

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

DATE: September 25, 2008

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Lightweight Thermal
Paper from the People's Republic of China

I. Summary

On March 14, 2008, the Department of Commerce (the "Department") published the Preliminary Determination of this investigation.¹ Subsequent to the Preliminary Determination, the Department issued a memorandum containing our preliminary analysis of new subsidy allegations. See Post-Preliminary Analysis. The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate benefits from these programs. Additionally, we have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the briefs. We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this investigation for which we received comments and rebuttal comments from parties:

- Comment 1: The Department's Authority to Apply the Countervailing Duty Law to China**
- Comment 2: Cut-off Date for Recognition of Subsidies**
- Comment 3: Adverse Facts Available ("AFA")**
- Comment 4: Sales Denominator for GG and ZG**
- Comment 5: Government Policy Lending – Specificity**
- Comment 6: Government Policy Lending – Financial Contribution**

¹ For this Issues and Decision Memorandum, we are using short cites to various references, including administrative determinations, court cases, acronyms, and documents submitted and issued during the course of this proceeding, throughout the document. We have appended to this memorandum a table of authorities, which includes these short cites as well as a guide to the acronyms.

- Comment 7: Government Policy Lending - Whether Particular Banks Are “Authorities”**
Comment 8: Chinese Interest Rates as the Benchmark
Comment 9: Benchmark Rates
Comment 10: Whether to Countervail Certain Loans Received from Shareholders
Comment 11: Provision of Electricity for Less Than Adequate Remuneration
Comment 12: Provision of Land for Less Than Adequate Remuneration
Comment 13: Stamp Tax and Income Tax Exemption Under Non-Tradable Share Reform
Comment 14: Whether ZG is Creditworthy
Comment 15: Double Counting/Overlapping Remedies

Selection of the Adverse Facts Available Rate

For the reasons explained in the Federal Register notice, the countervailing duty rates being calculated for Shenzhen Yuanming Industrial Development Co., Ltd. (“Shenzhen Yuanming”), MDCN Technology Co., Ltd. (“MDCN”) and Xiamen Anne Paper Co., Ltd. (“Xiamen Anne”) are completely based on adverse facts available.

We have changed the rate calculated in the Preliminary Determination to conform with the Department’s practice in recent investigations. Specifically, for programs other than those involving income tax exemptions and reductions, we will apply the highest calculated rate for an identical program used by a responding company, if available. If there is no identical program match within the investigation, we will use the highest non-de minimis rate calculated for the same program in another China CVD investigation. Absent an above-de minimis subsidy rate calculated for the same program, we will use the highest non-de minimis rate calculated for a similar program in any China CVD investigation. Absent an above-de minimis subsidy rate calculated for a similar program, we are applying the highest calculated subsidy rate for any non company-specific program unless the industry in the instant proceeding cannot use the product for which those rates were calculated. See CWASPP from the PRC, 73 FR at 39661; and Citric Acid from the PRC, 73 FR at 54369-72.

Also, as explained in Lawn Groomers from the PRC, where the GOC can demonstrate through complete, verifiable, positive evidence that non-cooperative companies (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department does not include those provincial programs in determining the countervailable subsidy rate for the non-cooperative companies. See Lawn Groomers from the PRC and the accompanying Initiation Checklist. In this investigation, the GOC did not provide this information. Certain information was submitted by Shenzhen Yuanming and Xiamen Anne, but the Department was unable to verify this information and has no information on the location of any cross-owned affiliates of MDCN, Shenzhen Yuanming and Xiamen Anne.² Therefore, for the final determination, we make the adverse inference that MDCN, Shenzhen Yuanming and Xiamen Anne had facilities and/or cross-owned affiliates that received subsidies under all of the sub-national programs, alleged prior to the selection of mandatory respondents. With respect to the provincial and local programs alleged after respondent

² See Shenzhen Yuanming Letter, December 20, 2007; and Xiamen Anne Letter, November 29, 2007.

selection, we only assigned adverse rates to those mandatory respondents that Petitioner alleged were located in the respective province or locality.³

