therefore, we analyzed, in accordance with 19 CFR 351.206(i), monthly shipment data for the period

¹⁸ See Preliminary Determination Memorandum at 36; *see also* Section XI.A, “Programs Determined to be Countervailable,” of this memorandum.

¹⁹ See Section XI.A, “Programs Determined to be Countervailable,” of this memorandum.

²⁰ See Critical Circumstances Analysis Memo at attachment 1.

December 2016 through September 2017, using GTA shipment data, adjusted to remove shipments reported by Huacheng I&E and Hongyi. Because of the proprietary nature of company-specific shipment data, our analysis is found in the Critical Circumstances Memorandum. Our analysis of this adjusted shipment data leads us to conclude that there was a massive increase in shipments by “all other” companies, in accordance with section 705(a)(2)(B) of the Act and 19 CFR 351.206(h).²¹ Accordingly, we find that critical circumstances exist with regard to imports of subject merchandise from “all other” producers/exporters of subject merchandise from the PRC.

V. SCOPE COMMENTS

In accordance with the preamble to the Department’s regulations,²² the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).²³ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. On December 4, 2017, the petitioners withdrew a portion of their comments regarding the scope language.²⁴ The Department issued a Preliminary Scope Decision Memorandum²⁵ and preliminarily modified the scope language that appeared in the *Initiation Notice*. The Department addressed all scope comments received²⁶ in the Final Scope Decision Memorandum.²⁷

VI. SCOPE OF THE INVESTIGATION

The scope of this investigation covers cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) of circular cross-section, 304.8 mm or more in length, in actual outside diameters less than 331mm, and regardless of wall thickness, surface finish, end finish or industry specification. The subject cold-drawn mechanical tubing is a tubular product with a circular cross-sectional shape that has been cold-drawn or otherwise cold-finished after the initial tube formation in a manner that involves a change in the diameter or wall thickness of the tubing,

²¹ See, e.g., *Certain New Pneumatic Off-The-Road Tires from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Determination*, 81 FR 39903 (June 20, 2016) (*OTR Tires from India*), and accompanying Issues and Decision Memorandum at Section V, Critical Circumstances.

²² See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

²³ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India and the People’s Republic of China: Initiation of Countervailing Duty Investigations*, 82 FR 22486 (May 16, 2017) (*Initiation Notice*).

²⁴ See the petitioners’ letter, “Certain Cold-Drawn Mechanical Tubing from Germany et al. – EN-10305-3,” dated December 4, 2017.

²⁵ See Memorandum, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People’s Republic of China, and Switzerland: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated November 15, 2017 (Preliminary Scope Decision Memorandum).

²⁶ The scope case briefs were due five days after the publication of the preliminary less than fair value determinations for the PRC, Germany, India, Italy, Korea, and Switzerland in the *Federal Register*, which was Monday, November 27, 2017. See Preliminary Scope Decision Memorandum at 6. The deadline for scope rebuttal briefs was Thursday, November 30, 2017.

²⁷ See Memorandum, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People’s Republic of China, and Switzerland: Scope Decision Memorandum for the Final Determinations: Final Scope Decision Memorandum,” dated concurrently with this memorandum (Final Scope Decision Memorandum).

or both. The subject cold-drawn mechanical tubing may be produced from either welded (*e.g.*, electric resistance welded, continuous welded, etc.) or seamless (*e.g.*, pierced, pilgered or extruded, etc.) carbon or alloy steel tubular products. It may also be heat treated after cold working. Such heat treatments may include, but are not limited to, annealing, normalizing, quenching and tempering, stress relieving or finish annealing. Typical cold-drawing methods for subject merchandise include, but are not limited to, drawing over mandrel, rod drawing, plug drawing, sink drawing and similar processes that involve reducing the outside diameter of the tubing with a die or similar device, whether or not controlling the inside diameter of the tubing with an internal support device such as a mandrel, rod, plug or similar device. Other cold-finishing operations that may be used to produce subject merchandise include cold-rolling and cold-sizing the tubing.

Subject cold-drawn mechanical tubing is typically certified to meet industry specifications for cold-drawn tubing including but not limited to:

- (1) American Society for Testing and Materials (ASTM) or American Society of Mechanical Engineers (ASME) specifications ASTM A-512, ASTM A-513 Type 3 (ASME SA513 Type 3), ASTM A-513 Type 4 (ASME SA513 Type 4), ASTM A-513 Type 5 (ASME SA513 Type 5), ASTM A-513 Type 6 (ASME SA513 Type 6), ASTM A-519 (cold-finished);
- (2) SAE International (Society of Automotive Engineers) specifications SAE J524, SAE J525, SAE J2833, SAE J2614, SAE J2467, SAE J2435, SAE J2613;
- (3) Aerospace Material Specification (AMS) AMS T-6736 (AMS 6736), AMS 6371, AMS 5050, AMS 5075, AMS 5062, AMS 6360, AMS 6361, AMS 6362, AMS 6371, AMS 6372, AMS 6374, AMS 6381, AMS 6415;
- (4) United States Military Standards (MIL) MIL-T-5066 and MIL-T-6736;
- (5) foreign standards equivalent to one of the previously listed ASTM, ASME, SAE, AMS or MIL specifications including but not limited to:
 - (a) German Institute for Standardization (DIN) specifications DIN 2391-2, DIN 2393-2, DIN 2394-2);
 - (b) European Standards (EN) EN 10305-1, EN 10305-2, EN 10305-4, EN 10305-6 and European national variations on those standards (*e.g.*, British Standard (BS EN), Irish Standard (IS EN) and German Standard (DIN EN) variations, etc.);
 - (c) Japanese Industrial Standard (JIS) JIS G 3441 and JIS G 3445; and
- (6) proprietary standards that are based on one of the above-listed standards.

The subject cold-drawn mechanical tubing may also be dual or multiple certified to more than one standard. Pipe that is multiple certified as cold-drawn mechanical tubing and to other

specifications not covered by this scope, is also covered by the scope of this investigation when it meets the physical description set forth above.

Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

For purposes of this scope, the place of cold-drawing determines the country of origin of the subject merchandise. Subject merchandise that is subject to minor working in a third country that occurs after drawing in one of the subject countries including, but not limited to, heat treatment, cutting to length, straightening, nondestructive testing, deburring or chamfering, remains within the scope of this investigation.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. Merchandise that meets the physical description of cold-drawn mechanical tubing above is within the scope of the investigation even if it is also dual or multiple certified to an otherwise excluded specification listed below. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) cold-drawn stainless steel tubing, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(2) products certified to one or more of the ASTM, ASME or American Petroleum Institute (API) specifications listed below:

- ASTM A-53;
- ASTM A-106;
- ASTM A-179 (ASME SA 179);
- ASTM A-192 (ASME SA 192);
- ASTM A-209 (ASME SA 209);
- ASTM A-210 (ASME SA 210);
- ASTM A-213 (ASME SA 213);
- ASTM A-334 (ASME SA 334);
- ASTM A-423 (ASME SA 423);
- ASTM A-498;
- ASTM A-496 (ASME SA 496);
- ASTM A-199;
- ASTM A-500;
- ASTM A-556;
- ASTM A-565;
- API 5L; and
- API 5CT

except that any cold-drawn tubing product certified to one of the above excluded specifications will not be excluded from the scope if it is also dual- or multiple-certified to any other specification that otherwise would fall within the scope of this investigation.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, 7306.50.5030. Subject merchandise may also enter under numbers 7306.30.1000 and 7306.50.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

VII. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM THE PEOPLE'S REPUBLIC OF CHINA

On October 25, 2007, the Department published its final determination on *Coated Paper*.²⁸ In *Coated Paper*, the Department found that:

... given the substantial differences in the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.²⁹

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.³⁰ Furthermore, on March 13, 2012, Public Law 112-99 was enacted, which confirms that the Department has authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.³¹ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.³²

Additionally, for the reasons stated in *Coated Paper*, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this CVD investigation.³³

²⁸ See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*Coated Paper*), and accompanying Issues and Decision Memorandum at Comment 6.

²⁹ *Id.*

³⁰ See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP*), and accompanying Issues and Decision Memorandum at Comment 1.

³¹ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

³² See Public Law 112-99, 126 Stat. 265 §1(b).

³³ See *CWP*, and accompanying Issues and Decision Memorandum at Comment 2.

VIII. SUBSIDIES VALUATION

A. Allocation Period

The Department has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for this final determination, *see the Preliminary Determination*.³⁴

B. Attribution of Subsidies

The Department made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies and no issues were raised by interested parties in case briefs regarding the attribution of subsidies.³⁵ For descriptions of the methodologies used for this final determination, *see the Preliminary Determination*.³⁶

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Final Analysis Memorandum," prepared for this final determination.³⁷ As a result of verification, we have revised the sales values for Hongyi, Huacheng I&E and their cross-owned affiliates to calculate the subsidy rates in this final determination.³⁸

³⁴ *See* Preliminary Decision Memorandum at 5.

³⁵ *Id.* at 6.

³⁶ *Id.*

³⁷ *See* memorandum to the file, "Analysis Memorandum for the Final Determination of the Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Jiangsu Hongyi Steel Pipe Co., Ltd.," dated concurrently with this memorandum (Hongyi's Final Analysis Memorandum) and memorandum to the file, "Countervailing Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Calculation Memorandum for the Final Determination for Zhangjiagang Huacheng Import & Export Co., Ltd.," dated concurrently with this memorandum (Huacheng I&E's Final Analysis Memorandum).

³⁸ *See* Hongyi's letter, "Hongyi – Minor Corrections at Verification: Countervailing Duty Investigation on Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China (C-570-059)," dated October 2, 2017, and Hongyi's Final Analysis Memorandum. *See also* Huacheng I&E's letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Minor Corrections," dated September 29, 2017, and Huacheng I&E's Final Analysis Memorandum.

IX. BENCHMARKS AND DISCOUNT RATES

As discussed in Comment 4b below, the Department has modified the calculation of the benchmark for steel rounds and billets. No other changes have been made to the benchmarks or the discount rates used in the *Preliminary Determination*. For a description of the benchmarks and discount rates used for this final determination, see the *Preliminary Determination* and Final Analysis Memorandum for Hongyi and Huacheng I&E.³⁹

X. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply “facts otherwise available” (FA) if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.⁴⁰

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

³⁹ See Hongyi’s Final Analysis Memorandum and Huacheng I&E’s Final Analysis Memorandum.

⁴⁰ On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this investigation.

⁴¹ See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from the PRC*); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

⁴² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁴³ It is the Department’s practice to consider information to be corroborated if it has probative value.⁴⁴ In analyzing whether information has probative value, it is the Department’s practice to examine the reliability and relevance of the information to be used.⁴⁵ However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.⁴⁶

Finally, under the new section 776(d) of the Act, the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁴⁷

The Department relied on facts available, including AFA, for several findings in the *Preliminary Determination*. For a description of these decisions, see the *Preliminary Determination* and the Preliminary Decision Memorandum.⁴⁸ The Department has not made any changes to its decisions in the *Preliminary Determination* to use facts otherwise available and AFA. For a description of these decisions, see *Preliminary Determination*.⁴⁹

XI. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

The Department made no changes to its preliminary analysis of, or the methodology used to calculate the subsidy rates for, the following programs, as described in the *Preliminary Determination*, except as noted. For a complete description, analysis, and explanation of the

⁴³ See, e.g., SAA at 870.

⁴⁴ See SAA at 870.

⁴⁵ See, e.g., SAA at 869.

⁴⁶ See SAA at 869-870.

⁴⁷ See section 776(d)(3) of the Act.

⁴⁸ See Preliminary Decision Memorandum at 15-30.

⁴⁹ *Id.*

calculation methodology used for each program, *see* the *Preliminary Determination*.⁵⁰ All issues raised by interested parties are addressed in the “Analysis of Comments” section, below.

1. *Policy Loans to the Cold-Drawn Mechanical Tubing Industry*

As explained below, the Department has not changed its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*. However, we revised the determination of the denominators used for Huacheng I&E and its cross-owned affiliates to conform with minor corrections to the response found at verification.⁵¹ We address the comments provided by interested parties in Comment 7, below.

Hongyi: 0.34 percent *ad valorem*
Huacheng I&E: 3.51 percent *ad valorem*

2. *Export Buyer’s Credit*

As discussed below, for purposes of this final determination, the Department determines that this program is countervailable and has selected a subsidy rate of 10.54 percent on the basis of AFA, unchanged from the *Preliminary Determination*.⁵² We address the comments provided by interested parties in Comment 9, below.

Hongyi: 10.54 percent *ad valorem*
Huacheng I&E: 10.54 percent *ad valorem*

3. *Income Tax Reduction for High or New Technology Enterprises*

The Department has not changed its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*. However, we revised the determination of the denominators used for Huacheng I&E and its cross-owned affiliates to conform with minor corrections to the response found at verification.⁵³

Hongyi: Unused
Huacheng I&E: 0.72 percent *ad valorem*

4. *Income Tax Deductions for Research and Development Expenses Under the Enterprise Income Tax Law*

The Department has not changed its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*. However, we revised the determination of the

⁵⁰ *Id.* at 33-39.

⁵¹ *See* Huacheng I&E’s Final Analysis Memorandum.

⁵² *See* Preliminary Decision Memorandum at 35.

⁵³ *See* Huacheng I&E’s Final Analysis Memorandum.

denominators used for Huacheng I&E and its cross-owned affiliates to conform with minor corrections to the response found at verification.⁵⁴ We address the comments provided by interested parties in Comment 10, below.

Hongyi: Unused
Huacheng I&E: 0.19 percent *ad valorem*

5. *Provision of Steel Rounds/Billets for LTAR*

As explained below, the Department has changed its preliminary calculation to exclude GTA data submitted by the petitioners for purpose of calculating a benchmark for this program from the *Preliminary Determination*.⁵⁵ We otherwise made no changes to the preliminary calculations for Hongyi and Huacheng I&E. We address the comments provided by interested parties in Comment 4a, below.

Hongyi: 4.78 percent *ad valorem*
Huacheng I&E: 2.12 percent *ad valorem*

6. *Provision of Hot-Rolled/Cold-Rolled Coiled Steel for LTAR*

As explained below, the Department changed its preliminary calculation for Hongyi to include all purchases of hot-rolled coiled steel.⁵⁶ The Department also changed Hongyi's cold-rolled coiled steel purchases to reflect the correct months of purchase.⁵⁷ We revised the determination of the denominators used for Huacheng I&E and its cross-owned affiliates to conform with minor corrections to the response found at verification.⁵⁸ We otherwise made no changes to the preliminary calculations for Hongyi and Huacheng I&E. We address the comments provided by interested parties in Comment 4b, below.

Hongyi: 4.02 percent *ad valorem*
Huacheng I&E: 0.19 percent *ad valorem*

7. *Provision of Electricity for LTAR*

As explained below, the Department has not changed its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*. However, we revised the determination of the denominators used for Huacheng I&E and its cross-owned affiliates to conform with minor corrections to the response found at verification.⁵⁹ We address the comments provided by interested parties in Comment 2, below.

Hongyi: 0.95 percent *ad valorem*

⁵⁴ *Id.*

⁵⁵ See Comment 4 of this memorandum, "Benchmarks for Steel Rounds/Billets, Hot-Rolled and Cold-Rolled Coiled Steel." See also Hongyi's Final Analysis Memorandum and Huacheng I&E's Final Analysis Memorandum.

⁵⁶ See Hongyi's Final Analysis Memorandum.

⁵⁷ *Id.*

⁵⁸ See Huacheng I&E's Final Analysis Memorandum.

⁵⁹ *Id.*

Huacheng I&E: 0.74 percent *ad valorem*

8. *Grant Program: SME International Market Exploration/Development Fund*

As explained below, the Department has not changed its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*. However, we revised the determination of the denominators used for Huacheng I&E and its cross-owned affiliates to conform with minor corrections to the response found at verification.⁶⁰

Hongyi: Unused
Huacheng I&E: 0.02 percent *ad valorem*

9. *Other Subsidies Reported by the Companies*

As explained below, the Department has not changed its methodology for calculating a subsidy rate for this program from the *Preliminary Determination*. However, we revised the determination of the denominators used for Huacheng I&E and its cross-owned affiliates to conform with minor corrections to the response found at verification.⁶¹ We address the comments provided by interested parties in Comment 12, below.

Hongyi: 0.78 percent *ad valorem*
Huacheng I&E: 0.31 percent *ad valorem*

B. Programs Determined Not to Be Used During the POI by Hongyi and Huacheng I&E

1. Preferential Loans for State-Owned Enterprises (SOEs)
2. Export Loans from Chinese State-Owned Banks
3. Export Seller's Credits from Export-Import Bank of China
4. Export Credit Guarantees from Export-Import Bank of China
5. Treasury Bond Loans
6. Exemptions for SOEs from Distributing Dividends
7. Debt Forgiveness to Hengyang Steel Tube and Tianjin Pipe (Group) Corporation (TPCO) and Hengyang
8. Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
9. Income Tax Deductions/Credits for Purchase of Special Equipment
10. Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries
11. VAT Rebates for Foreign Invested Enterprises (FIEs) Purchasing Domestically-Produced Equipment
12. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
13. VAT and Tariff Exemptions for Purchasers of Fixed Assets Under the Foreign Trade Development Fund

⁶⁰ *Id.*

⁶¹ *Id.*

14. Government Provision of Land to SOEs for LTAR
15. Government Provision of Land in Special Economic Zones (SEZs) for LTAR
16. Government Provision of Iron Ore for LTAR
17. Government Provision of Coking Coal for LTAR
18. GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands
19. Special Fund for Energy Savings Technology Reform
20. The State Key Technology Project Fund
21. Grants for Energy Conservation and Emission Reduction
22. Grants for the Retirement of Capacity
23. Grants for the Relocation of Productive Facilities
24. SME Technology Innovation Fund
25. Export Assistance Grants
26. Grants to Hunan Valin Iron and Steel Group Co., Ltd.