For the following eight alleged income tax programs pertaining to either the reduction of the income tax rates or exemption from income tax, we have applied an adverse inference that MDCN, Shenzhen Yuanming or Xiamen Anne paid no income tax during the POI: (1) “Two Free, Three Half” program; (2) Income tax reduction program for high-tech companies in Guangdong Province (previously identified as “Income tax reduction program for high-tech companies under the Torch Program”); (3) Reduced income tax for productive foreign-investment enterprises based on location; (4) Local income tax exemptions and reductions for productive foreign-investment enterprises; (5) Reduced income tax rates and exemption for local tax in Pudong New Area; (6) Income tax exemption program for export-oriented foreign-investment enterprises; (7) Reduced income tax rate for technology or knowledge intensive foreign-investment enterprises; and (8) Reduced income tax rate for high or new technology foreign-investment enterprises. The standard income tax rate for corporations in the PRC is 30 percent, plus a 3 percent provincial income tax rate. Therefore, the highest possible benefit for these eight income tax rate programs is 33 percent and we are assigning that rate to these eight programs.

This 33 percent AFA rate does not apply to income tax credit, deduction or refund programs. Neither respondent used the “Corporate Income Tax Refund Program for Reinvestment of Foreign-Investment Enterprise Profits in Export Oriented Enterprises,” the “Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically-Owned Enterprises” or the “Preferential Income Tax Policy for Research and Development by Foreign-Investment Enterprises” program and the Department has not calculated a rate for any of these programs in any prior investigation. Therefore, we have determined to use the highest non-de minimis rate for any indirect tax program from a China CVD investigation because, after examining each China CVD final determination, there were only de minimis rates for income tax credit or refund programs from prior investigations. The rate we selected for these programs is 1.51 percent, the rate calculated for respondent Gold East Paper (Jiangsu) Co., Ltd. (“GE”) for the “Value Added Tax and Tariff Exemptions on Imported Equipment,” program in CFS from the PRC. See CFS from the PRC IDM at 13-14. Also, see CWASPP from the PRC, where the Department calculated an AFA rate for Froch Enterprise Co., Ltd. (a.k.a. Zhangyuan Metal Industry Co., Ltd.) using this same 1.51 rate for an income tax credit or refund program. See CWASPP from the PRC, 73 FR at 39661-62.

For the “Value Added Tax and Duty Exemptions on Imported Equipment” program, we have determined to use GG’s rate from this investigation (.64 percent).

For loan programs, we have determined to use GG’s rates from this investigation for the “Government Policy Lending” program (7.99 percent). Neither respondent used the following programs: “Loans Provided Pursuant to the Northeast Revitalization,” “Loan Guarantees from Government Owned and Controlled Banks,” or “Loan and Interest Subsidies Pursuant to

³ LWS from the PRC IDM at 7.

Liaoning Province’s Framework,” and the Department has not calculated rates for any of these programs in prior investigations. Therefore, for each program, we have determined to use the highest non-de minimis rate for any loan program from a China CVD investigation, which is the 7.99 percent, GG rate for the “Government Policy Lending” program from this investigation.

For grant programs, we have determined to use GG’s rate from this investigation for the “Funds for Outward Expansion” program (0.08 percent ad valorem). Neither respondent used the following programs: “State Key Technology Program Fund,” “Export Interest Subsidies Funds for Enterprises in Shenzhen and Zhejiang Province,” and the “Foreign Currency Retention” programs, and the Department has not calculated above de minimis rates for any of these programs in prior investigations. Moreover, all previously calculated rates for grant programs from prior China CVD investigations have been de minimis. Therefore, for each of these programs, we have determined to use the highest calculated subsidy rate for any program otherwise listed which met the criteria discussed at the beginning of this section. The rate was 13.36 percent for the “Government Provision of Land for Less Than Adequate Remuneration” program from LWS from the PRC. See LWS from the PRC IDM at 14-18. We are disregarding several higher calculated subsidy rates as we have determined that the industry under investigation in this proceeding cannot use the products for which these rates were calculated. These higher subsidy rates are from: (1) LWS from the PRC IDM (“Government Provision of Inputs for Less Than Adequate Remuneration” program for biaxial-oriented polypropylene), and (2) CWP from the PRC IDM (the “Hot-Rolled Steel For Less Than Adequate Remuneration” program).