XII. ANALYSIS OF COMMENTS

Comment 1: The Countervailability of the Government Provision of Coking Coal and Steam Coal for LTAR

Background: The Petition alleged and the Department initiated on the government provision of coking coal for LTAR.⁶² In response to the Department’s initial questionnaire, Hongyi reported, and we confirmed at verification, that it purchased steam coal to generate power during the POI,⁶³ but did not purchase or consume coking coal. Hongyi reported further that its cross-owned affiliates, Hongren and Kemeng, did not purchase coking coal during the POI.⁶⁴ Because Huacheng I&E and its cross-owned affiliates also reported that they made no purchases of coking coal during the POI, our *Preliminary Determination* found that the government provision of coking coal for LTAR was not used by the either respondent during the POI.⁶⁵

The Petitioners’ Comments and Rebuttal Comments

- The Department cannot ignore the government provision of an input to Hongyi for LTAR simply because Hongyi purchased steam coal rather than coking coal.⁶⁶ The record evidence of Hongyi’s steam coal purchases during the POI and other data relevant to the benchmark for measuring benefit allow the Department to calculate a benefit.⁶⁷

⁶² See Initiation Checklist at 24-25.

⁶³ See Hongyi’s letter, “Hongyi Initial CVD Questionnaire Response: Countervailing Duty Investigation on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China (C-570-059),” dated July 28, 2017 (Hongyi’s IQR) at Exhibit F.1; Hongyi’s letter, “Hongyi CVD Supplemental Questionnaire Response: Countervailing Duty Investigation on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China (C-570-059),” dated September 1, 2017 (Hongyi’s SQR) at 10; and Hongyi’s Verification Report at 3-4, and 10-11.

⁶⁴ See Hongyi’s IQR at 24.

⁶⁵ See Preliminary Decision Memorandum at 42.

⁶⁶ See Petitioners’ Case Brief at 3.

⁶⁷ *Id.*

- There is enough evidence on the record to determine that Hongyi’s steam coal producers are government authorities, the provision of steam coal is specific, and the steam coal industry is distorted by PRC government intervention.⁶⁸ The Department should refer to its past proceedings and find that the GOC’s failure to act to the best of its ability warrants AFA treatment.⁶⁹
- The statute and judicial precedent requires the Department to countervail a discovered subsidy with respect to the subject merchandise, independent of a timely allegation.⁷⁰
- Hongyi reported that it purchased steam coal, not coking coal, during the POI to generate power for the factories.⁷¹ It also provided benchmark data obtained from GTA with a proper tariff code to value the type of steam coal it purchased. Thus, Hongyi provided enough information (including relevant freight expenses) for the Department to calculate a benefit.⁷²
- The Department has all the record information necessary to measure the benefit under the provision of steam coal for LTAR and should reach such a conclusion in the final determination.⁷³

Hongyi and GOC’s Rebuttal Comments

- The Department properly excluded coking coal for LTAR from its analysis, and neither did the petitioners timely allege, nor did the Department timely initiate, on the provision of steam coal for LTAR.⁷⁴
- The petitioners’ reference to *Bethlehem Steel* is inapposite because it requires the Department to investigate “discovered,” not potential subsidies.⁷⁵ Further, in *Bethlehem Steel*, the petitioners made their subsidy allegation at least four months prior to the date of the final determination.⁷⁶ The Department lacks the resources or the time necessary to investigate the petitioners’ untimely new allegation.⁷⁷

⁶⁸ *Id.* at 6-18.

⁶⁹ *Id.* (citing *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review*, 2013, 80 FR 77318 (December 14, 2015) (*Citric Acid Review*) and accompanying Issues and Decision Memorandum at 7-9 and 25-26 (where the Department found the producers steam coal “Authorities” and the steam coal industry in the PRC distorted by the government’s involvement in the market) and *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 9714 (February 8, 2017) (*Stainless Steel Sheet and Strip*) (where the Department found the government provision of steam coal to be specific)).

⁷⁰ *Id.* at 3-4 citing section 775 of the Act and *Bethlehem Steel Corp. v. United States*, 140 F. Supp. 2d 1354, 1360 (CIT 2001) (*Bethlehem Steel*); *see also* 19 CFR 351.311(b).

⁷¹ *Id.* at 5-6.

⁷² *Id.* at 6.

⁷³ *Id.* at 19.

⁷⁴ *See* Hongyi’s Rebuttal Brief at 1-4; *see also* GOC’s Rebuttal Brief at 2-5.

⁷⁵ *See* Hongyi’s Rebuttal Brief at 4.

⁷⁶ *Id.* at 5.

⁷⁷ *Id.* (citing *Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1150 n. 12 (CIT 2000)).

- The Department’s practice is to reject unreasonable and late new subsidy allegations (NSAs).⁷⁸ The petitioners raised this issue a month prior to the date of the final determination in the briefing stage of this investigation and well past the deadline for submission of NSAs.⁷⁹
- The Department neither initiated nor investigated the provision of steam coal for LTAR.⁸⁰ The Department should also reject the petitioners’ reliance on *Stainless Steel Sheet and Strip* and *Citric Acid* because, unlike the circumstances in this proceeding, the Department initiated and investigated the provision of steam coal in those two cases.⁸¹
- Hongyi was cooperative in disclosing its steam coal purchases well before the *Preliminary Determination* and months before filing its case brief.⁸² There is overwhelming evidence on the record to support the conclusion that the Department neither discovered nor investigated this program as a countervailable subsidy during the course of the proceeding. The Department found no evidence that Hongyi and its cross-owned affiliates had any equipment that used coking coal to produce the subject merchandise.⁸³

Department’s Position:

In the *Preliminary Determination*, the Department found that the provision of coking coal for LTAR was not used by either Hongyi or Huacheng I&E.⁸⁴ The Department continues to find that the provision of coking coal for LTAR was not used by the either respondent and finds that Hongyi’s purchases of steam coal should not be included in this investigation.

Sections 702(a) and (b)(1) and section 775(1) of the Act provide the basis for the Department’s investigative authority in CVD proceedings. For the Department to include a possible subsidy in an investigation, there must be either 1) a timely allegation – either in the petition or in a new subsidy allegation under 19 CFR 351.301(c)(2)(iv) – which alleges all necessary elements and provides supporting evidence reasonably available to the petitioner; or 2) evidence on the record

⁷⁸ *Id.* at 5-6, (citing *e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Investigation*, 78 FR 50379 (August 19, 2013) and accompanying Issues and Decision Memorandum at Comment 12 and *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*Oil Country Tubular Goods*) and accompanying Issues and Decision Memorandum at Comment 28).

⁷⁹ *Id.* at 6.

⁸⁰ *Id.* at 7.

⁸¹ *Id.* (citing *Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 46643 (July 18, 2016) (*Stainless Steel Sheet and Strip Preliminary Determination*) and accompanying Preliminary Decision Memorandum at 10; unchanged in the final determination, *Stainless Steel Sheet and Strip*; see also *Citric Acid Review* and accompanying Issues and Decision Memorandum, page number unidentified).

⁸² *Id.* at 2; see also GOC’s Case Brief at 6-8.

⁸³ See GOC’s Case Brief at 8, (citing to Hongyi’s Verification Report at 10).

⁸⁴ See Preliminary Decision Memorandum at 42.

of a “practice which appears to be countervailable subsidy.”⁸⁵ Consistent with this statutory and regulatory scheme, the petitioners specifically alleged, and the Department subsequently initiated on, the government provision of coking coal for LTAR.⁸⁶

Hongyi initially reported “Input purchases – Coal,” generally and without further specificity, but later clarified in its supplemental questionnaire that these purchases were of steam coal, not coking coal.⁸⁷ At verification, we reviewed all of Hongyi’s raw material accounts that included coal purchases, reconciled them to the audited financial statements, and confirmed that Hongyi correctly reported the total quantity of steam coal purchased during the POI.⁸⁸ We reviewed the fixed-asset ledgers of Hongyi and its cross-owned affiliates and found no evidence that Hongyi or its cross-owned affiliates had facilities and/or equipment that use coking coal for the production of subject merchandise.⁸⁹

Huacheng I&E reported that it did not purchase coking coal during the POI,⁹⁰ and did not volunteer that it purchased steam coal for use in the production of subject merchandise.⁹¹ The petitioners did not either allege that Huacheng I&E used steam coal in the production of subject merchandise, or comment on its responses concerning coking coal in any of their comments prior to verification.⁹² Nevertheless, at verification, we examined the accounts that Huacheng I&E and its cross-owned affiliates used for purchases of coal.⁹³ Specifically, we asked Huacheng to provide the applicable entries for lump coal, coke, and anthracite for Huacheng Industry Pipe, Salem, HZB Special Material and Huacheng SMC.⁹⁴ We noted that Huacheng Industry Pipe alone made certain sales of anthracite during the POI.⁹⁵ Otherwise, none of the companies purchased or sold any type of coal during the POI.⁹⁶ Huacheng I&E and all of its cross-owned affiliates use electricity to power all of the machinery and equipment used to produce subject

⁸⁵ See sections 702(a) and (b)(1) of the Act; and section 775(1) of the Act. See also 19 CFR 351.301(c)(2)(iv) and 351.311.

⁸⁶ See Initiation Checklist at 24-25

⁸⁷ See Hongyi’s IQR at Exhibit F.1; and Hongyi’s SQR at 10.

⁸⁸ See Hongyi’s Verification Report at 4.

⁸⁹ *Id.* at 10.

⁹⁰ See Huacheng I&E’s IQR at Volume I, page 32; Volume II, page 43; Volume III, page 31; Volume IV, page 28; Huacheng I&E’s letter, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: HZB Special Materials CVD Questionnaire Response,” dated August 28, 2017 (HZB Special Material’s IQR), at page 26; Huacheng I&E’s letter, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: CVD Supplemental Questionnaire Response, Question 14: SMC CVD Questionnaire Response,” dated September 1, 2017 (Huacheng SMC’s IQR) at page 37.

⁹¹ *Id.*

⁹² See, e.g., the petitioners’ letter, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China - Petitioners’ Comments on Huacheng’s Initial CVD Questionnaire Response,” dated August 7, 2017; the petitioners’ letter, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China - Petitioners’ Pre-Verification Comments,” dated September 7, 2017.

⁹³ See Huacheng I&E’s Verification Report at 6-7, and Verification Exhibit VE-42, “Accounting Codes and Purchases of Coal.”

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

merchandise. Therefore, we found that neither Huacheng I&E nor its cross-owned affiliates had facilities and/or equipment that use coking coal for the production of subject merchandise.⁹⁷

In *Bethlehem Steel*, the Court held that the Department is obligated to investigate allegations that reasonably appear to be countervailable and are discovered within a reasonable time prior to the completion of its investigation.⁹⁸ However, we disagree that *Bethlehem Steel* is applicable to this case, because, from the limited record evidence, there is not enough information in this case to conclude that Hongyi's purchases of steam coal reasonably appear countervailable within the meaning of section 775 of the Act and 19 CFR 351.311.⁹⁹ This evidence tells us nothing about whether there was a financial contribution from an "authority," whether the purchases conferred a benefit, or whether – even if these two criteria were met – there is a specific subsidy. This is in contrast to the types of subsidies the Department normally discovers – either through self-reporting or at verification – in CVD investigations, such as those discussed below in Comment 12.

Thus, consistent with the *Preliminary Determination*, we continue to find the government provision of coking coal for LTAR to be unused by Hongyi and Huacheng I&E. Further, we are not including the provision of steam coal as a discovered subsidy in this investigation.

Comment 2: The Provision of Electricity for LTAR

GOC's Comments

- Electricity is not countervailable because electricity represents general infrastructure and is not a financial contribution. U.S. law defines "financial contribution" as "providing goods or services, other than general infrastructure" as stated in section 771(5)(D)(iii) of the Act. Therefore, the Department should continue to follow its long-standing precedent of rejecting the petitioners' claims of infrastructure subsidies.¹⁰⁰
- There is no evidence on the record that the provision of electricity by the GOC in this case is "specific" to the cold-drawn mechanical tubing industry, as required in order to find any program countervailable under section 771(5A) of the Act.
- If the Department determines that electricity is countervailable, the use of AFA is inappropriate because the GOC provided sufficient information on the record for the Department to select an appropriate benchmark to measure the existence and amount of the benefit.
- It is reasonable for the Department to determine the adequacy of remuneration by examining whether respondents received a preferential rate compared to those entities receiving a rate by the standard pricing mechanism.¹⁰¹

⁹⁷ *Id.*

⁹⁸ See *Bethlehem Steel*, 140 F. Supp.2d at 1354.

⁹⁹ See 19 CFR 351.301(c)(2)(iv)

¹⁰⁰ See the GOC's Case Brief at 40 (citing *Bethlehem Steel*, 223 F. Supp. 2d at 1372; *Carbon Steel Wire Rod from Saudi Arabia*, 51 FR 4206 (February 3, 1986); and *Industrial Phosphoric Acid from Israel*, 52 FR 25447 (July 7, 1987)).

¹⁰¹ *Id.* at 43 (citing *Maverick Tube Corporation v. United States*, Slip Op. 17-146 at 20 (CIT October 27, 2017)).

The Petitioners' Rebuttal Comments

- The Department properly applied AFA with respect to the provision of electricity for LTAR. Similar AFA determinations with respect to this program have been upheld by the reviewing courts.¹⁰²
- The GOC's claim that electricity is general infrastructure and therefore not countervailable has been consistently rejected by the Department.¹⁰³ According to the petitioners, the courts have affirmed the Department's determination that electricity is not general infrastructure on the basis that what was being provided was "the electricity itself and not the physical plant associated with the generation, transmission and distribution of the electricity."¹⁰⁴ The Department has "consistently found the provision of electricity to be the provision of a good and not to be general infrastructure."¹⁰⁵
- The petitioners argue that the GOC did not cooperate to the best of its ability in providing a response, and therefore the application of AFA is warranted.¹⁰⁶

Department's Position:

We disagree with the GOC's argument that electricity rates in the PRC are based on market principles, that the GOC provided fulsome answers to each question, and that electricity for LTAR is not specific in this investigation. As an initial matter, the Department requested that the GOC provide information on how the provincial electrical tariff schedules were developed by the GOC's National Development and Reform Commission (NDRC). In its initial questionnaire response, the GOC stated that, as of the issuance of the "NDRC Notification on Lowering the On-Grid Price of Coal-Fired Electricity and Electricity for Industrial and Commercial-Use {2015 No. 748},"¹⁰⁷ the NDRC no longer reviews, *i.e.* approves, electricity pricing schedules submitted to it by the provinces.¹⁰⁸ Therefore, the GOC explained that the NDRC no longer determines the electricity prices in provinces within the PRC.¹⁰⁹ Further, the GOC stated that, as a result of Notice 748, provincial price departments develop and establish grid and electricity sales

¹⁰² See Petitioners' Rebuttal Brief at 45, 46 (citing *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1368, 1372 (Fed. Cir. 2014), and *Hebei Jiheng Chemicals Co. v. United States* 161 F. Supp. 3d 1322, 1326-33 (CIT 2016)).

¹⁰³ *Id.* at 40 (citing *Certain Steel Wheels from the People's Republic of China, Final Determination of the Countervailing Duty Investigation*, 77 FR 17017, (March 16, 2012) (*Steel Wheels*) and accompanying Issues and Decision Memorandum at 64 and *Certain Magnesia Carbon Bricks from the People's Republic of China, Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010) (*Magnesia Bricks*) and accompanying Issues and Decision Memorandum at 56 and *Certain Hot-Rolled Carbon Steel Flat Products from Thailand, Final Affirmative Countervailing Duty Determination*, 66 FR 50410 (September 21, 2001) and accompanying Issues and Decision Memorandum).

¹⁰⁴ *Id.* at 41 (citing *Royal Thai Government v. United States*, 441 F. Supp. 2d 1350, 1356 (CIT 2006)).

¹⁰⁵ *Id.* at 42 (citing *Steel Wheels* and accompanying Issues and Decision Memorandum at 64).

¹⁰⁶ *Id.* at 44 (citing section 776(b)(1) of the Act and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (holding that a party's compliance with the "best of its ability" standard includes providing accurate responses to the Department's request for information)).

¹⁰⁷ See the GOC's IQR at Exhibit II-F38 (Notice 748).

¹⁰⁸ *Id.* at 145.

¹⁰⁹ *Id.*

prices.¹¹⁰ As such, according to the GOC, there are no provincial price proposals created and the relevant provincial agencies are only required to provide their final published electricity schedules to the NDRC for its record.¹¹¹ The GOC added that inter-provincial and inter-regional electricity price adjustments and prices are based upon market principles and negotiations between parties.¹¹² It is within the authority of provincial pricing departments to formulate the specific price levels for different electricity users, and to set principles and a general range.¹¹³ Finally, the GOC stated that the NDRC issued an updated price adjustment notice, Number 3105, on December 27, 2015.¹¹⁴ Effective January 1, 2016, the NDRC issued a notice to establish the market-oriented pricing mechanism, Number 3169.¹¹⁵

Consequently, both Notice 748 and Notice 3105 explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Neither Notice 748 nor Notice 3105 explicitly stipulates that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions, as the GOC states to be the case.¹¹⁶ Rather, both notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices.¹¹⁷ Moreover, while Article IV of Notice 3169 does indicate that “local government and relevant departments should not designate the transaction price,” Articles 2 and 3 of Notice 3169 also make clear that the NDRC stipulates the formulae by which prices are to be adjusted. In a supplemental questionnaire, the Department requested that the GOC identify the legislation which may have eliminated the Provincial Price Proposals. The GOC explained that Notice 748 and 3015 “do not serve as the NDRC’s notice of control over the provincial electricity price adjustments, rather, such notice only indicates that the NDRC promotes electricity policy objectives at the macro level.”¹¹⁸ This response does not accord with the directive language in Notice 748, as discussed above.