Consistent with our preliminary determination for new subsidy allegations, we will include the following three new subsidy programs in the calculation of Shenzhen Yuanming’s AFA rate:⁴

- Provision of Electricity for LTAR in the Long Gang District of Shenzhen City
- Provision of Land to Shenzhen Yuanming in the Li Lang Industrial Zone for LTAR
- Prohibited Export Subsidies for Enterprises Registered in Shenzhen Municipality

As explained above, for subsidies alleged after the mandatory respondents have been selected, we only assign adverse rates for those provincial and local programs where Petitioner has specifically alleged respondents are located.⁵ Thus, because Petitioner alleged that Shenzhen Yuanming benefitted from these subsidies in Shenzhen and Li Lang Industrial Zone, we assigned adverse rates to Shenzhen Yuanming for the three new subsidy programs that Petitioner alleged were provided in Shenzhen.⁶

For the program involving the provision of electricity for LTAR, the Department has determined to use GG’s rate calculated in this investigation for this program (which is 0.06 percent). Similarly, for the program involving the provision of land for LTAR, the Department has determined to use GG’s rate calculated in this investigation for this program (which is 0.18 percent). Neither respondent used the “Prohibited Export Subsidies for Enterprises Registered in

⁴ Post-Preliminary Analysis at 15-16.

⁵ LWS from the PRC IDM at 6.

⁶ Petitioner’s NSA at 5-7, 25-26, 29, and 55-60.

Shenzhen Municipality,” and the Department has not calculated rates for this program in prior investigations. Moreover, as explained above, all previously calculated rates for grant programs from prior China CVD investigations have been de minimis. Therefore, for this program, we have determined to use the highest calculated subsidy rate for any program otherwise listed, which meets the criteria discussed at the beginning of this section. The rate was 13.36 percent for the “Government Provision of Land for Less Than Adequate Remuneration” program from the LWS from the PRC IDM at 14-18. As discussed above, we are disregarding several higher calculated subsidy rates as we have determined that the industry under investigation in this proceeding cannot use the products for which these rates were calculated.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.” See, e.g., SAA at 870. The Department considers information to be corroborative if it has probative value. See id. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. See section 776(c) of the Act. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. See SAA at 869.

When the Department applies AFA, to the extent practicable, it will determine whether such information has probative value by evaluating the reliability and relevance of the information used. See SAA at 870; see also TRBs from Japan - AD Preliminary, 61 FR at 57392 (unchanged in TRBs from Japan AD, 62 FR at 11843 (March 13, 1997)). With regard to the reliability aspect of corroboration, we note that certain program rates that we are relying upon for AFA were calculated in prior final CVD determinations. No information has been presented that warrants re-examining the reliability of these calculated rates that we are applying as AFA. Unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. See section 776(c) of the Act. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it. See Flowers from Mexico, 61 FR at 6812.

In the absence of record evidence concerning these programs due to the respondents’ decision not to participate in the investigation, the Department has reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that programs of the same type are relevant to the programs of this case. For the programs for which there is no program-type match, as AFA the Department has selected the highest calculated subsidy rate for any PRC program we are applying the highest calculated subsidy rate for any non company-specific program unless the

industry in the instant proceeding cannot use the product for which those rates were calculated. The relevance of this rate is that it is an actual calculated CVD rate for a PRC program from which the industry in this proceeding could receive a benefit. Due to the lack of participation by MDCN, Shenzhen Yuanming and Xiamen Anne and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to the extent practicable. See section 776(c) of the Act.

On this basis, we determine that the AFA countervailable subsidy rates for MDCN, Shenzhen Yuanming and Xiamen Anne are 123.65, 137.25, and 123.65, percent ad valorem. See Memorandum to File: Calculation of AFA Rate (September 25, 2008). Attachment I of that memorandum identifies the programs we consider countervailable and the rates we have assigned.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the AUL of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the Department's regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (the "IRS Tables"). The AUL period in this proceeding is 13 years according to the IRS Tables. No parties have contested this period.

We have determined that we will identify and measure subsidies in China beginning on the date of that country's accession to the WTO, December 11, 2001.⁷ Therefore, we are allocating non-recurring subsidies received after December 11, 2001, over the 13-year AUL.

Attribution of Subsidies

The Department's regulation at 351.525(b)(6)(i) states that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if: (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more)

⁷ See CWP from the PRC IDM at Comment 2.

corporations. The preamble to the Department’s regulations further clarifies the Department’s cross-ownership standard. According to the CVD Preamble, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits). . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.⁸

Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The CIT has upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.⁹

Our findings regarding cross-ownership and attribution for the two responding companies in this investigation, GG and Hanhong, are as follows.

GG: GG responded to the Department’s questionnaire on behalf of itself and ZG. GG reported that ZG does not produce subject merchandise, but it supplies GG with base paper inputs for the subject merchandise. As in the Preliminary Determination,¹⁰ we find that GG and ZG are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) and that ZG supplies an input to GG that is primarily dedicated to the production of the downstream product. Therefore, we are attributing the subsidies received by ZG to the combined sales of GG and ZG, excluding the sales between the two companies, pursuant to 19 CFR 351.525(b)(6)(iv).

GG also identified several affiliated companies in addition to ZG. We verified that these affiliates do not produce the subject merchandise and do not provide inputs to GG.¹¹ Therefore, because these companies do not produce subject merchandise or otherwise fall within the situations described in 19 CFR 351.525(b)(6)(iii)-(v), we do not reach the issue of whether these companies and GG are cross-owned and we have not attributed any subsidies received by these companies to GG. Consequently, we have limited our investigation to subsidies received by GG and ZG.

ZG received certain benefits that were tied to export performance, but ZG did not export subject merchandise. As in the Preliminary Determination,¹² we determine that these benefits do not provide a countervailable subsidy to the subject merchandise.

⁸ See CVD Preamble, 63 FR at 65401.

⁹ See Fabrique, 166 F. Supp at 603.

¹⁰ See Preliminary Determination, 73 FR at 13853

¹¹ See GG/ZG Verification Report at 5.

¹² See Preliminary Determination, 73 FR at 13854

Hanhong: Hanhong responded to the Department’s questionnaire on behalf of itself and two affiliates. The affiliates provide Hanhong with raw material (jumbo rolls of LWTP) for processing under a tolling arrangement, while maintaining title to the merchandise throughout the production process. These companies are located outside of the PRC and, as in the Preliminary Determination,¹³ are not included in our analysis.

Hanhong also identified several affiliated companies inside the PRC. We verified that these affiliates do not produce the subject merchandise and do not provide inputs to Hanhong.¹⁴ Therefore, because these companies do not produce subject merchandise or otherwise fall within the situations described in 19 CFR 351.525(b)(6)(iii)-(v), we do not reach the issue of whether these companies and Hanhong are cross-owned and we are not attributing any subsidies received by these companies to Hanhong. Consequently, we have limited our investigation to subsidies received by Hanhong.

Benchmarks and Discount Rates

Benchmarks for Short-Term RMB Denominated Loans: Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. See 19 CFR 351.505(a)(2)(i). However, the loans provided to the respondents by SOCBs were made under the Government Policy Lending program, as explained below, and the Department does not treat loans from government banks as commercial if they were provided pursuant to a government program. See 19 CFR 351.505(a)(2)(ii). Also, these loans from SOCBs are the very loans for which we are seeking a benchmark.

Moreover, as noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. However, for the reasons explained in CFS from the PRC¹⁵ and in response to Comment 6 below, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting a market-based benchmark interest rate based on the inflation-adjusted interest rates of countries with similar per capita GNI to the PRC.¹⁶

The use of an external benchmark is consistent with the Department’s practice. For example, in Softwood Lumber from Canada, the Department used U.S. timber prices to measure the benefit

¹³ See Preliminary Determination, 73 FR at 13853

¹⁴ See Memorandum to Nancy Decker, Program Manager, entitled “Shanghai Hanhong Paper Co. Ltd.” (August 7, 2008) at 3-4.

¹⁵ See CFS from the PRC IDM at Comment 10.

¹⁶ Id. at 6-7.

for government-provided timber in Canada. See [Softwood Lumber from Canada](#) IDM at Comment 34.