The Department requested further clarification from the GOC, with supporting documentation, how the pricing values indicated in the Appendices to Notice 748 and Notice 3109 were

¹¹⁰ *Id.*

¹¹¹ See the GOC’s 1st SQR at 17.

¹¹² See the GOC’s IQR at 145.

¹¹³ See the GOC’s 1st SQR at 19.

¹¹⁴ See the GOC’s IQR at Exhibit II-F39. (Notice 3105).

¹¹⁵ See the GOC’s 1st SQR at Exhibit S-21 (Notice 3169).

¹¹⁶ *Id.* at 19.

¹¹⁷ See, e.g., Notice 748 Article 10 and Notice 3105 Articles II and X.

¹¹⁸ See the GOC’s IQR at 148.

derived.¹¹⁹ In response, the GOC provided no new explanation, but rather repeated its previous statement regarding the NDRC and notices 748 and 3109.¹²⁰

Accordingly, the Department found that the GOC failed to provide necessary information in response to the Department's question and failed to cooperate to the best of its ability. In the *Preliminary Determination*, the Department applied facts available with an adverse inference to the determination of the appropriate benchmark. Specifically, because the GOC provided the provincial electrical tariff schedules, the Department relied on this information for the application of facts available and, to apply an adverse inference, the Department identified the highest rates among the schedules for each reported electrical category and used those as the benchmarks in the benefit calculations in the *Preliminary Determination*.¹²¹ As discussed above and contrary to its assertions, the GOC was not cooperative in responding to the Department's request for information, which precluded us from carrying out this analysis, and thus, the Department continues to use a benchmark based on an adverse inference.

The GOC further argues that the provision of electricity for LTAR is a general infrastructure program and consequently, is not countervailable under section 771(5)(D)(iii) of the Act. The Department has rejected this argument in the past, and we have repeatedly countervailed the provision of electricity when the statutory requirements are met.¹²² Accordingly, we find that the GOC's provision of electricity does not constitute general infrastructure because it confers a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act is specific under section 771(5A)(D) of the Act.

Comment 3: The Government Provision of Inputs for LTAR

a. Input Producers are "Authorities"

GOC's Comments

- There are no governmental "programs" to provide to input producers in the cold-mechanical tubing industry. These producers are not government "authorities" within the meaning of the U.S. CVD law.¹²³
- The GOC fully responded to the Department's requests for information and by providing information through the Enterprise Credit Information Publicity System (ECIPS) for all

¹¹⁹ See the Department's letter, "Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Request for Additional Information Regarding the Government of the People's Republic of China's Response to the Department's Initial Questionnaire," dated August 21, 2017, at page 9.

¹²⁰ See the GOC's 1st SQR at 20.

¹²¹ See Preliminary Decision Memorandum at 40 -41

¹²² See, e.g., *Steel Wheels*, 77 FR 17017, and accompanying Issues and Decision Memorandum at 64; *Magnesia Bricks*, 75 FR 45472, and accompanying Issues and Decision Memorandum at 56. See also *Royal Thai Govt. v. United States*, 441 F. Supp. 2d 1350, 1356 (CIT 2006).

¹²³ See the GOC's Case Brief at 23-24.

of the respondents' input producers, tracing back to the ultimate individual or state owners.¹²⁴

- The information provided in the ECIPS is sufficient to demonstrate the ownership status and changes of the respondents' input producers during the POI.¹²⁵ The Department has verified the system in the past and found no discrepancies to the record.¹²⁶ The Department, however, chose not to verify the ECIPS information in this proceeding.¹²⁷
- The Department incorrectly found that all non-government-owned input producers are "authorities."¹²⁸ Further, the Department's finding in *PC Strand*¹²⁹ does not address the issue of whether Chinese law permits owners, members of the board of directors and managers of companies to be Chinese Communist Party (CCP) officials. Instead it focused on the membership in the CCP, whereas the initial questionnaire sought information about CCP officials and committees.¹³⁰ Thus, *PC Strand* does not support the proposition that CCP officials are permitted to serve as company officials.¹³¹
- The record shows that the input producers are bound by the *Company Law of China*, and these producers conduct their business activities independently without government intervention.¹³²
- Requiring a respondent to demonstrate that company officials are not CCP officials is unreasonably burdensome and intrusive; such inquiry is an unlawful exercise of the Department's authority.¹³³ The GOC has acted to the best of its ability to obtain the requested information, and the Department cannot penalize the GOC by resorting to AFA.¹³⁴
- The affiliations between company officials and the CCP do not make the company a "government authority."¹³⁵ The Department has failed to establish this relevance; thus, it should reverse the *Preliminary Determination* and revise the subsidy rates.¹³⁶
- There are no governmental "programs" to provide steel rounds and billets or cold-rolled/hot-rolled coiled steel to the cold-drawn mechanical tubing industry in the PRC, and PRC producers of these inputs are not government "authorities."¹³⁷

¹²⁴ *Id.* at 25.

¹²⁵ *Id.*

¹²⁶ *Id.* at 25-26 (citing *CORE*).

¹²⁷ *Id.*

¹²⁸ *Id.* at 26-27.

¹²⁹ *Id.* at 28 (citing *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 28557 (May 21, 2010) (*PC Strand*) and accompanying Issues and Decision Memorandum at 8).

¹³⁰ *Id.* at 28, (citing *PC Strand* and accompanying Issues and Decision Memorandum at Comment 8).

¹³¹ *Id.*

¹³² *Id.* at 27-28.

¹³³ *Id.* at 30.

¹³⁴ *Id.* at 31, (citing *Olympic Adhesives, Inc. v. United States*, 89 F.2d 1565, 1572 (Fed. Cir. 1990); *AK Steel Corp. v. United States*, 21 CIT 1204, 1223 (1997); *NSK Ltd. v. United States*, 416 F. Supp. 2d 1334, 1341 (CIT 2006)).

¹³⁵ *Id.* at 32-33.

¹³⁶ *Id.* at 34-35.

¹³⁷ *Id.* at 24.

The Petitioners' Rebuttal Comments

- The GOC makes no reference to the Department's finding regarding the majority-government-owned input producers, implicitly conceding the appropriateness of the Department's AFA determination.¹³⁸ The Department's *Preliminary Determination* found that the record is incomplete because of the GOC's failure to provide the requested information.¹³⁹ The Department should therefore affirm the decision made in the *Preliminary Determination*.¹⁴⁰
- While the GOC insists that it identified ownership information, it selectively ignores the fact that it never provided the Department's twice-requested supporting corporate documentation,¹⁴¹ which is readily available to the GOC; thus, the GOC's withholding of information constitutes a lack of cooperation.¹⁴²
- The GOC's claim that ownership information alone should be sufficient undermines the fact that the GOC failed to address the Department's multiple requests for information.¹⁴³ Thus, the GOC's failure to act to the "best of its ability to comply" warrants an application of AFA.¹⁴⁴
- The claim that the *Company Law of China* and the *Civil Servant Law* require companies to operate independently without government intervention has been repeatedly rejected by the Department.¹⁴⁵ Thus, the Department's previous finding of a lack of *de jure* control through the *Company Law of China* does not lead to a conclusion that CCP officials have no decision-making authority in private enterprises.¹⁴⁶
- The GOC's claim that the information requested by the Department is "unreasonably burdensome as to be an unlawful exercise" contradicts the GOC's lack of cooperation and its overall effort.¹⁴⁷
- The Department's policy and practice with respect to "government authorities," or "public bodies" in the PRC is well-settled, and the role and functions of CCP officials within PRC enterprises is relevant to its analysis.¹⁴⁸
- The Department should continue to conclude that PRC steel producers are authorities as AFA because the GOC twice failed to provide supporting corporate documentation requested by the Department.¹⁴⁹ Additionally, the Department should continue to

¹³⁸ See Petitioners' Rebuttal Brief at 22.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 23-24.

¹⁴² *Id.*

¹⁴³ *Id.* at 24.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 25, (citing *CORE* and accompanying Issues and Decision Memorandum at Comment 1).

¹⁴⁶ *Id.* at 26.

¹⁴⁷ *Id.* at 26-27.

¹⁴⁸ *Id.* at 27-28.

¹⁴⁹ *Id.* at 24, 27 and 30 (citing *CORE* and accompanying Issues and Decision Memorandum at Comment 1, *High Pressure Steel Cylinders from the People's Republic of China, Final Determination in the Countervailing Duty Investigation*, 77 FR 26738 (May 7, 2012) (*Steel Cylinders*) and accompanying Issues and Decision Memorandum at 13, and *Chlorinated Isocyanurates from the People's Republic of China, Preliminary Determination*, 79 FR 10097

conclude that the domestic PRC steel market is distorted, as AFA, and therefore continue to use world market prices as a benchmark in accordance with 19 CFR 351.511(a)(2)(ii).

- The GOC claim that the Department’s preliminary AFA determination was inappropriate because the GOC responded to the “best of its ability” is not true, as the GOC in prior CVD investigations has been able to provide the Department with the information requested.¹⁵⁰
- The Department’s preliminary finding was consistent with the case precedent regarding the same inputs.¹⁵¹ The GOC never submitted the requested product information for steel rounds/billets.
- In the *Tool Chests Prelim*, the GOC submitted data showing that state-owned producers accounted for 60.89 percent of domestic hot-rolled wide strip production, 55.28 percent of domestic hot-rolled thin strip production; and 76.4 percent of domestic cold-rolled strip production during the POI.¹⁵²

Department’s Position:

In the initial questionnaire, we requested ownership information from the GOC about the companies that produced steel rounds/billets and hot-rolled/cold-rolled coiled steel purchased by Hongyi and Huacheng I&E.¹⁵³ We notified the GOC that, in accordance with the analysis contained in the Public Body Memorandum placed on the record of this investigation,¹⁵⁴ the Department generally treats producers that are majority owned by the government or a government entity as controlled by the government and, hence, as “authorities” within the meaning of section 771(5)(B) of the Act. However, with regard to those majority government-owned companies that the GOC argues are not “authorities,” and for each producer that is not majority owned by the government, we instructed the GOC to answer all questions in the “Information Regarding Input Producers in the PRC” Appendix (Input Producer Appendix). For each producer that the GOC claimed was privately owned by individuals during the POI, we requested identification of the owners, members of the board of directors, or managers of the

(February 24, 2014) (*Chlorinated Isocyanurates Prelim*) and accompanying Preliminary Decision Memorandum at 23).

¹⁵⁰ See Petitioners’ Rebuttal Brief at 24 (citing *QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) and *PPG Indus., Inc. v. United States*, 978 F.2d 1232, 1238 (Fed. Cir. 1992); *Ningbo Dafa Chemical Fiber Co. v. United States*, 577 F. Supp. 2d 1304, 1309 (CIT 2008), affd, 580 F.3d 1247 (Fed. Cir. 2009))

¹⁵¹ *Id.* at 31 (citing *Seamless Pipe* and accompanying Issues and Decision Memorandum at 4, *Certain Corrosion-Resistant Steel Products from the People’s Republic of China, Preliminary Affirmative Determination*, 80 FR 68843 (November 2, 2015) (*CORE Prelim*) and accompanying Preliminary Decision Memorandum at 18-20 and *CORE* and accompanying Issues and Decision Memorandum at 7 and Comment 3).

¹⁵² *Id.* at 32 (citing *Certain Tool Chests and Cabinets from the People’s Republic of China, Preliminary Affirmative Determination: Countervailing Duty Investigation* 82 FR 43331 (September 15, 2017) (*Tool Chests Prelim*) and accompanying Preliminary Decision Memorandum at 30 and 31).

¹⁵³ See letter from the Department “Countervailing Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Countervailing Duty Questionnaire” dated June 9, 2017 (Initial Questionnaire) at 10-19.

¹⁵⁴ See memorandum to the file “Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China, Public Bodies Memorandum” dated September 1, 2017 (Public Body Memorandum).

producers who were also government or CCP officials or representatives during the POI. The GOC responded that Hongyi purchased steel rounds/billets from nine producers; cold-rolled coil from six producers; and hot-rolled coil from five producers. Huacheng I&E purchased steel rounds/billets from 17 producers; cold-rolled coil from two producers; and hot-rolled coil from five producers. The GOC provided partial ownership information for producers, wholly or partially owned by Chinese individuals or entities. However, the GOC failed to respond to section B of the Input Producer Appendix regarding the presence of Chinese Communist Party (CCP) officials and organizations within those companies.¹⁵⁵ Instead, the GOC stated that the Department's CCP questions are not relevant to the investigation of the LTAR program and that, as a matter of PRC law, the government cannot interfere in the management and operation of the suppliers of raw materials.¹⁵⁶ The GOC explained its view that the CCP, the People's Congress, and the Chinese People's Political Consultative Conference are not government bodies. Furthermore, the GOC stated that “{t}here is no central informational database to search for the requested information and the industry and commerce administration does not require companies to provide such information.”¹⁵⁷

Regarding the GOC's objection to the Department's questions about the role of CCP officials and organizations in the management and operations of raw material suppliers, we have explained our understanding of the CCP's involvement in the PRC's economic and political structure in a past proceeding.¹⁵⁸ The Department has previously determined that “available information and record evidence indicates that the CCP meets the definition of the term ‘government’ . . . for the limited purpose of applying the U.S. CVD law to China.”¹⁵⁹ Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations “in all companies, whether state, private, domestic, or foreign-invested” and that such organizations may wield a controlling influence in the company's affairs.¹⁶⁰ With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.¹⁶¹ The GOC's argument, is also contradicted by past Department findings that CCP officials can, in fact, serve as owners, members of the board of directors, or senior managers of companies.¹⁶² More broadly, the Department has found that, even in non-state-owned enterprises, “CCP primary organizations . . . ensure those entities ‘carry

¹⁵⁵ See GOC's IQR at 95-99, and 118-122; see also Exhibits F-21, F22, F28, and F29.

¹⁵⁶ *Id.* at 70-78

¹⁵⁷ *Id.* at 79.

¹⁵⁸ See Public Body Memorandum.

¹⁵⁹ *Id.* at 69.

¹⁶⁰ *Id.* at 35-36 and sources cited therein.

¹⁶¹ See *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Circumstances Determination*, 75 FR 57444 (September 21, 2010), (*Seamless Pipe*) and the accompanying IDM at 16.

¹⁶² See, e.g., *PC Strand* and accompanying Issues and Decision Memorandum at Comment 8 (“{i}n the instant investigation, the information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies.”), *Citric Acid Review*, and *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission in Part; 2012-2013*, 80 FR 69638 (November 10, 2015).

out social responsibilities,' {and} maintain and implement the Party's (i.e., the government's) line and principles."¹⁶³

Thus, the Department finds, as it has in other PRC CVD proceedings,¹⁶⁴ that the information requested regarding the role of CCP officials and CCP committees in the management and operations of the steel rounds/billets and hot-rolled/cold-rolled coiled steel producers, and in the management and operations of the producers' owners, is necessary to our determination of whether the producer is an authority within the meaning of section 771(5)(B) of the Act. Because the GOC did not fully respond to the Input Producer Appendix for each producer that is not majority-owned by the government, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in conducting our final analysis of the steel rounds/billets and hot-rolled/cold-rolled coil producers.¹⁶⁵ Additionally, for those input producers identified by the GOC as majority government-owned, we find, consistent with the Public Body Memorandum, that these producers are "authorities" within the meaning of section 771(5)(B) of the Act because they possess, exercise, or are vested with governmental authority. Specifically, as explained in the Public Body Memorandum, such producers are used by the GOC as implements to uphold the socialist market economy and to fulfill other government functions.

Contrary to the GOC's assertions and objections to our questions, it is the prerogative of the Department, not the GOC, to determine what information is relevant to our analysis.¹⁶⁶ The Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in the PRC.¹⁶⁷ We have also explained our understanding of the CCP's involvement in the PRC's economic and political structures in past proceedings.¹⁶⁸ With regard to the GOC's claim that the *Company Law* prohibits GOC officials from taking positions in private companies, we have previously found that the *Company Law* does not pertain to CCP officials.¹⁶⁹ Moreover, taking into account that the CCP in the PRC satisfies the definition of "authorities" for U.S. CVD law, the Department's finding that certain company

¹⁶³ See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*2012 Citric Acid Review*) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁶⁴ See e.g. *2012 Citric Acid Review*.

¹⁶⁵ See section 776(a)(2)(A) of the Act.

¹⁶⁶ See *NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); see also *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (stating that "[i]t is Commerce, not the respondent, that determines what information is to be provided").

¹⁶⁷ See the Department's memorandum, "Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Public Bodies Memorandum" dated September 1, 2017 (Public Bodies Memorandum).

¹⁶⁸ *Id.*; see also *Certain Uncoated Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 3110 (January 20, 2016) and accompanying Issues and Decision Memorandum at 15.

¹⁶⁹ See *Seamless Pipe* and accompanying Issues and Decision Memorandum at 16.

officials were members and not officials of the CCP in *PC Strand* does not diminish the Department's position that complete information related to whether any senior company officials were government or CCP officials and to the role of any CCP committee within the companies is essential to determine whether steel rounds/billets, hot-rolled and cold-rolled coiled steel producers are "authorities" within the meaning of section 771(5)(B) of the Act.¹⁷⁰

We disagree that the GOC responded to the Department's request for information to the best of its ability. As noted in the Preliminary Decision Memorandum, the GOC previously has been able to provide the information requested here.¹⁷¹ We also agree with the petitioners that the GOC overstates the burden of responding to our requests for information. As noted above, the GOC identified the government ownership information on less than one-third of the respondents' input producers.¹⁷² Moreover, when requested to provide information on the role of CCP officials in the management and operations of these producers, the GOC reiterated the *Regulation on Disclosure of Government Information* and provided no information on the role of the CCP officials in these private enterprises.¹⁷³ Given that the GOC provided similar information in the past, we find the GOC's claim that providing our requested information would be unduly burdensome unconvincing.

Assuming, *arguendo*, that the GOC could not provide any information, pursuant to section 782(c) of the Act, it should have promptly explained to the Department what attempts it undertook to obtain this information and proposed alternative forms of providing the information.¹⁷⁴ The GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC's responses in prior CVD proceedings involving the PRC demonstrate that it is, in fact, able to access information similar to what was requested in this proceeding.¹⁷⁵ Thus, the GOC did not act to the best of its ability.

As the GOC neither provided the information we requested regarding the CCP officials' involvement in the operations of the input producers, nor explain what attempts it undertook to

¹⁷⁰ See *PC Strand* and accompanying Issues and Decision Memorandum at Comment 8.

¹⁷¹ See Preliminary Decision Memorandum at 22, citing *High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Investigation*, 77 FR 26738 (May 7, 2012) (*Steel Cylinders*) and accompanying Issues and Decision Memorandum at 13.

¹⁷² See the GOC's SQR at Exhibits S-19 and S-20.

¹⁷³ See, e.g., the GOC's SQR at 7-10.

¹⁷⁴ Section 782(c)(1) of the Act states, "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party." Furthermore, the Department's questionnaire explicitly informs respondents that if they are unable to respond completely to every question in the questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, the respondents must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response. See Initial Questionnaire at 3.

¹⁷⁵ See, e.g., *Steel Cylinders* and accompanying Issues and Decision Memorandum at 13.

obtain such information, we have no basis to revise the Department’s preliminary AFA finding that steel rounds/billets, hot-rolled and cold-rolled coiled steel producers are “authorities” within the meaning of section 771(5)(B) of the Act. Therefore, for this final determination, we continue to determine, as AFA, that the companies producing the steel rounds/billets, hot-rolled and cold-rolled coiled steel purchased by the respondents are “authorities” within the meaning of section 771(5)(B) of the Act, and, as AFA, that the respondents received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

b. Inputs are Specific

GOC’s Comments

- Record evidence indicates that hot-rolled/cold-rolled coiled steel is widely used across virtually all sectors of industry in the PRC; its use cannot be considered specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.¹⁷⁶
- Data from the World Steel Association demonstrates that hot-rolled/cold-rolled coiled steel is widely used across all sectors of industry in the PRC and its use cannot be considered specific.¹⁷⁷
- Consistent with *Chlorinated Isocyanurates*, the Department should conclude that hot-rolled/cold-rolled coiled steel is used in diverse industries and is not specific.¹⁷⁸

The Petitioners’ Rebuttal Comments

- Although the GOC generally contests the Department’s finding on specificity for both steel round/billets and hot-rolled/cold-rolled coiled steel, the GOC only refers to certain evidence to support its claim related to hot-rolled/cold-rolled coiled steel.¹⁷⁹ Thus, the Department should consider the AFA finding for steel round/billets unchallenged and affirm its *Preliminary Determination*.¹⁸⁰
- The Department previously reviewed World Steel Association Data on the record cited by the GOC and found it to be insufficient to conduct its specificity analysis.¹⁸¹
- The GOC’s reliance on *Chlorinated Isocyanurates* is a misplaced argument, as in that case the GOC provided information on the industries that consumed urea, the input at issue, which included the total urea consumption among those industries.¹⁸² Conversely, in this instant proceeding, the GOC failed to provide any verifiable consumption data by

¹⁷⁶ See the GOC’s Case Brief at 34.

¹⁷⁷ *Id.* at 35.

¹⁷⁸ *Id.* at 36, (citing *Chlorinated Isocyanurates from the People’s Republic of China: Final Affirmative Countervailing Duty Investigation; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isocyanurates*) and accompanying Issues and Decision Memorandum at 23).

¹⁷⁹ See Petitioners’ Rebuttal Brief at 29.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 29-30.

¹⁸² *Id.* at 30.

industry.¹⁸³ Thus, the Department should reject the GOC's claim and continue find that the provision of steel inputs for LTAR is specific in the final determination.¹⁸⁴

Department's Position:

We continue to find, based on AFA, the provision of steel rounds/billets and hot-rolled and cold-rolled coiled steel to be specific. As explained in the Preliminary Decision Memorandum, we sought information from the GOC that would allow us to determine whether the provision of inputs at LTAR is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, but the GOC did not adequately provide information requested by the Department.

In response to our questions concerning specificity, the GOC initially explained that there are “no statistics regarding the industries in China {that purchase steel rounds/billets, hot-rolled/cold-rolled coiled steel}, nor does it exist by standard industrial classification.”¹⁸⁵ Further, the GOC stated that, to the best of its knowledge, no input producer compiles its sales volume and value by industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry.¹⁸⁶ We reiterated our request in our supplemental questionnaire, and the GOC again failed to provide such information.¹⁸⁷

Moreover, we noted various inconsistencies in the response provided by the GOC. For example, in the case of steel rounds/billets, we find that the GOC's response that “{t}he industries that purchase/use steel rounds/billets are not limited,”¹⁸⁸ directly contradicts statements in previous cases that, for example, “{s}teel rounds (billets in round shape that can be used to produce seamless pipe) are {used} by the seamless pipe industry.”¹⁸⁹ Further, with regard to the hot-rolled/cold-rolled coiled steel industry in the PRC, the GOC stated that hot-rolled/cold-rolled coiled steel is highly varied within the economy and that these inputs are widely used across virtually all sectors of industry in the PRC; the GOC therefore claims that its use cannot be considered specific to one industry or a particular group of industries.¹⁹⁰ The GOC indeed provided some information, *e.g.*, the National Economy Industry Classification, an excerpt of the general categorization of all economic activities under the United Nation's International Standard Industrial Classification for All Economic Activities (ISIC), and a printout from the World Steel Association that identifies sectors where 15 steel products are used.¹⁹¹ However, the supporting documentation from the World Steel Association provides no data indicating how much hot-rolled steel or cold-rolled steel is used by each sector, industry, application, product,

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *See* the GOC's IQR at 86, 110 and 138.

¹⁸⁶ *Id.*

¹⁸⁷ *See* the GOC' SQR at 14-15.

¹⁸⁸ *See* the GOC's IQR at 94.

¹⁸⁹ *See Seamless Pipe* and accompanying Issues and Decision Memorandum at 18.

¹⁹⁰ *See* the GOC's IQR at 138.

¹⁹¹ *Id.* at Exhibits II-F34, F-35, F-36, and F-37.

*etc.*¹⁹² While it includes a matrix comparing a list of sectors using steel products with 15 steel products used in those sectors, the GOC also did not explain how the World Steel Association data relates to the PRC economy and the other two sources listed above.¹⁹³ Moreover, the Chinese National Economy Industry Classification and the UN's ISIC information do not provide any information regarding usage of steel rounds/billets, hot-rolled and cold-rolled coiled steel.¹⁹⁴

The incomplete information on the record does not undermine the Department's previous findings, or otherwise establish that users of the inputs in question are not limited in number. Further, the Department's *de facto* specificity analysis is not limited simply to whether users are limited in number. Instead, sections 771(5A)(D)(iii)(II)-(III) of the Act provide that a subsidy is also *de facto* specific if an enterprise or industry is a predominant user of the subsidy or receives a disproportionately large amount of the benefit. Therefore, even if the GOC had presented information establishing use by a limited number of users, it still did not provide requested data that would have allowed the Department to determine the usage of the subsidy by cold-drawn mechanical tubing producers versus usage by other industries (as contemplated by sections 771(5A)(D)(iii)(II)-(III) of the Act). In comparison, in the *Chlorinated Isocyanurates* case, the GOC provided the Department with the data necessary for the complete *de facto* specificity analysis.¹⁹⁵ Because there is no such data coverage in the instant case, we find the GOC's reference to *Chlorinated Isocyanurates* inapposite.

Thus, the Department continues to find that the GOC has withheld information requested of it, within the meaning of section 776(a)(2)(A) of the Act, and that the Department must rely on facts available in making a specificity determination. Moreover, an adverse inference is warranted in selecting from among the facts available because the GOC did not adequately answer the questions posed by the Department. Relying upon AFA, we find that the subsidies from these inputs are specific within the meaning of section 771(5A)(D)(iii) of the Act. Our determination is consistent with *Steel Cylinders* where we found a similar program (*i.e.*, the provision of hot-rolled steel) in the PRC to be specific, because hot-rolled coiled steel is only provided to steel consuming industries, and thus, is only provided to a limited number of industries. We apply the same logic here. Therefore, we made no changes to our calculations for this final determination.

¹⁹² *Id.*

¹⁹³ *Id.* See also the GOC's IQR at 138.

¹⁹⁴ *Id.*

¹⁹⁵ See *Chlorinated Isocyanurates* and accompanying Issues and Decision Memorandum at 23 and 38-41 (finding the provision of urea not specific based on the "overarching fact that a large number of diverse industrial sectors in the PRC use urea and that the industry producing subject merchandise is not the predominant or disproportionate user of urea") (emphasis added).

c. Input Industries are Distorted (Tier-One Benchmark for Inputs for LTAR)

GOC's Comments

- The Department incorrectly found that the GOC failed to provide the requested information in determining that the domestic markets of these inputs are distorted.¹⁹⁶
- The Department incorrectly used tier-two benchmarks to calculate the benefit.¹⁹⁷
- The Department's preliminary conclusion that the number of hot-rolled/cold-rolled coiled steel producers do not represent the industry as a whole is inaccurate.¹⁹⁸ The State Statistics Bureau (SSB) has always adopted 20 million RMB annual revenue as a threshold in compiling the numbers of domestic input producers that are privately-owned and/or state-owned.¹⁹⁹
- The Department should reverse its determination and use a tier-one benchmark (*i.e.*, in-country prices) for all the inputs.²⁰⁰
- The Department's finding in the *Preliminary Determination* that the use of an in-country benchmark is inappropriate is not supported by the record and is inconsistent with WTO obligations.²⁰¹ The GOC provided evidence showing that the prices in the PRC for steel rounds/billets, hot-rolled and cold-rolled coiled steel reflect market forces.²⁰²
- The WTO Appellate Body has found that “{e}vidence relating to government ownership of State Owned Entities (SOE) and their respective market shares does not, in and of itself, provide a sufficient basis for concluding that in-country prices are distorted.”²⁰³

The Petitioners' Rebuttal Comments

- Based on record evidence, the Department's properly found as AFA, that the PRC markets for the inputs are distorted by the GOC's involvement.²⁰⁴ This finding is consistent with case precedent regarding the same inputs.²⁰⁵
- In addition to omitting an unknown number of hot-rolled and cold-rolled coiled steel producers, the GOC's response does not reconcile with other recently-provided data regarding the hot-rolled and cold-rolled coiled steel industry in the PRC.²⁰⁶

¹⁹⁶ See the GOC's Case Brief at 36.

¹⁹⁷ *Id.* at 37.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.* at 37-38.

²⁰¹ *Id.* (citing Panel Report, *United States – Countervailing Duty Measures on Certain Products from China*, WT/DS437/R (July 14, 2014) para. 4.62, 4.5, and 4.95).

²⁰² *Id.* at 38.

²⁰³ *Id.* at 38 (citing Panel Report *United States Countervailing Duty Measures on Certain Products from China*, WT/DS437/R (July 14, 2014)).

²⁰⁴ See Petitioners' Rebuttal Brief at 30-31.

²⁰⁵ *Id.* (citing *Seamless Pipe* and accompanying Issues and Decision Memorandum at 4 and *CORE* and accompanying Issues and Decision Memorandum at Comment 3).

²⁰⁶ *Id.* at 32 (citing *Tool Chests Prelim* and accompanying Preliminary Decision Memorandum at 30, 31).

- The findings of the WTO Appellate Body are not binding on the United States.²⁰⁷ Other facts on the record, *e.g.*, a high export tariff on steel rounds/billets, show input markets in the PRC to be distorted by government intervention.²⁰⁸
- The Department has previously found that state-owned steel companies provide steel inputs for LTAR and determined that prices of steel inputs are not market-driven by the GOC’s industrial policies.²⁰⁹
- Record evidence does not support the GOC’s assertion that prices “reflect market forces.”²¹⁰ The record indicates that thickness is considered a more important physical characteristic than width in distinguishing distinct types of hot-rolled/cold-rolled coiled steel.²¹¹ Thus, Hongyi’s claim that it “never” would have purchased “products of this size” is misleading.²¹²

Department’s Position:

We continue to find that the GOC’s involvement in the markets for steel rounds/billets, hot-rolled and cold-rolled coiled steel in the PRC results in the significant distortion of prices. As explained below, we cannot calculate a benefit for the provision of inputs at LTAR by using a tier-one benchmark. Thus, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the provision of steel rounds/billets, hot-rolled and cold-rolled coiled steel for LTAR.

As stated in the *Preliminary Determination*, we requested information regarding the inputs in the PRC during the POI and the prior two years.²¹³ We specifically requested information on the number of producers, the total volume and value of domestic consumption and production in the PRC, the total volume and value of imports of the input, as well as other information.²¹⁴ In its response, the GOC explained that the inputs (*i.e.*, steel rounds/billets, hot-rolled/cold-rolled coiled steel) are “not subject to export quota or export tariff during the POI.”²¹⁵ The GOC further claimed that “there is no central informational database to search for the requested information,” and that such information is not available for steel rounds/billets, hot-rolled/cold-rolled coiled steel.²¹⁶

²⁰⁷ *Id.* (citing, *e.g.*, *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1348-49 (Fed. Cir. 2005) and *SNR Roulements v. United States*, 341 F. Supp. 2d 1334, 1343 (CIT 2004)).

²⁰⁸ *Id.* at 32-33 (citing the GOC’s IQR at 109, Exhibit. II-F26).

²⁰⁹ *Id.* (citing *Seamless Pipe* and accompanying Issues and Decision Memorandum at 17-18; *CORE* and accompanying Issues and Decision Memorandum at Comment 3; and *53-Foot Domestic Dry Containers from the People’s Republic of China, Final Determination in the Countervailing Duty Investigation*, 80 FR 21209 (April 17, 2015) (*53-Foot Dry Containers*) and accompanying Issues and Decision Memorandum at Comment 6).

²¹⁰ *Id.* at 33 (citing *CORE* and accompanying Issues and Decision Memorandum at Comment 3, pages 10-11, and *53 foot Dry Containers* and accompanying Issues and Decision Memorandum at 18-23).

²¹¹ See Petitioners’ Rebuttal Brief at 37.

²¹² *Id.*

²¹³ See Preliminary Decision Memorandum at 24.

²¹⁴ *Id.*

²¹⁵ See the GOC’s IQR at 85, 109, and 137.

²¹⁶ *Id.* at 82-84, 86, 105-107, 110, 131, and 138.

The GOC initially reported the total number of hot-rolled and cold-rolled steel producers and identified the number of producers that are majority government-owned.²¹⁷ The GOC further explained that this data originated from a survey that the SSB conducted by taking a sample of the industries with main business income below 20 million {RMB}.²¹⁸ In addition, the GOC identified the domestic production information on hot-rolled and cold-rolled coiled steel by state-owned companies and provided four standards that the SSB adopted in discerning whether private enterprises are state-owned.²¹⁹ We asked the GOC to clarify the SSB's methodology and statistical scope in conducting its survey.²²⁰ Specifically, we asked the GOC to provide a sample survey the SSB used and to explain how the SSB was able to discern whether companies are majority state-owned when they initially did not provide their ownership information.²²¹ The GOC responded to our question by providing a weblink to the survey and asking the Department to consult the respondents directly on this matter.²²² Further, the GOC did not clearly explain how the SSB confirmed the companies' status as majority government-owned.²²³ As such, the GOC has provided more extensive responses in other recent proceedings, *e.g.*, *Tool Chests Final*, where the Department determined that domestic prices in the PRC are distorted such that they cannot be used as a tier-one benchmark.²²⁴ Moreover, we note that the GOC was indeed able to identify the total production of relevant steel inputs in other recent cases, such as hot-rolled steel in *CWP*.²²⁵ Thus, we continue to find that the GOC withheld the information necessary to our analysis and it did not cooperate to the best of its ability. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act.

Further, the GOC's refers to information on the record indicating the absence of formal price controls, production quotas, or export controls. The GOC therefore argues that the relevant markets are not distorted by government intervention. However, the GOC's argument disregards the fact that it failed to provide the requested information regarding the extent of state ownership and control over the relevant markets. Accordingly, we are relying on AFA, and adversely inferring extensive state ownership or control over the relevant markets. The GOC's position amounts to an argument that a respondent can selectively choose which information to provide on a relevant issue by providing information that is favorable to it while withholding information that is not favorable. The GOC then asserts that the Department should be bound by the favorable information. However, this would undermine the purpose of the facts available provisions of the Act, which is to ensure that a respondent does not obtain a more favorable result by failing to cooperate than by cooperating fully. We therefore do not accept the GOC's

²¹⁷ *Id.* at 130.

²¹⁸ *Id.*

²¹⁹ *Id.* at 122-123.

²²⁰ *See* the GOC's SQR at 15-17.

²²¹ *Id.*

²²² *Id.* at 16.

²²³ *Id.* at 16-17 (stating "the BBS would receive the result to confirm if an enterprise is a State-Owned Equity Controlled Company. The confirmation regarding the status... *the BBS could receive, however, not the detailed information with respect to the ownership information.*") (emphasis added).