We are calculating an external benchmark using the regression-based methodology first developed in [CFS from the PRC](#)¹⁷ and more recently updated in [OTR Tires from the PRC](#). This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita GNIs similar to the PRC, and takes into account a governance factor for these countries.

As explained in the [CFS from the PRC](#) IDM at Comment 10, to derive this rate we determine which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 53 and 55 countries as of 2004 and 2006, respectively.¹⁸

Many of these countries reported lending and inflation rates to the International Monetary Fund and they are included in that agency's International Financial Statistics ("IFS").¹⁹ Certain of the interest rates used in our regression analysis may reflect maturities of longer than one-year. Therefore, we are not treating the regression-based interest rate derived from these rates as a short-term rate.²⁰ Instead, we are applying our benchmark to loans with terms of two years or less.

With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "low middle income" by the World Bank.²¹ We did not include those economies that the Department considered to be non-market economies for AD purposes for any part of the years in question: the PRC, Armenia, Azerbaijan, Belarus, Georgia, Moldova, Turkmenistan, and Ukraine (for Ukraine only, prior to 2007). The benchmark necessarily also excludes any country that did not report both lending and inflation rates to IFS for those years. Third, Jordan reported a deposit rate, not a lending rate; and the rate reported by Ecuador is a dollar-denominated rate.²² Therefore, the rates for both of these countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have excluded any countries with aberrational interest rates for the year in question.²³

We then calculated the interest rate that would exist in the PRC if it were a market economy using a regression analysis relating the inflation-adjusted interest rates and an average governance indicator for these countries.²⁴ This regression provides the most suitable market-

¹⁷ See [CFS from the PRC](#) IDM at Comment 10.

¹⁸ See <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20487070~isCURL:Y~menuPK:64133156~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html>; see also GG/ZG Final Calculation Memorandum at Attachment 1 or Hanhong Final Calculation Memorandum at Attachment 1.

¹⁹ See <http://www.imfstatistics.org>, provided in the GG/ZG Final Calculation Memorandum at Attachment 1 and the Hanhong Final Calculation Memorandum at Attachment 1.

²⁰ See 19 CFR 351.102 (where "short-term loan" is defined as having repayment terms of one-year or less).

²¹ See the GG/ZG Final Calculation Memorandum at Attachment 1 and the Hanhong Final Calculation Memorandum at Attachment 1.

²² Id.

²³ Id.

²⁴ See www.worldbank.org/wbi/governance.

based benchmark and discount rate for the PRC because it takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to state-imposed significant distortions in the banking sector discussed above.

The resulting inflation-adjusted short-term benchmark lending rates for 2004 and 2006 are 8.27 and 7.95 percent, respectively.²⁵ Because these are inflation-adjusted benchmarks, it is necessary to adjust respondents' interest payments and discount rates for inflation. This was done using the PRC inflation figure as reported in IFS.²⁶

The lending rates reported in IFS represent short- and medium-term lending, and there is no sufficient publicly-available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.²⁷ Because the short-term benchmark covers loans up to two years, we have calculated the long-term adjustment based on the difference between (1) the two-year BB bond rate and (2) the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.

Benchmarks for Short-Term Foreign Currency-Denominated Loans: For foreign currency-denominated loans, the Department was unable to locate sufficient data on short-term lending rates for the countries in the basket of "lower middle-income countries" used for its benchmark for RMB loans. Therefore, the Department used as a benchmark the one-year dollar interest rates for the London Interbank Offering Rate ("LIBOR"), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Bloomberg provides data on average corporate bond rates for companies with a range from A-rated to B-rated. See Bloomberg data, placed on the record of this investigation in the Post-Preliminary Analysis. For this final determination, we have determined that BB-rated bonds, which are the highest non-investment-grade and near the middle of the overall range, are the most appropriate bases for calculating the spread over LIBOR. Several of the countries in the basket report bond rates, but not all of these countries report corporate bond rates and none reports corporate bond rates for firms in the industrial sector. The Department, therefore, relied on corporate bond rates for the industrial sector in the United States and the eurozone, because the market for dollars and euros is international in scope.