²²⁴ *See Tool Chests Prelim* and accompanying Preliminary Decision Memorandum at 30 (unchanged in *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56852 (November 29, 2017) and accompanying Issues and Decision Memorandum at "Use of Facts Otherwise Available and Adverse Inferences").

²²⁵ *See CWP* and accompanying Issues and Decision Memorandum at 9-12.

argument. The GOC's references to a lack of evidence of formal, express controls over the market is not sufficient to undercut the Department's determination that the GOC failed to cooperate with the Department's request for information. Accordingly, the Department determines, as AFA, that the GOC dominates the three input markets at issue and concludes that the markets are distorted.

Finally, the Department's determination is consistent with U.S. law, which in turn is consistent with U.S. WTO obligations. In addition, the WTO reports relied upon by China involved "as applied" challenges to the CVD determinations at issue in those disputes and thus were limited to those determinations.

Comment 4: Benchmarks for Steel Rounds/Billets, Hot-Rolled and Cold-Rolled Coiled Steel

The Petitioners' Comments and Rebuttal Comments

- The Department's use of a simple average of world market prices submitted by Hongyi and the petitioners for steel rounds/billets and hot-rolled/cold-rolled coiled steel gave unfair weight to certain secondary market countries.²²⁶
- The steel input prices provided by Hongyi are not representative world market prices, but rather, only include select countries, predominantly located in a similar geographic location and exclude the large developed markets in Europe or North America.²²⁷
- The Department should have rejected this information, but rather, by using a simple average of benchmarks, the Department rewarded the respondents' attempt to skew the pricing data towards only secondary steel markets, not the large developed markets in Europe or North America.²²⁸
- In recent investigations, the Department has repeatedly indicated its preference for weighted-average prices.²²⁹
- The Department has previously rejected pricing data reported by certain sources, including American Metal Market (AMM), Steel Orbis, and SBB-Platt, in the preliminary determinations for *Aluminum Foil* and *Tool Chests* because the reported information reflects summary prices.²³⁰ Without the underlying raw data, the petitioners contend that

²²⁶ See Petitioners' Case Brief at 20.

²²⁷ *Id.* at 21.

²²⁸ *Id.* at 22.

²²⁹ *Id.* (citing *Final Results of the Countervailing Duty Investigation: Certain Polyethylene Terephthalate Resin from the People's Republic of China*, 81 FR 13337 (March 14, 2016) (*Polyethylene Resin*) and accompanying Issues and Decision Memorandum at 12 ("According to 19 CFR 351.511(a)(2)(iv), we calculated a weight average of the GTA prices for each month"); and *Final Affirmative Determination of Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey*, 79 FR 41964 (July 18, 2014) and accompanying Issues and Decision Memorandum at comment 4 ("Using weighted average prices where possible reduces the potential distortionary effect of any specific transactions (*e.g.*, extremely small transactions) in the data").

²³⁰ *Id.* at 23 (citing *Tool Chests Prelim* and accompanying Preliminary Decision Memorandum at 30-32 and *Preliminary Results of the Countervailing Duty Investigation: Certain Aluminum Foil from the People's Republic of China*, 82 FR 37844 (August 17, 2017) (*Aluminum Foil Prelim*) and accompanying Preliminary Decision Memorandum at 16-17).

the Department concluded the information was unverifiable and, thus, unreliable for benchmarking purposes.²³¹

- In *Citric Acid*, the Department initially calculated world benchmarks based upon the simple average of export prices from several countries.²³² On remand, the Department recalculated the benchmarks using weighted-average values.²³³
- The Department should thus reject Hongyi’s contention that the petitioners’ GTA data are “unsuitable.”²³⁴ The Department should instead reject Hongyi’s data or weight average with the GTA export prices to derive a non-skewed, robust benchmark.²³⁵

Huacheng I&E’s Comments and Rebuttal Comments

- The GTA data submitted by the petitioners and used by the Department in the benchmark average for the purposes of the *Preliminary Determination* is not specific to prices for steel billets. For the final determination, the Department should use only the benchmarks submitted by Hongyi.²³⁶
- Specifically, as reported in Huacheng I&E’s benchmark rebuttal brief,²³⁷ HTS code 7206.90²³⁸ covers world exports of iron and non-alloy steel in primary forms other than ingots, and HTS code 7224.10²³⁹ covers world exports of ingots and other primary forms of alloy steel.
- The Department should reject the petitioners’ argument that the Department should solely utilize the petitioners’ GTA data for the derivation of a benchmark to value steel rounds and billets, as the Department has used similar sources in other cases when the data came from multiple sources,²⁴⁰ is specific to the product under investigation and as a result, is superior to the GTA data submitted by the petitioners.²⁴¹

²³¹ *Id.*

²³² *Id.* at 24 (citing *Final Affirmative Decision of the Countervailing Duty Administrative Review: Citric Acid and Certain Citrate Salts from the People’s Republic of China*, 79 FR 101 (January 2, 2014) (*Citric Acid Review*) and accompanying Issues and Decision Memorandum at 20 -26).

²³³ *Id.* (citing *RZBC Group Shareholding Co., Ltd., RZBC Co., Ltd., RZBC Imp. & Exp. Co., Ltd., and RZBC (Juxian) Co., Ltd. v. United States*, Court No. 14-00041 (CIT 2015)).

²³⁴ *Id.* at 38.

²³⁵ *Id.*

²³⁶ See Huacheng I&E’s Case Brief at 3.

²³⁷ See Huacheng I&E’s letter, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Rebuttal Benchmark Information,” dated September 1, 2017 (Huacheng I&E’s Benchmark Rebuttal Brief) at Exhibit 1.

²³⁸ 7206.90: 7206 (Iron and nonalloy steel in ingots or other primary forms (excluding iron of heading 7203)); .90 (Other {than ingots}).

²³⁹ 7224.10: 7224 (Other alloy steel in ingots or other primary forms; semi-finished products of other alloy steel); .10 (Ingots and other primary forms).

²⁴⁰ *Id.* (citing *Boltless Steel Shelving Units Prepackaged for Sale from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR. 51775 (August 26, 2015) (*Boltless Shelving*) and accompanying Issues and Decision Memorandum at 18).

²⁴¹ *Id.*

- The Department cannot value a good allegedly provided for LTAR using a world market price for an entirely different product as this would be contrary to section 771(5)(E)(iv) of the Act and 19 CFR 351.51 1(a)(2)(ii).²⁴²
- Rejecting the Steelguru and Metal Expert data or continuing to use it in an average with the GTA data would contravene the Department’s mandate to calculate rates “as accurately as possible.”²⁴³

Hongyi’s Comments and Rebuttal Comments

- Hongyi’s benchmark data for hot-rolled/cold-rolled coiled steel are more specific to the products being valued, and they eliminate the distortive effect of different size and quality hot-rolled coiled steel and cold-rolled coil steel included in the petitioners’ GTA data.²⁴⁴
- The statutory and regulatory requirements instruct the Department to select the most specific benchmarks possible for its LTAR calculation and to “conduct the most accurate ‘apples-to-apple’ comparison.”²⁴⁵
- The petitioners’ submitted data capture hot-rolled coiled steel and cold-rolled coiled steel whose widths are far smaller than those purchased by Hongyi; it is therefore unsuitable for use as a tier-two benchmark.²⁴⁶ These prices are not prices that Hongyi “would have paid,” because they simply “would never have” products with smaller widths.²⁴⁷
- The regulations instruct the Department to use average prices provided by the parties.²⁴⁸ In addition, the Department has consistently used AMM, Steel Orbis and/or SBB/Platts as sources for tier-two benchmarks in numerous PRC CVD proceedings.²⁴⁹
- The petitioners’ basket benchmarks are less specific than Hongyi’s; the Department should therefore reject the petitioners’ GTA prices.²⁵⁰ At a minimum, Hongyi argues that the Department should continue to use the same averaging methodology it used in the *Preliminary Determination*.²⁵¹
- GTA data submitted by the petitioners and used by the Department is not appropriate for steel rounds/billets. The petitioners used GTA data from HTS code 7206.90 which covers “world exports of iron and non-alloy steel in primary forms other than ingots,”

²⁴² *Id.*

²⁴³ See Huacheng I&E’s Rebuttal Brief at 3 (citing *Borusan Mannesmann v. United States*, 61 F. Supp. 3d 1306, 1336 (CIT 2015) (citing *Rhone Poulenc v. United States*, 899 F.2d 1185 (Fed. Cir. 1990))).

²⁴⁴ See Hongyi’s Case Brief at 7.

²⁴⁵ *Id.*

²⁴⁶ *Id.* at 8-9.

²⁴⁷ *Id.*

²⁴⁸ See Hongyi’s Rebuttal Brief at 9-10.

²⁴⁹ *Id.* at 10-11.

²⁵⁰ *Id.* at 13.

²⁵¹ *Id.*

and, HTS number 7224.10, which covers “world exports of ingots and other primary forms of alloy steel.”²⁵²

- If the Department continues to use the petitioners’ GTA data, then it should only use HTS 7224.10 in the benchmark for calculation purposes.²⁵³

GOC’s Comments

- The Department must use an in-country PRC benchmark.²⁵⁴

Department’s Position:

For the *Preliminary Determination*, the Department calculated a benchmark for steel rounds/billets and hot-rolled/cold-rolled coiled steel based on a simple average of GTA data submitted by the petitioners and monthly data from various sources (*i.e.*, Metal Expert, AMM Steel Orbis, SBB-Platts, and Steelguru) submitted by Hongyi. After reviewing the record and in consideration of the arguments raised in the case and rebuttal briefs submitted by interested parties, the Department continues to find that the sources provided by both parties (*i.e.*, Metal Expert, AMM Steel Orbis, SBB-Platts, and Steelguru, as well as trade data from GTA) generally represent appropriate benchmark sources in this case for hot-rolled/cold-rolled coiled steel, and we have continued to use a simple average of these sources for benchmarking purposes in this final determination. However, we find that the specific GTA data submitted by the petitioners to benchmark steel rounds/billets is not appropriate, because it is not specific to the material in question.

First, we disagree that we should disregard Hongyi’s proposed benchmark data because they only represent countries in a similar geographic location. Our regulation instructs us to rely on a “world market price” where it is reasonable to conclude that such price would be available to purchasers in the country in question.²⁵⁵ Additionally, we are required to use the parties’ submitted data where there is more than one commercially available world market price by averaging such prices to the extent possible, making due allowance for factors affecting comparability.²⁵⁶ Although we agree that the sources that Hongyi used (*i.e.*, AMM, Platts, Steelguru, Metal Expert World Steel Data and Steel Orbis) use various pricing techniques, it is clear from the record that the purpose of the assessments is to provide transparent market prices of various products. Specifically, Platts considers “firm bids and offers that are transparent and open to any counterparty... bids, offers or transactions that are not transparent may not be considered.”²⁵⁷ Similarly, AMM bases its prices and assessments on “regular contact with a

²⁵² See Hongyi’s Rebuttal Brief at 2.

²⁵³ See Hongyi’s Case Brief at 5.

²⁵⁴ See GOC’s Case Brief at 36.

²⁵⁵ See 19 CFR 351.511.

²⁵⁶ *Id.*

²⁵⁷ See the petitioners’ letter, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China – Petitioners’ Pre-Preliminary Comments and Rebuttal to Respondent’s Benchmark Submission,” (Petitioners Pre-Prelim Comments) dated September 1, 2017 at Attachment 2.

wide variety of market participants.”²⁵⁸ Steel Orbis gathers prices “from actual international & local transactions... confirmed by the sellers and the buyers.”²⁵⁹ We also find that the Department has relied on sources including AMM, Platts, and Steel Orbis in the past to calculate benefit (*e.g.*, *53-foot Dry Containers*, *Drill Pipe*, and *Oil Country Tubular Goods*).²⁶⁰ Thus, we determine that they are commercially available, world market prices that would be available to PRC producers, and there is no basis to reject Hongyi’s benchmark data.

We further disagree with the petitioners’ contention that we should use a weighted average of the benchmarks. The petitioners argue that using a simple average of Hongyi’s benchmark submissions with a weighted average of the petitioners’ GTA data skews the benchmark to certain secondary markets. First, we note that the Act and the Department’s regulations do not specify which approach to take when we derive an average for benchmarking purposes and that, by necessity, the Department exercises discretion in determining an appropriate approach given the facts in any given case.²⁶¹ When deriving an average value from available data to derive a “market-determined price,” the Department takes into account, where possible and depending on the particular facts of a case, the source, nature and completeness of the available data.²⁶² This is a case-by-case assessment. In the case of steel rounds/billets, the Department has determined that the petitioners’ GTA data is not specific, and therefore, we have not used the GTA data in the construction of the benchmark for steel rounds/billets for the final determination, as explained below. Instead, we have simple averaged the values provided by Hongyi, as discussed further below.

With respect to hot-rolled/cold-rolled coiled steel, we find that it is appropriate to use an average of the data submitted by both the petitioners and Hongyi, because they reflect the world market price. The data provided by Hongyi do not contain transaction volumes, whereas the GTA data submitted by the petitioners do. Specifically, to construct the benchmark for the final determination, using the monthly quantity and value of hot-rolled steel and cold-rolled coiled steel, the petitioners provided a monthly average unit value (AUV),²⁶³ which we then averaged with Hongyi’s data from four separate sources (*i.e.* AMM, Steel Orbis, SBB-Platts and

²⁵⁸ *Id.* at Attachment 3.

²⁵⁹ *Id.* at Attachment 4.

²⁶⁰ See *53-foot Dry Containers* and accompanying Issues and Decision Memorandum at 5; *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe*) and accompanying Issues and Decision Memorandum at 32; and *Oil Country Tubular Goods* and accompanying Issues and Decision Memorandum at 14.

²⁶¹ Section 771(5)(E) of the Act requires the Department to take into account “prevailing market conditions,” which include price, quality, availability, marketability, transportation, and other conditions of purchase or sale. The relevant regulation, 19 CFR 351.511(a)(2)(ii) states that if “there is more than one commercially available world market price, the Secretary will average such prices to the extent practicable; making due allowance for factors affecting comparability.”

²⁶² See *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) and accompanying Issues and Decision Memorandum at Comment 17.

²⁶³ See Petitioners’ Pre-Prelim Comments at exhibit 4.

Steelguru).²⁶⁴ By using the weighted-average GTA unit prices in this manner, and by continuing to include the other, non-GTA data on the record, we maintain the most robust world market price possible that reflects the spectrum of prices available under market principles. We also account for the quantities, to the extent they are available on the record. We note that using both weightable and un-weightable data to construct a robust world market price was upheld in *RZBC Companies v. United States II*.²⁶⁵

With respect to the respondents' assertions that the GTA data submitted by the petitioners is not usable because it is not specific to the inputs in question, we agree with respect to the benchmark for steel rounds/billets. Hongyi reports, and the Department verified for both Hongyi and Huacheng I&E, that the input in question is billets, which are semi-finished steel input products.²⁶⁶ The sources provided by Hongyi provide benchmark prices specific to billet inputs of the type purchased by Hongyi and Huacheng I&E.²⁶⁷ In contrast, the petitioners provided monthly GTA data for quantity and value of world exports of HTS 7206.90 and 7224.10 (excluding shipments to and from the PRC) as a benchmark for the same billet inputs.²⁶⁸ However, by their very definition, neither of the petitioners' HTS categories are specific to billet inputs. Specifically, HTS code 7206 covers "iron and non-alloy steel in ingots or other primary forms (excluding iron of heading 7203)" with the .90 subheading constituting "other" primary forms (*i.e.*, non-ingot primary forms). HTS code 7224 covers "other alloy steel in ingots or other primary forms; semi-finished products of other alloy steel" with the .10 subheading specifying "Ingots and other primary forms."²⁶⁹ As such, the petitioners' data provides export prices for primary forms of steel inputs that have not yet been manufactured into the semi-finished form of a billet. The HTS Explanatory Notes published by the World Customs Organization and provided to the record by Huacheng plainly demonstrate that primary and semi-finished steel forms are not classified in the same headings.²⁷⁰ Rather, semi-finished carbon and alloy steel products, such as billets, are classified at the standardized international level under HTS 7207 (and subcategories thereof) and HTS 7224.90 (and subcategories thereof).²⁷¹ Accordingly, we agree with the respondents that it would be improper to value a good allegedly provided for LTAR using a world market price for a product not as specific as other information on the record, and have thus not included the GTA data for exports of 7206.90 and 7224.90 in the calculation of benchmark prices for steel round/billet inputs. Therefore, for the purposes of this

²⁶⁴ See Hongyi's Benchmark Brief at exhibit 3 and memorandum "Analysis Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Jiangsu Hongyi Pipe Co., Ltd." dated September 18, 2017 (Hongyi Prelim Calc Memo).

²⁶⁵ See *RZBC Group Shareholding Co., Ltd., RZBC Co., Ltd., RZBC Imp. & Exp. Co., Ltd., and RZBC (Juxian) Co., Ltd. v. United States*, Court No. 14-00041 (CIT March 30, 2016) (Court Order affirming remand redetermination) (*RZBC Companies v. United States II*).

²⁶⁶ See Hongyi's Benchmark Brief at page 2 and Exhibit 3.

²⁶⁷ *Id.* The data submitted by Hongyi define the inputs as SteelGuru: Steel Billets, size 125-150, grade Rolling, and Metal World: Steel products, Semi Finished products, Billets, Steel products, Semi-finished products, Pipe billets.

²⁶⁸ See letter from the petitioners, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China - Petitioners' Comments and Submission of Factual Information Regarding Measurement of Adequacy of Remuneration Comments on Factual Information," dated August 22, 2017 at Attachment 3.

²⁶⁹ In other words, six digit HTS 7224.10 is the alloy steel equivalent of four-digit HTS 7206 for carbon steel.

²⁷⁰ See Huacheng's Benchmark Rebuttal Brief at Exhibit 1.

²⁷¹ *Id.* We note that export data does not exist on the record in the alternative for these semi-finished HTS categories.

final determination, the Department has calculated a benefit for the provision of steel round/billet inputs for LTAR based exclusively on the data submitted by Hongyi.

However, we disagree with the respondents' assertions that the petitioners' GTA data for hot-rolled/cold-rolled coiled steel benchmarks represent a broad basket category and are not representative of the inputs in question. Unlike the situation explained above concerning the billet benchmarks, despite the respondents' claims otherwise, there is no record information that demonstrates that export data for HTS 7208.27 (Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated: Other, in coils, not further worked than hot-rolled, pickled: Of a thickness of less than 3 mm) and 7209.16 (Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated; In coils, not further worked than cold-rolled (cold-reduced): Of a thickness exceeding 1 mm but less than 3 mm) are in any way inappropriate as a benchmark for hot-rolled coiled steel and cold-rolled coiled steel inputs, respectively. Indeed, the description of both confirms that each are plainly representative of hot and cold-rolled coiled inputs. As such, as we did in the *Preliminary Determination*, we continue to rely on the simple average of: 1) the weighted-average GTA data submitted by the petitioners; and, 2) the export prices reported by Hongyi from AMM, Steel Orbis, SBB-Platts and Steelguru for hot-rolled and cold-rolled coiled steel to calculate a benefit for the provision of hot-rolled and cold-rolled coiled steel for LTAR.

Comment 5: The Appropriate Benchmark for Ocean Freight

Hongyi's Comments

- The Department should reject the petitioners' ocean freight arguments because there is no basis to reject Hongyi's ocean freight benchmarks, nor is there any reason to modify the ocean freight calculation other than to exclude the Santos to Shanghai shipment data.²⁷²
- Hongyi notes that it was the only party that submitted ocean freight benchmarks for all 12 months of the POI, and specifically for January to July 2016.²⁷³ By contrast, the petitioners only submitted data for the months of August through December of 2016, claiming that data for the other months of the POI were unavailable.²⁷⁴

The Petitioners' Comments and Rebuttal Comments

- The Department should revise the ocean freight benchmark rates to be consistent with other recent determinations.²⁷⁵ The Department's choice of a simple average of the petitioners' Maersk data and Hongyi's Descartes data for the ocean freight benchmark rate does not reflect an accurate representation of global rates because Hongyi's submission is limited to certain routes between the U.S. and Shanghai.²⁷⁶ The petitioners argue that the Department should adjust the calculations in accordance with 19 CFR 351.511(a)(2)(iv) to include more ports throughout the world using the August to December 2016 Maersk rates as it did in the *Tool Chests Prelim*.²⁷⁷

²⁷² See Hongyi's Case Brief at 9.

²⁷³ See Hongyi's Rebuttal Brief at 12.

²⁷⁴ *Id.*

²⁷⁵ See Petitioners' Case Brief at 25.

²⁷⁶ *Id.* at 26.

²⁷⁷ See Petitioners' Rebuttal Brief at 39.

Department's Position:

For the final determination, the Department has continued to use a simple average of ocean freight rates reported by the petitioners and Hongyi sourced from Maersk Shipping Line and Descartes, representing actual price quotes for the shipment of cargo from various points around the world to Shanghai, PRC. Upon further consideration of the disclaimers in both the Maersk and Descartes data, we believe both data sources reasonably reflect market prices, and there is insufficient basis on the record to exclude one over the other. Accordingly, we used the average of the two commercially available world market prices (*i.e.*, Descartes and Maersk) on the record of this investigation consistent with 19 CFR 351.511(a)(2)(ii).²⁷⁸

Comment 6: External Benchmark Interest Rates for Loans

Huacheng I&E's Comments

- The Department improperly used an external market-based interest rate benchmark to value the benefit of loans received by Huacheng I&E.²⁷⁹ Rather, the information submitted by the GOC demonstrates that the PRC's financial system is market-oriented and the Department should thus use in-country tier-one benchmarks for interest rates in this investigation.²⁸⁰

No other party provided comments on this issue.

Department's Position:

The Department disagrees with Huacheng I&E's argument regarding the inappropriateness of the use of an external market-based benchmark for interest rates to value the benefit of loans received by Huacheng I&E. Section 771(5)(E)(ii) of the Act and 19 CFR 351.505 indicate that the benchmark should be a market-based rate. For the reasons first explained in *Coated Paper*, loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.²⁸¹ As stated in the *Preliminary Determination*, "the Department recently conducted a re-assessment of the PRC's financial system for CVD benchmarking purposes."²⁸² Based on this re-assessment, the

²⁷⁸ See *TMK IPSCO v. United States*, 222 F. Supp. 3d 1306, 1319-1321 (CIT 2017) (Sustaining the Department's decision to use an average of two freight quotes).

²⁷⁹ See Huacheng I&E's Case Brief at 6.

²⁸⁰ *Id.* at 7.

²⁸¹ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper Amended Final*) (revised rate for "Preferential Lending to the Coated Paper Industry" program) and accompanying Issues and Decision Memorandum at Comment 10.

²⁸² See memorandum to the file, "Countervailing Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Review of China's Financial System Memorandum," dated August 1, 2017, transmitting the memorandum, "Review of China's Financial System for Countervailing Duty (CVD) benchmarking Purposes," dated July 21, 2017.

Department continues to find, that despite reforms to date, the GOC's role in the banking system continues to fundamentally distort lending practices in the PRC in terms of risk pricing and resource allocation, precluding the use of interest rates in the PRC for CVD benchmarking or discount rate purposes.²⁸³ Consequently, we continue to find that any loans received by the respondents from private PRC or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i).²⁸⁴ For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii).²⁸⁵ Therefore, because of the special difficulties inherent in using a PRC benchmark for loans, the Department continues to select an external market-based benchmark interest rate.²⁸⁶ Moreover, the use of an external benchmark is consistent with the Department's practice. For example, in *Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada."²⁸⁷ Therefore, we made no changes to our calculations for the final determination with respect to the external benchmark interest rates for loans.

Comment 7: GOC Policy Loans during the POI

GOC's Comments

- In the *Preliminary Determination*, the Department determined that the GOC provided policy loans to both Huacheng I&E and Hongyi, failing to recognize that the reforms made in the PRC under the *Capital Rules for Commercial Banks (provisional)* have fundamentally changed the banking sector of the PRC.²⁸⁸
- The state-owned commercial banks (SOCBs) in China are not government "authorities"
- No policy loan program exists for cold drawn mechanical tubing producers, and the industry policies to which the Department cited in the *Preliminary Determination* are overly-broad and do not specifically refer to cold drawn mechanical tubing.²⁸⁹ As a result, the GOC contends that the loans provided to Huacheng I&E and Hongyi are not countervailable.²⁹⁰
- Record evidence confirms provincial governments including the government of Jiangsu Province, where both Hongyi and Huacheng I&E are located, supported production of cold drawn mechanical tubing, however that support did not include the bank loans received by the respondents.²⁹¹

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ 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) (*Lumber from Canada*), and accompanying Issues and Decision Memorandum at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

²⁸⁸ See the GOC's Case Brief at 44.

²⁸⁹ *Id.* at 48.

²⁹⁰ *Id.* at 45.

²⁹¹ *Id.* at 44.

The Petitioners' Rebuttal Comments

- The record establishes a policy of preferential lending to the cold drawn mechanical tubing industry, and the courts have repeatedly affirmed the Department's decision to weigh the record evidence and find policy loans countervailable.²⁹²
- The Department has established a link between the GOC policy of promoting the cold drawn mechanical tubing industry and SOCBs' lending to promoted sectors.²⁹³
- Consistent with PRC industrial policies, Jiangsu's steel plan outlined a series of measures aimed at achieving its goals, including the use of fiscal and tax incentives, and bank financing.²⁹⁴
- The GOC cites to the WTO when claiming SOCBs are not government authorities.²⁹⁵ Section 771(5)(B) of the Act defines "authority" to mean "a government of a country or any public entity within the territory of the country".²⁹⁶ The WTO Appellate Body rulings are not binding in the United States.²⁹⁷
- The Department has developed a "longstanding practice of treating most government-owned corporations as the government itself."²⁹⁸
- The GOC's Iron and Steel Industry 12th Five-Year Plan called for promotion of "steel varieties, qualities and standards in all rounds," in addition to increased production of high-strength and special steel, categories inclusive of the cold-drawn mechanical tubing.²⁹⁹

Department's Position:

The Department preliminarily determined that there was a program of preferential policy lending specific to producers of cold drawn mechanical tubing within the meaning of section 771(5A)(D)(i) of the Act. When examining a policy lending program, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support such objectives or goals. Where such plans or policy directives exist, then it is our practice to find that a policy lending program exists that is *de jure* specific to the targeted industry (or producers that fall under that industry) within the meaning of section 771(5A)(D)(i) of the Act. Once that finding is made, we rely upon the analysis undertaken in *Coated Paper* to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.³⁰⁰

²⁹² See Petitioners' Rebuttal Brief at 49 (citing *Wuhan Bee Healthy Co. v. United States*, 374 F. Supp. 2d 1299, 1304 (CIT 2005) and *Shandong Huarong Gen. Corp. v. United States*, 159 F. Supp. 2d 714, 723 (CIT 2001))

²⁹³ *Id.* (citing *Drill Pipe* and accompanying Issues and Decision Memorandum at 15-17; *Seamless Pipe* and accompanying Issues and Decision Memorandum at 15-16; and, *Oil Country Tubular Goods* and accompanying Issues and Decision Memorandum at 12).

²⁹⁴ *Id.* at 50 (citing GOC's 1st SQR at exhibit II).

²⁹⁵ *Id.* at 52 (citing the GOC's case brief at 49-50).

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.* (citing *Countervailing Duties; Final Rule*, 63 FR 64348, 65377 (November 25, 1998) (*CVD Preamble*)).

²⁹⁹ *Id.* at 49 (citing the GOC's IQR at exhibit II-B15, at IV.1).

³⁰⁰ See *Coated Paper* and accompanying Issues and Decision Memorandum at Comment 8.

The GOC argues that promoting an industry and providing special policy loans from SOCBs are two different things. In *Drill Pipe*, and *Oil Country Tubular Goods*, however, the Department established a link between the GOC policy of “promoting” a specific industry and policy loans to that sector from SOCBs.³⁰¹ In the GOC’s 1st SQR, at Exhibit III, Summary and Index of 11th-13th five-year plan for Jiangsu Province, a series of measures aimed at promoting the iron and steel industry, including the provision of loans, are outlined. Record evidence indicates that financial support directed specifically toward certain encouraged industries, including the iron and steel industry, which includes the high strength and special steel categories, inclusive of cold-drawn mechanical tubing, does in fact exist.³⁰² Further, the SOCBs act in accordance with these government policies and effectuate government interests in providing the lending, and therefore they are “authorities” within the meaning of section 771(5)(B) of the Act.³⁰³ The GOC argues that the Department is relying on outdated findings to support its decision that SOCBs are “authorities,” but we note that the Department updated its analysis of the Chinese banking sector this year, and we continue to conclude that the GOC uses SOCBs to fulfill government functions.³⁰⁴ Therefore, we continue to find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are “authorities,” and thus we have made no changes to our calculations for policy loans for the final determination.

Comment 8: Huacheng I&E’s Bank Acceptance Bills

The Petitioners’ Comments

- The Department erroneously failed to treat Huacheng I&E’s bank acceptance bills as policy loans for the purposes of the *Preliminary Determination*, even though the Department found that the GOC implemented policies directed at developing the PRC iron and steel industry, including cold-drawn mechanical tubing, through preferential loans.³⁰⁵
- Huacheng I&E’s bank acceptance bills constitute preferential loans, where the bank guarantees and pays a note on Huacheng I&E’s behalf, which allows Huacheng I&E to receive goods without having to make an immediate payment, for fees that are commensurate with rates charged for other types of loans.³⁰⁶ As a consequence, the

³⁰¹ See *Drill Pipe* and accompanying Issues and Decision Memorandum at 15-17; *Seamless Pipe* and accompanying Issues and Decision Memorandum at 15-16; and *Oil Country Tubular Goods* and accompanying Issues and Decision Memorandum at 12.

³⁰² See the GOC’s IQR at Exhibit II-B15 at IV.1.

³⁰³ See, e.g., *Coated Paper* and accompanying Issues and Decision Memorandum at Comment 1.

³⁰⁴ See memorandum to the file, “Countervailing Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Review of China’s Financial System Memorandum,” dated August 1, 2017, transmitting the memorandum, “Review of China’s Financial System for Countervailing Duty (CVD) benchmarking Purposes,” dated July 21, 2017. The July 21, 2017, memorandum expressly states, among other things, that the government uses “the banking sector as a key policy instrument to allocate capital to priority industries.” *Id.* at 7.

³⁰⁵ See Petitioners’ Case Brief at 27.

³⁰⁶ *Id.* at 28.

Department should reverse its *Preliminary Determination* and countervail Huacheng I&E's bank acceptance bills as policy loans for the final determination.³⁰⁷

Huacheng I&E's Rebuttal Comments

- The Department should reject the petitioners' claim that Huacheng I&E's bank acceptance bills represent countervailable policy loans³⁰⁸ because the banks do not finance Huacheng I&E's material purchases or pay suppliers on Huacheng I&E's behalf.³⁰⁹ Thus, Huacheng I&E neither receives money from the bank nor pays interest to it.³¹⁰ Moreover, because Huacheng I&E is required to deposit the full face value of the bank acceptance bill into its guaranty account before the maturity date of the bill, Huacheng I&E's suppliers do not receive any money from the bank unless it was already deposited by Huacheng I&E.³¹¹ In addition, Huacheng I&E may provide a guarantee deposit up to the full value of the bill, and earn interest on that deposit.³¹² Thus, the bank acceptance bills are more like letters of credit rather than loans.³¹³
- The only circumstances under which these transactions would represent loans, is if Huacheng I&E fails to provide sufficient funds to cover the bank acceptance bill by the applicable date, which has never occurred.³¹⁴

Department's Position:

We conducted a thorough examination of the terms and operations of Huacheng I&E's bank acceptance bills at verification.³¹⁵ We reviewed the bank acceptance contracts, transaction details, bank slips and accounting ledgers for selected transactions.³¹⁶ We confirmed that Huacheng I&E timely deposited the full amount of the applicable bank acceptance bills in accordance with terms established in its respective contracts.³¹⁷ We observed that Huacheng I&E paid, at times, a service fee equal to a percentage of the contract.³¹⁸ Thus, we confirmed the terms and conditions of the bank acceptance bills as Huacheng I&E described them: that the banks guarantee payment to the supplier for a fee; that Huacheng I&E may place a guarantee deposit on the account, upon which it earns interest; that Huacheng I&E is obligated to pay the full amount of the bill before the maturity date of the bill; and, that Huacheng I&E at no time received a loan from the bank.³¹⁹

³⁰⁷ *Id.* at 29.

³⁰⁸ *See* Huacheng I&E's Case Brief at 4-5.

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id.* at 4-5, (citing Huacheng I&E's IQR at Volume 1, page 20).

³¹² *Id.* at 4-5.

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *See* Huacheng I&E's Verification Report at 11-12.

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*

In addition, we tied Huacheng I&E's reported loans to its short-term liabilities, confirmed that there were no additional loans, and found no discrepancies with the information reported in the response.³²⁰ We tied the outstanding balance of Huacheng I&E's loans and/or interest payments from its loan accounts to its audited financial statements.³²¹ We found no discrepancies with the information that Huacheng I&E reported regarding the terms of its bank acceptance bills, guaranty payments, interest earnings, and transaction fees.³²² Therefore, we have made no changes to Huacheng I&E's loan calculations or our treatment of its bank acceptance bills for the final determination.

Comment 9: The Export Buyer's Credit Program

GOC's Comments

- The GOC fully responded to the Department's requests for information, explaining that respondents did not avail themselves of the Export Buyer's Credit Program.³²³ Because the GOC fully participated in the investigation, and because the Department chose not to verify its questionnaire responses, the Department must assume that all factual information submitted on the record by the GOC is accurate.³²⁴ As a result, the Department should not countervail the Export Buyer's Credit Program for the final determination.³²⁵
- If the Department continues to use an AFA rate for the final determination, it should not use the 10.54 percent rate used in the *Preliminary Determination*.³²⁶ In *Aluminum Foil Prelim*, the Department calculated a rate of 2.06 percent for the Export Seller's Credit Program for the preliminary determination.³²⁷ If the Department continues to apply AFA to the Export Buyer's Credit Program for the final determination, the Department should use the 2.06 percent rate calculated in *Aluminum Foil Prelim*.³²⁸

Huacheng I&E Comments

- Even assuming the GOC did not provide a response, the record provides sufficient evidence to show that the Export Buyer's Credit Program was not used during the POI.³²⁹ Therefore, the Department must decline to calculate a benefit under the Export Buyer's Credit Program.³³⁰
- In previous instances where the Department has found that the GOC did not provide the necessary information, the Department has used other record evidence to determine

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.*

³²³ See the GOC's Case Brief at 8.

³²⁴ *Id.* at 14.

³²⁵ *Id.* at 18.

³²⁶ *Id.* at 19.

³²⁷ *Id.* (citing *Aluminum Foil Prelim* and accompanying Preliminary Decision Memorandum at 45).

³²⁸ *Id.*

³²⁹ See Huacheng I&E's Case Brief at 4.