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

Uncreditworthy Benchmark: As discussed below, the Department is finding ZG uncreditworthy in 2003 and 2004. To construct the uncreditworthy benchmark rate for those years, we used the long-term rates described above as the "long-term interest rate that would be paid by a creditworthy company" in the formula presented in 19 CFR 351.505(a)(3)(iii).

²⁵ See Id. for the countries that were aberrational for the year in question.

²⁶ Id.

²⁷ See LWRP from the PRC IDM at 8.

Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. See 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i), the Department may examine, among other factors, the following four types of information: 1) the receipt by the firm of comparable commercial long-term loans; 2) present and past indicators of the firm's financial health; 3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and 4) evidence of the firm's future financial position.

With respect to the first factor, in the case of firms not owned by the government, the receipt by the firm of comparable long-term commercial loans, unaccompanied by a government-provided guarantee (either explicit or implicit), will normally constitute dispositive evidence that the firm is not uncreditworthy, pursuant to 19 CFR 351.505(a)(4)(ii). However, according to the CVD Preamble, in situations, for instance, where a company has taken out a single commercial bank loan for a relatively small amount, where a loan has unusual aspects, or where we consider a commercial loan to be covered by an implicit government guarantee, we may not view the commercial loan(s) in question to be dispositive of a firm's creditworthiness.²⁸

Consistent with our Preliminary Uncreditworthiness Memo,²⁹ we continue to find ZG uncreditworthy in 2003 and 2004. See Comment 14 and BPI Memorandum.

Analysis of Programs

I. Programs Determined to Be Countervailable

A. Government Policy Lending Program

In CFS from the PRC,³⁰ the Department found that: (1) the GOC had in place a policy to promote the paper industry through initiatives that involved preferential financing and, hence, loans provided by Policy Banks and state-owned commercial banks (SOCBs) in the PRC constituted a direct financial contribution from the government (see section 771(5)(D)(i) of the Act); (2) the loans were de jure specific because the GOC had a policy "to encourage and support the growth and development of the forestry and paper industry" (see section 751(5A)(D)(i) of the Act); and (3) the loans conferred a benefit equal to the difference between what the recipient paid on the loans and what the recipient would have paid for a comparable commercial loans (see section 771(5)(E)(ii)).

For the reasons explained in CFS from the PRC, we continue to find that policy lending by the GOC confers a countervailable subsidy to recipients of such lending in the Chinese paper

²⁸ See CVD Preamble, 63 FR at 65367.

²⁹ See Preliminary Uncreditworthiness Memo.

³⁰ CFS from the PRC, 72 FR at 60645.

industry through 2005, the POI in CFS from the PRC. Moreover, the considerations that led to our finding in CFS from the PRC extend through 2006, the POI covered by this investigation. Evidence indicates that any reforms introduced in the Chinese banking system since 2005 have not been sufficiently implemented to preclude government influence in bank lending decisions.³¹ The Tenth Five-Year and 2010 Special Plan for the Construction of National Forestry and Papermaking Integration Project (“Integration Plan”);³² the Development Policy for Papermaking Industry (2007) (“2007 Paper Plan”);³³ the Decision of the State Council on Promulgating and Implementing the Provisional Regulation on Promoting Industrial Structure Adjustment GUOFA (2005) No. 40 (“Decision No. 40”),³⁴ the Guiding Catalogue for Industry Restructuring (2005 version) (“Guidance Catalogue”),³⁵ the Guangdong Papermaking Industry 2005-2010 Development Plan (“Guangdong Paper Plan”),³⁶ and the Outline for the Eleventh Five-Year Plan for the Economic and Social Development of Zhanjiang (“Zhanjiang City 11th Five-Year Plan”)³⁷ together indicate that the GOC had in place a policy to promote specifically the pulp and paper industry. Finally, among the other considerations noted in CFS from the PRC, the PRC continued to maintain a floor on lending rates and a ceiling on deposit rates for Chinese banks in 2006,³⁸ indicating that those banks cannot independently price loans or set interest rates on a market basis.³⁹

Therefore, we determine that the GOC has a policy in place to encourage and support the growth of the paper industry through preferential financing initiatives, as expressly reflected in the government plans and related documents. Furthermore, we determine that loans from Policy Banks and SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act and that they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans. Finally, we determine that the loans are de jure specific because of the GOC’s policy, as illustrated in the government plans, to encourage and support the growth and development of the paper industry.