³³⁰ *Id.* at 6.

whether a program was used.³³¹ The CIT has sustained this determination,³³² and the Department should continue with this practice.³³³

- Huacheng I&E submitted affidavits from all of its U.S. customers stating that they did not use the Export Buyer's Credit Program, and no evidence exists to contradict this evidence.³³⁴

Hongyi's Comments

- If the Department chooses to calculate a benefit, the AFA rate used for the *Preliminary Determination* should be revised.³³⁵ The Department considers a benefit to exist for loan programs "to the extent that the amount the firm pays on the government provided loan is less than the amount the firm would pay on a comparable commercial loan that the firm could actually obtain on the market",³³⁶ as stated in 19 CFR 351.505(a). The highest CVD rate a company could receive under the Export Buyer's Credit Program presuming all the companies' exports are covered by loans is 0.56 percent.³³⁷
- In a CVD proceeding, the Department's investigation of an alleged subsidy has two goals, (1) to determine how the program operates and (2) to determine whether it was used by the respondents or their customers.³³⁸

³³¹ *Id.* (citing *Chlorinated Isocyanurates* and accompanying Issues and Decision Memorandum at 14-15 and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China, Final Results of the Countervailing Duty Administrative Review*, 81 FR 46904 (July 19, 2016) (*Solar Cells POR 2*) and accompanying Issues and Decision Memorandum at 1).

³³² *Id.* (citing *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 2017 Slip Op. 106 (August 18, 2017), where the Court stated that "it would have been inappropriate for Commerce to apply AFA for no reason other than to deter the GOC's non-cooperation in future proceedings when relevant evidence existed elsewhere on the record." See also *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254, 1262 at 10 (CIT 2012) (although adverse collateral effects are permissible, they are "disfavored and should not be employed when facts not collaterally adverse to a cooperative party are available."), affirmed in *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1369-70 (Fed. Cir. 2014)).

³³³ *Id.* at 5 (citing *SKF USA, Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001) ("{A}n agency action is arbitrary when the agency offer{s} insufficient reasons for treating similar situations differently.") (quoting *Transactive Corp. v. United States*, 91 F.3d 232, 237, 319 U.S. App. D.C. 428 (D.C. Cir. 1996)).

³³⁴ *Id.* at 4.

³³⁵ See Hongyi's Case Brief at 17.

³³⁶ *Id.*

³³⁷ *Id.* (citing *China Kingdom Import & Export Co., Ltd v. United States*, 507 F. Supp. 2d 1337,1341 (CIT 2007) and *Boltless Shelving* and accompanying Issues and Decision Memorandum at 45 (citing *China Kingdom* 507 F. Supp. 2d at 1341) ("In this investigation, the Department decided not to conduct verification of the GOC Without verification, the Department must assume for purposes of its determination that every factual statement submitted by the GOC is accurate"))).

³³⁸ *Id.* at 11 (citing *Stainless Steel Sheet and Strip in Coils from France: Final Results of Countervailing, Duty Administrative Review*, 67 FR 62098 (Oct. 3, 2002) and accompanying Issues and Decision Memorandum at Comment 1 (finding that because no financial contribution was made, *i.e.*, no revenue forgone, there is nothing to countervail even if a benefit could be calculated)).

- The Export Buyer’s Credit Program was not used by Hongyi’s U.S. customers.³³⁹ Identical information was provided in *Solar Cells POR 2*,³⁴⁰ where despite the determination that the GOC’s actions were determined uncooperative, the Department found the customer declaration sufficient.
- The Department is required to consider all record evidence when considering the use of this program, independent of the GOC’s actions.³⁴¹
- If the Department applies AFA to the Export Buyer’s Credit Program, the rate of 10.54 percent is unlawful as the rate was not selected from a similar program and there was no corroboration from secondary sources. Section 776(d)(A) of the Act requires corroboration when using secondary sources. The Export Buyer’s Credit Program is an export subsidy program and 19 CFR 351.525(b)(2) states that export subsidy programs are tied to export sales and export sales are used as the denominator in the benefit calculation. For loan programs, the Department considers a benefit to exist “to the extent that the amount the firm pays on the government provided loan is less than the amount the firm would pay on a comparable commercial loan that the firm could actually obtain on the market.” 19 CFR 351.505(a). Section 776(d) of the Act establishes a ceiling on how high the AFA rate could possibly be for the Export Buyer’s Credit program, just as the income tax program ceiling of 25 percent acts as a ceiling for tax programs.³⁴² The highest CVD rate a company could receive under the Export Buyer’s Credit Program presuming all the companies’ exports are covered by loans is 0.56%.

The Petitioners’ Rebuttal Comments

- The GOC’s failure to provide program information warrants the continued application of AFA as the court recognizes that the Department has the right to determine what information is needed to conduct its investigation.³⁴³

³³⁹ *Id.* at 13.

³⁴⁰ *Id.* (citing *Solar Cells POR 2* and accompanying Issues and Decision Memorandum at Comment 1: Usage of Export Buyer’s Credit Program).

³⁴¹ *Id.* at 12, 14 (citing *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013) where the court explained that: “The application of AFA to the GOC under such circumstances may adversely impact a cooperating party, although Commerce should seek to avoid such impact if relevant information exists elsewhere on the record” and *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 (CIT 2012) where the court stated “We do not treat the GOC and Fine Furniture as a joint entity in making our determination; rather, we acknowledge that, in the context of a CVD investigation, an inference adverse to the interests of a noncooperating government respondent may collaterally affect a cooperative respondent. While such an inference is permissible under the statute, it is disfavored and should not be employed when facts not collaterally adverse to a cooperative party are available” and *Sunpower Corp. v. United States*, 2016 CIT LEXIS 54 (June 8, 2016) explaining that “an agency determination that is arbitrary is *ipso facto* unreasonable”, and a determination is arbitrary when it “treats similar situations in dissimilar ways”).

³⁴² *Id.* at 18 (citing *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (Apr. 4, 2011) (*Aluminum Extrusions CVD Final*) and accompanying Issues and Decision Memorandum (“Therefore, the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent. Therefore, we are applying a CVD rate of 25 percent on an overall basis”).

³⁴³ See Petitioners’ Rebuttal Brief at 4 (citing *PPG Indus., Inc. v. United States*, 978 F.2d 1232, 1238 (Fed. Cir. 1992)).

- The type of program information the Department sought from the GOC is critical to understanding how the Export Buyer’s Credit Program operates and to making a determination.³⁴⁴
- The GOC’s failure to complete the Standard Questions Appendix constitutes a failure of the GOC to fully comply with the Department’s request.³⁴⁵
- Customer declarations are not verifiable evidence of non-use.³⁴⁶ The GOC’s refusal to provide the required information is sufficient to apply AFA.³⁴⁷
- The statute’s requirement to verify “all information” relied upon in making a final determination in an investigation under section 782(i) of the Act is not met in this case because the verification was precluded by the GOC’s failure to submit a complete response.³⁴⁸
- Because the respondents’ claims of non-use are not verifiable, they cannot be relied upon in the Department’s final determination.³⁴⁹
- The Department’s practice in investigations is to rely on, as an AFA rate, the highest non-zero rate calculated for the identical program in the investigation. If there is no such program, the Department will use the rate from an identical program in another CVD proceeding involving the same country. If no such rate exists, then the Department will use the highest, above *de minimis* rate calculated in a “similar/comparable program (based on treatment of the benefit)” in another CVD proceeding involving the same country. Finally, if that rate is not available, the Department will use the highest

³⁴⁴ *Id.* at 8 (citing *Aluminum Foil Prelim* and accompanying Preliminary Decision Memorandum at 28 and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 82 FR 32678 (July 12, 2017) (*Solar Cells POR 1*) and accompanying Issues and Decision Memorandum at Comment 1 and *Truck and Bus Tires from the People’s Republic of China: Final Determination in the Countervailing Duty Investigation and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 8606 (January 27, 2017) (*Truck and Bus Tires*) and accompanying Issues and Decision Memorandum at 13).

³⁴⁵ *Id.* (citing section 776(b)(l) of the Act).

³⁴⁶ *Id.* at 9 (citing *Citric Acid* and accompanying Issues and Decision Memorandum at 73-74 (“Thus, notwithstanding the non-use claims of the RZBC Companies and the GOC, we find that the GOC’s refusal to allow the verifiers to examine the EXIM Bank database containing the list of foreign buyers that were provided assistance under the program during the POR precluded the Department from verifying the non-use claims made by the RZBC Companies and the GOC.”), *Certain Biaxial Integral Geogrid Products from the People’s Republic of China: Final Affirmative Decision of the Countervailing Duty Investigation*, 82 FR 3282 (January 11, 2017) (*Biaxial Geogrid*) and accompanying Issues and Decision Memorandum at comment 1, *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results in the Countervailing Duty Review*, 82 FR 18285 (April 18, 2017) (*OTR Tires*) and accompanying Issues and Decision Memorandum at Comment 10, and pages 13-14, and *Solar Cells POR 1* at Comment 1).

³⁴⁷ *Id.* (citing *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1372 (Fed. Cir. 2014) (a “collateral impact on a cooperating party does not render the application of adverse inferences in a CVD investigation improper”).

³⁴⁸ *Id.* at 10 (citing *Firth Rixson Special Steels Ltd. v. United States*, 27 CIT 873, 890, 2003 CIT LEXIS 71, at *44 (June 27, 2003).

³⁴⁹ *Id.* at 16 (citing section 782(i) of the Act (where the Department is required to verify all information relied up in making a final determination in an investigation)).

calculated rate” from any non-company specific program in a CVD case involving the same country that the company’s industry could conceivably use.”³⁵⁰

- In the *Aluminum Foil Prelim* where the Department calculated a different rate for the Export Seller’s Credit Program, it still applied the 10.54 percent AFA rate for the Export Buyer’s Credit Program.
- The Department has corroborated the 10.54 percent AFA rate by determining (1) the rate reflected the actual behavior of the GOC based on information on the similar program (*i.e.*, preferential government lending); (2) that “no information has been presented that calls into question the reliability of calculated rate” that is being used as an AF A rate; (3) there are no independent sources for data on company-specific benefits; and (4) there is no information reasonably at the Department’s disposal that indicates the rate is not appropriate as AFA.³⁵¹

Department’s Position:

Consistent with the *Preliminary Determination*, we continue to find that the application of AFA is warranted in determining the countervailability of the Export Buyer’s Credit Program because the GOC failed to provide all the requested information needed to allow the Department to fully analyze this program. We disagree with the arguments made by Hongyi, and Huacheng I&E that despite the GOC’s refusal to fully cooperate, the record contained sufficient evidence for the Department to make a determination that Hongyi did not use the Export Buyer’s Credit Program. We further disagree with the argument that the AFA rate of 10.54 percent is inappropriate and punitive.

Prior to the *Preliminary Determination*, on multiple occasions, including the initial questionnaire and subsequent supplemental questionnaire, the Department requested information from the GOC, as well as complete translated copies of documents critical to understanding how the Export Buyer’s Credit Program is applied. Among those documents, the Department requested the 2013 *Administrative Measures* revisions (2013 Revisions) to the Export Buyer’s Credit Program. In lieu of providing this document, the GOC asked the Department to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyer’s Credit remained in effect, despite evidence on the record to the contrary.³⁵² Given the complicated structure of loan disbursements for this program, a complete understanding of how this program, including any adjustments that would be in the 2013 Revisions, is administered is necessary. Consistent with 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by the Department and significantly impedes a proceeding, the Department uses facts otherwise available. Furthermore, the Department may apply an adverse inference under section 776(b) of the Act, if a party fails to cooperate to the best of its ability. The GOC’s refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is

³⁵⁰ *Id.* at 18 (citing *Aluminum Foil Prelim* and accompanying Preliminary Decision Memorandum at 23-24 and *SolarWorld Americas, Inc. v. United States*, 229 F. Supp. 3d 1362, 1366-67 (CIT 2017)).

³⁵¹ *Id.* at 19-20 (citing *Certain Amorphous Silica Fabric from the People’s Republic of China; Final Determination of the Countervailing Duty Investigation*, 82 FR 8405 (January 25, 2017) (*Silica Fabric*) and accompanying Issues and Decision Memorandum at 14).

³⁵² *See* GOC’S IQR at exhibit II B.

administered by the China Ex-Im Bank, warrants the Department's use of AFA in countervailing this program.

Furthermore, we disagree with Hongyi's, Huacheng I&E's and the GOC's assertion that the Department should have substituted an AFA determination of use of the Export Buyer's Credit program for alleged record evidence of non-use in the form of customer declarations. In this investigation, we have information on the record indicating that there were revisions to the 2013 *Administrative Measures* and the involvement of third-party banks, which were not present on the record of *Solar Cells POR 2*, and *Chlorinated Isocyanurates from the PRC*, which have been cited by both Hongyi and Huacheng I&E to support their arguments. With respect to *Chlorinated Isocyanurates from the PRC*, the Department has since modified its position with respect to the Export Buyer's Credit program in the most recent administrative review (*i.e.*, *Chlorinated Isocyanurates from the PRC AR 2014*)³⁵³ where it determined that AFA was warranted because the GOC did not cooperate to the best of its ability in responding to the Department's request for additional information regarding the operations of the Export Buyer's Credit program.³⁵⁴ As such, we find Hongyi's and Huacheng I&E's reliance on *Chlorinated Isocyanurates from the PRC* to be unpersuasive.

Moreover, in *Solar Cells POR 2*, we specifically stated that, even though we found the record there supported a conclusion of non-use, we intended to continue requesting the GOC's cooperation regarding this program in future proceedings, and we would base subsequent evaluations of this program on the record for each respective proceeding.³⁵⁵ Thus, by not responding to our requests for additional information regarding the operation of this program, the GOC was uncooperative in the instant proceeding. Without this additional information, the Department determines that the information provided by the GOC and our understanding of this program is incomplete and unreliable. As such, we recognize that we cannot rely on information about this program provided by parties other than the GOC (*i.e.*, the respondent company's customers' certifications of non-use).³⁵⁶

Hongyi, and the GOC make the additional claim that if the Department does continue to apply AFA, the applied AFA rate of 10.54 percent is inappropriate. We disagree with the GOC's assertion that the Department should use the rate of 2.06 percent, which was calculated for the separate Export Seller's Credit Program in *Aluminum Foil Prelim*. Our practice in investigations is to rely on, as an AFA rate, the highest nonzero rate calculated for the identical program in the investigation. If no such program exists, we then use the rate from an identical program in

³⁵³ See *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*. 82 FR 27466 (June 15, 2017) (*Chlorinated Isocyanurates from the PRC AR 2014*), and accompanying Issues and Decision Memorandum at Comment 2 (concluding that "without the GOC's necessary information, the information provided by respondent companies is incomplete for reaching a determination of non-use").

³⁵⁴ See *Chlorinated Isocyanurates from the PRC AR 2014* and accompanying Issues and Decision Memorandum at Comment 2.

³⁵⁵ See *Solar Cells POR 2* and accompanying Issues and Decision Memorandum at Comment 1.

³⁵⁶ *Id.* at Comment 11.

another CVD proceeding involving the same country. If no such rate exists, the next option is to use the highest, above *de minimis* rate calculated in a “similar/comparable program (based on treatment of the benefit)” in another CVD proceeding involving the same country. Finally, if that rate is not available, the Department will use the highest calculated rate “from any non-company specific program in a CVD case involving the same country that the company’s industry could conceivably use.” In this investigation, based on the above listed hierarchy, the Department determined that the AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program (in the *Coated Paper Amended Final* proceeding), as the rate for these companies.³⁵⁷ The rate of 2.06 percent from the Export Seller’s Credit Program from the *Aluminum Foil Prelim* is not the highest. Moreover, it is only a preliminary rate.

With regard to Hongyi’s argument that the AFA rate is uncorroborated, we disagree. As we explained in the *Preliminary Determination*, section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.³⁵⁸ Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”³⁵⁹ The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.³⁶⁰ To determine the probative value of the secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate in a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA. Within these parameters, we have corroborated the 10.54 percent rate to the extent practicable.

Furthermore, the Department disagrees with Hongyi’s argument that the highest CVD rate a company could receive under the Export Buyer’s Credit Program presuming all the companies’ exports are covered by loans is 0.56 percent. Section 776(d)(3) of the Act is clear that the Department is not required to estimate what the CVD rate would have been if the respondent had cooperated. Further, section 776(d)(1)(A)(i) of the Act expressly authorizes the Department to use a CVD rate from a prior proceeding involving the same country as an AFA rate.

³⁵⁷ See *Coated Paper Amended Final*.

³⁵⁸ See Preliminary Decision Memorandum at 15.

³⁵⁹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

³⁶⁰ *Id.*

Comment 10: Income Tax Deductions for R&D Expenses

The Petitioners' Comments

- The Enterprise Income Tax Law allows enterprises in select high-technology sectors to take an additional 50 percent deduction from taxable income for authorized R&D expenditures that do not form part of the company's intangible assets value.³⁶¹ The Department erroneously determined the benefit for this program by applying the preferential corporate income tax rate of 15 percent to the applicable R&D expenses, rather than the standard corporate income tax rate of 25 percent.³⁶²
- 19 CFR 351.509(a)(1) requires the Department to calculate a CVD benefit as the difference between the amount of tax a company pays and the amount it would have paid in the absence of the program.³⁶³ Moreover, in *Wind Towers*,³⁶⁴ *PET Resin*,³⁶⁵ and *Stainless Steel Sheet and Strip*,³⁶⁶ the Department did not consider whether a company received other tax benefits when determining the benefits from this program.³⁶⁷ Specifically, the Department calculated the benefit for the income tax deduction for R&D expenses at the 25-percent rate whether or not the company was designated as a high or new technology enterprise (HNTE), and/or received countervailable benefits in the form of a 10-percent reduction in tax liability under that program.
- The Department should revise the calculations in the *Preliminary Determination* to apply the 25-percent tax rate to Huacheng I&E's reported income tax deductions for R&D expenses.³⁶⁸

No other party provided comments on this issue.

Department's Position:

We disagree that our calculations in the *Preliminary Determination* were inaccurate or inappropriate. Specifically, we determined the benefit in the *Preliminary Determination* for the income tax deduction for R&D expenses as it was recorded in Huacheng I&E's corporate income tax returns, taking into account that Huacheng I&E was obligated to pay taxes at the 15-percent rate.³⁶⁹ The benefit calculated in the *Preliminary Determination* represents the explicit difference between the amount of tax a company pays and the amount it would have paid in the

³⁶¹ See Petitioners' Case Brief at 30-31.

³⁶² *Id.* at 31.

³⁶³ *Id.*

³⁶⁴ See *Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers*) and accompanying Issues and Decision Memorandum at 18-19.

³⁶⁵ See *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Affirmative Determination*, 81 FR 13337 (March 14, 2016) (*PET Resin*) and accompanying Issues and Decision Memorandum at 43 - 44.

³⁶⁶ See *Stainless Steel Sheet and Strip* and accompanying Issues and Decision Memorandum at 12.

³⁶⁷ *Id.*

³⁶⁸ *Id.* at 32.

³⁶⁹ See Huacheng I&E's Final Analysis Memorandum.

absence of the program in accordance with 19 CFR 351.509(a)(1).³⁷⁰ Moreover, the petitioners' proposed benefit represents the difference in the tax that Huacheng I&E might have paid at the 25-percent rate with and without the deduction for R&D expenses, had it been taxed at the 25-percent rate,³⁷¹ and therefore, overstates the actual benefit that Huacheng I&E received from the tax deduction for eligible R&D expenses.

We disagree further that the cases cited by the petitioners provide appropriate guidance for this case. Specifically, in *Wind Towers* and *Stainless Steel Sheet and Strip*, we calculated the benefit using the 25-percent tax rate, in accordance with the respondents' books and records.³⁷² There is no indication that the respondents at issue in those cases received benefits under the HNTE tax program, and therefore, the Department appropriately calculated benefits under the income tax reduction for R&D expenses at the 25-percent rate.³⁷³ In *PET Resin*, the respondent received benefits under both programs, and we calculated the benefits under the R&D program as if the company did not receive benefits under the HNTE program.³⁷⁴ However, the calculated benefits were 0.00 percent,³⁷⁵ and there was no subsequent discussion in the form of ministerial errors or litigation regarding the Department's calculation methodology. However, *Truck and Bus Tires* treated the income tax reduction for R&D expenses as the Department did in the *Preliminary Determination*, calculating the benefit at the tax rate applicable to the respondent.³⁷⁶ Therefore, because the Department's benefit calculation reflects the actual tax benefit that Huacheng I&E received for this program, we have made no changes to our calculations for the final determination.

Comment 11: The GOC's Claims Regarding Verification

GOC's Comments

- Since the Department refused to verify its questionnaire responses, the Department must assume that every factual statement submitted by the GOC is accurate.³⁷⁷

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² See *Stainless Steel Sheet and Strip Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 39; unchanged in the final determination, *Stainless Steel Sheet and Strip*. See also *Utility Scale Wind Towers from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 33422, unchanged in *Wind Towers*.

³⁷³ *Id.*

³⁷⁴ See *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Preliminary Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 80 FR 48810 (August 14, 2015) and accompanying Preliminary Decision Memorandum at 29 and 33, methodology unchanged in the final determination, *PET Resin* and accompanying Issues and Decision Memorandum.

³⁷⁵ *Id.*

³⁷⁶ See *Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Determination*, 81 FR 43577 (July 5, 2016) (*Truck and Bus Tires Prelim*) and accompanying Preliminary Decision Memorandum at 36, unchanged in *Truck and Bus Tires*.

³⁷⁷ See the GOC Case Brief at 7.

- The CIT has found “{a} deliberate refusal to subject certain factual information to a verification procedure is not the equivalent of a valid finding that ... such information ‘cannot be verified.’”³⁷⁸ The GOC asserts that, the Department’s preliminary determination to apply AFA wrongly assumes that the information cannot be verified.³⁷⁹ Thus, the GOC argues that the information was unverifiable only because of the Department’s ‘last minute’ refusal to verify the GOC.³⁸⁰

Huacheng I&E’s Comments

- Since the Department declined to verify the GOC, the Department must accept the GOC’s assertion of non-use. “Without a verification, the Department must assume for purposes of its final determination that every factual statement submitted by the GOC is accurate.”³⁸¹
- The Department has also previously held that absent verification, it must assume for purposes of its determination that every factual statement submitted by the GOC is accurate.³⁸²

The Petitioners’ Rebuttal Comments

- The GOC’s failure to submit complete responses precludes the Department’s need to verify “all information.”³⁸³

Department’s Position:

We disagree with the GOC that the Department wrongly applied AFA with respect to the Export Buyer’s Credit Program because the Department “cancelled” the verification of the GOC. As explained above, the Department has applied AFA to the Export Buyer’s Credit Program because the GOC withheld information requested by the Department that was necessary to conduct its analysis with respect to this program. The GOC argues that, since the Department did not verify its questionnaire responses, the Department must assume that every factual statement submitted by the GOC is accurate, including the information submitted by the GOC that neither respondent used the Export Buyer’s Credit Program. However, the GOC withheld requested information regarding this program, and in doing so failed to cooperate to the best of its ability. The GOC’s argument that we must accept the veracity of a respondent’s statements when that respondent has failed to cooperate by not providing information is not tenable. Doing so would amount to giving a respondent permission to provide only favorable information, while withholding unfavorable information. As we stated in the *Preliminary Determination*, given the complicated structure of loan disbursements for the Export Buyers Credit Program, “a complete understanding of how this program is administered is necessary. Thus, the GOC’s refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administered by the China Ex-Im Bank, impede the Department’s ability to conduct its investigation of this program.”³⁸⁴ Thus, the Department determined not to verify the GOC because necessary information requested from the GOC for this program (and other programs)

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ *Id.* at 13.

³⁸¹ See Huacheng I&E’s Case Brief at 6.

³⁸² *Id.* (citing *Boltless Shelving* and accompanying Issues and Decision Memorandum at 45 (citing *China Kingdom* 507 F. Supp. 2d at 1341)).

³⁸³ See Petitioners’ Rebuttal Brief at 9.

³⁸⁴ See Preliminary Decision Memorandum at 18.

was not on the record of this proceeding. The purpose of verification is to verify information already on the record. Absent the necessary information, there is nothing to verify.

Comment 12: The Department’s Investigation of Uninitiated Programs

GOC’s Comments

- The Department preliminarily determined that, as AFA, the respondents’ self-reported grants (*i.e.*, “Other Subsidies”) are specific and constitute financial contributions pursuant to section 771(5A)(D)(iii)(I) and section 771(5)(D) of the Act, despite the fact that neither the petitioners alleged, nor the Department initiated upon these programs.³⁸⁵
- The “Other Subsidies” were not included in the Initial Questionnaire³⁸⁶ or any new subsidy questionnaires in this proceeding.³⁸⁷ Thus, the GOC argues that the Department does not have authority to seek information on these new subsidies under either the statute or the Department’s regulations.³⁸⁸
- Articles 11.1 and 11.2 of the SCM Agreement provide that an investigation of any alleged subsidy may only be initiated upon written application with sufficient evidence of the existence of a subsidy.³⁸⁹ While the same Agreement provides the right to self-initiate, it can only be exercised on the basis of sufficient evidence.³⁹⁰
- The Department required the respondents and the GOC to provide information on “Other Subsidies” that were never properly initiated as an NSA.³⁹¹ Thus, the Department failed to lawfully initiate an investigation of the reported “Other Subsidies.”³⁹² As a consequence, the Department should withdraw its preliminary findings and remove from the record all the improperly obtained information.³⁹³

The Petitioners’ Rebuttal Comments

- The Department requested information on other forms of assistance reported by the respondents in its initial and supplemental questionnaires.³⁹⁴ The petitioners claim that the GOC failed to provide cooperative or complete responses, or instead replied by either stating the request was “premature absent a more direct inquiry” or confirming the reported years of receipt.³⁹⁵
- The Department’s initial and supplemental questionnaires regarding these other subsidies served as notification to the GOC of the Department’s consideration of the reported

³⁸⁵ See the GOC’s Case Brief at 53.

³⁸⁶ See Initial Questionnaire.

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ *Id.* at 54.

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ See Petitioners’ Rebuttal Brief at 56-57.

³⁹⁵ *Id.*

subsidies. The Department’s decision to countervail other subsidies “fell squarely within the guidelines established under section 775 of the Act and 19 CFR 351.311(b).”³⁹⁶

- The petitioners argue that the GOC’s claim that the Department was required to initiate investigations into the other reported subsidies is incorrect.³⁹⁷ The Department’s initial and supplemental questionnaires to the GOC regarding other subsidies served as a notification to the GOC (and to the respondents) of the Department’s consideration of the reported subsidies.³⁹⁸ Therefore, the petitioners contend that consistent with the *Preliminary Determination* and its prior findings, the Department should countervail these programs.

Department’s Position:

We disagree that the Department’s investigation of the respondents’ self-reported subsidies as “Other Subsidies” is inconsistent with domestic law or the international obligations of the United States. Investigations into potentially countervailable subsidies to a class or kind of merchandise can be initiated in one of two ways. First, an investigation can be self-initiated by the Department.³⁹⁹ Second, a domestic interested party may file a petition for the imposition of countervailing duties on behalf of an industry.⁴⁰⁰ Under the second mechanism, parties are obligated to support their subsidy allegations with information reasonably available to them, and those allegations must identify the elements of a countervailable subsidy (*i.e.*, financial contribution, benefit, and specificity).⁴⁰¹

Once an investigation has been initiated through one of the mechanisms listed above, under section 775 of the Act, the Department may also investigate potential subsidies it discovers during the course of the proceeding. Specifically, in the course of an investigation, the Department may “discover { } a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in the countervailing duty petition.”⁴⁰² In such a case, the Department “*shall* (emphasis added) include the practice, subsidy, or subsidy program in the proceeding.”⁴⁰³ Thus, section 775 of the Act imposes an affirmative obligation on the Department to “consolidate in one investigation... all subsidies known by petitioning parties to the investigation or by the {Department} relating to {subject} merchandise” to ensure “proper aggregation of subsidization practices.”⁴⁰⁴ The Department’s regulations carve out a limited exception to its obligation to investigate what “appear { } to be countervailable subsidies: when the Department discovers a potential subsidy too late in a proceeding, it may defer its analysis of

³⁹⁶ *Id.* at 57-58 (citing *Silica Fabric* and accompanying Issues and Decision Memorandum at 74).

³⁹⁷ *Id.* at 57.

³⁹⁸ *Id.* at 58 (citing *Silica Fabric*).

³⁹⁹ See section 702(a) of the Act.

⁴⁰⁰ See section 702(b) of the Act.

⁴⁰¹ See section 702(b)(1) of the Act.

⁴⁰² See section 775 of the Act.

⁴⁰³ *Id.*

⁴⁰⁴ See S. Rep. No. 96-249, at 98 (1979); see also *Allegheny I*, 112 F. Supp. 2d at 1150 n.12 (“Congress ... clearly intended that all potentially countervailable programs be investigated and catalogued, regardless of when evidence on these programs became reasonably available”).

the program until a subsequent review, if any.”⁴⁰⁵ Moreover, the Department has broad discretion to determine which information it deems relevant to its determination, and to request that information.⁴⁰⁶

Thus, consistent with the CIT’s holding in *Changzhou Trina Solar Energy*,⁴⁰⁷ we find that the Department’s “other assistance” question enables the Department to effectuate its obligation to investigate all subsidies to the subject merchandise in the course of a proceeding, and is consistent with the Department’s broad discretion to seek information it deems relevant to its determination. Accordingly, the Department requested information regarding potentially countervailable subsidies, in order to determine whether such assistance appeared to be countervailable (*i.e.*, elements necessary for the imposition of countervailing duties are present) and attributable to subject merchandise. We thus find that the request was within our independent investigative authority.

Our standard initial questionnaire clearly asked the GOC to coordinate with the respondents to report any forms of assistance to producers/exporters of subject merchandise.⁴⁰⁸ We further asked the GOC to describe such assistance in detail, as previously requested in the initial questionnaire.⁴⁰⁹ As such, we have been overt and unambiguous in our intent to investigate “other subsidies” from the beginning. Further, section 775 of the Act and 19 CFR 351.311(b) require the Department to investigate potentially countervailable subsidies when sufficient time remains in the proceeding to do so.⁴¹⁰ Here, at the outset of the investigation, sufficient time remained in the investigation for the Department to inquire about other forms of assistance received by the respondents during the POI, so the Department requested that the respondents and the GOC report such information for the Department to examine.

⁴⁰⁵ See 19 CFR 351.311(b).

⁴⁰⁶ See *Changzhou Trina Solar Energy Co.*, 195 F. Supp. 3d at 1341 (holding that the Department has “independent authority, pursuant to {section 775 of the Act}, to examine additional subsidization in the production of subject merchandise,” and this “broad investigative discretion” permits the Department to require respondents to report additional forms of governmental assistance), *Ansaldo Componenti, S.p.A.*, 628 F. Supp. at 205; *Essar Steel Ltd.*, 721 F. Supp. 2d at 1298-1299, *revoked in part on other grounds*; and *Acciai Speciali Terni S.p.A.*, 26 CIT at 167; see also *PAM, S.p.A.*, 495 F. Supp. 2d at 1369.

⁴⁰⁷ See *Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1346 (“Commerce’s inquiry concerning the full scope of governmental assistance provided by the {Government of China} and received by the Respondents in the production of subject merchandise was within the agency’s independent investigative authority pursuant to {sections 702}(a) and {775 of the Act}, this inquiry was not contrary to law”).

⁴⁰⁸ See the Department’s letter, “Countervailing Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Countervailing Duty Questionnaire,” dated June 9, 2017 at 24.

⁴⁰⁹ See the Department’s letter, “Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Request for Additional Information Regarding the Government of the People’s Republic of China’s Response to the Department’s Initial Questionnaire,” dated August 21, 2017 at 2-3.

⁴¹⁰ See *Changzhou Trina Solar Energy*, 195 F. Supp. 3d at 1345 (“{T}he petitioner’s burden is irrelevant when Commerce chooses to exercise its independent investigative authority under {section 775 of the Act} ... {and thus} Commerce did not unlawfully shift any burden from the petitioner” through its request that respondents report any other forms of governmental assistance).

The GOC refers to the WTO SCM Agreement to argue that the Department’s request for information on “Other Subsidies” is inconsistent with the United States’ international obligations. However, the Act is fully consistent with the international obligations of the United States, and, as we have identified above, our “Other Subsidies” question is fully consistent with section 775 of the Act.

Despite our multiple requests for information (*e.g.*, describe any other forms of assistance in detail and answer all questions in the Standard Questions Appendix), the GOC was only able to confirm the years of receipt and the amounts received for the subsidies reported by the respondents.⁴¹¹ This information was a duplicate of what the respondents previously provided on the record. Thus, we continue to find that we must rely on “facts available” with an adverse inference in accordance with sections 776(a)(1), 776(a)(2)(A), and 776(b) of the Act. In drawing an adverse inference, we find that these “Other Subsidies” reported by Hongyi, Huacheng I&E and their cross-owned affiliates constitute a financial contribution pursuant to section 771(5)(D) of the Act and are specific within the meaning of section 771(5A) of the Act.

Comment 13: Minor Corrections to the Department’s Preliminary Benefit Calculation

The Petitioners’ Comments

- The Department should make the following changes to the preliminary subsidy calculation for Hongyi:⁴¹²
 - Include all of Hongyi’s purchases of hot-rolled coiled steel in calculating benefits for the Provision of Hot-Rolled Coiled Steel for LTAR;⁴¹³
 - Correct the months of purchase for Hongyi’s purchases of cold-rolled coiled steel;⁴¹⁴
 - Include all of Hongyi’s grants received during the POI.⁴¹⁵

Hongyi’s Rebuttal Comments

- The Department correctly determined that the grants at issue were either not measurable or approved prior to the POI, and thus did not include them in the benefit calculation.⁴¹⁶ There is no basis to adjust the preliminary calculation.⁴¹⁷

Department’s Position:

We agree with the petitioners that the issues addressed above should be adjusted for the final determination. Thus, we revised Hongyi’s benefit calculation for the provision of hot-rolled

⁴¹¹ See the GOC’s IQR at 155; and the GOC’S 1st SQR at 2-3 and Exhibit S-1.

⁴¹² See Petitioners’ Case Brief at 29.

⁴¹³ *Id.* at 29-30.

⁴¹⁴ *Id.* at 30.

⁴¹⁵ *Id.* at 32-33.

⁴¹⁶ See Hongyi’s Rebuttal Brief at 15.

⁴¹⁷ *Id.*

coiled steel for LTAR by including all of Hongyi's purchases of hot-rolled coiled steel.⁴¹⁸ We also corrected the months of Hongyi's cold-rolled coiled steel purchases for the provision of cold-rolled coiled steel for LTAR.⁴¹⁹ In addition, we revised Hongyi's self-reported government grants received during the POI by including those that were inadvertently excluded in our preliminary calculation.⁴²⁰ Specifically, we included measurable grants that were approved prior to the POI but in which the respondents received payment during the POI.⁴²¹

XIII. 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

12/4/2017

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistance Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

⁴¹⁸ See Hongyi's Final Analysis Memorandum.

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

⁴²¹ *Id.*