To calculate the benefit under the policy lending program, we used the benchmarks described in the Benchmarks and Discount Rates section above and the methodology described in 19 CFR 351.505(c)(1) and (2). On this basis, we determine that GG received a countervailable subsidy of 7.99 percent ad valorem and Hanhong received a countervailable subsidy of 0.18 percent ad valorem under this program.

³¹ See, e.g., Economist Intelligence Unit, “Country Finance China 2006,” at 4 (Petition Exhibit 64), which states, “The Commercial Banking Law of 1995 established a legal framework for turning the four state owned commercial banks into profit-oriented, full-fledged commercial entities by 2000. However, this process has taken considerably longer than planned, and although the banks have announced an avalanche of new measures, most of these have never actually been implemented.” See also BPI Memorandum.

³² Id. at Exhibit 91.

³³ Id. at Exhibit 96.

³⁴ Id. at Exhibit 86.

³⁵ Id. at Exhibit 87.

³⁶ GOC 2nd SQR at Exhibit S2-4.

³⁷ GOC 4th SQR at Exhibit S4-2.

³⁸ See Prospectus for the Global Offering of the Industrial and Commercial Bank of China Limited at 63 (GOC QR at Exhibit 22).

³⁹ See CFS from the PRC IDM at 68 (Comment 10).

B. Shareholder Loans

In the course of the investigation, we found that certain wholly state-owned non-bank financial institutions provided loans to GG and ZG that were outstanding in the POI.⁴⁰ These financial institutions, or their parent company, were also GG or ZG shareholders during the POI. We did not include these loans in the Preliminary Determination on policy lending because the lenders were not SOCBs.

Pursuant to section 775(1) of the Act, the Department can investigate any subsidy that it discovers during the course of an investigation. In this investigation, the Department found that some of these “shareholder loans” were overdue that and the respondent had failed to meet its obligation under the loan contracts, as explained in more detail in the BPI Memorandum.

Debt forgiveness is a separately defined financial contribution from loans and, as such, is a new countervailable subsidy at the point of the debt forgiveness to the extent that it is specific. See section 771(5)(D)(i) of the Act. Consistent with the Department’s regulations regarding loans and debt forgiveness, at the point when there is no reasonable expectation that a loan will be repaid, the Department may find that the loan is forgiven and treat the forgiven amount as a grant at the point of loan forgiveness. See 19 CFR 351.505(d)(2). In this investigation, we find that a certain portion of the loan was forgiven after the cut-off date for certain loans either by explicit agreement or by default. See BPI Memorandum.

Accordingly, consistent with OTR Tires from the PRC,⁴¹ we determine that the forgiven portion of the loan constitutes debt forgiveness, a government financial contribution as described in section 771(5)(D)(i) because the forgiveness was provided by wholly government-owned financial institutions. Additionally, the interest forgiveness is specific under section 771(5A)(D)(iii)(I) because it was limited to a single company, ZG.⁴²

Consistent with 19 CFR 351.508(a), the benefit is equal to the amount that the government has assumed or forgiven and, in accordance with 19 CFR 351.508(c) and 351.524(d), this amount was allocated over the AUL. We divided the benefit allocated to 2006 by the combined total sales of GG and ZG (less any sales between the two companies during that period). On this basis, we determine that GG received a countervailable subsidy of 2.32 percent ad valorem.

We have treated a certain portion of the outstanding “shareholder loans” that were disbursed after the cut-off date as long-term interest-free loans as explained in the BPI Memorandum. These loans constitute a financial contribution as described in section 771(5)(D)(i) because the loans were provided by wholly government-owned financial institutions, and are specific under section 771(5A)(D)(iii)(I) because they were limited to a single company, ZG.

⁴⁰ See ZG 2nd SQR at 9-10, ZG 3rd SQR at 3-4 and Exhibits 3 and 4, ZG 4th SQR at 1-5, GG 2nd SQR at 6 and Exhibit 2, and GG 3rd SQR at 4-5 and Exhibit 3.

⁴¹ OTR Tires from the PRC at 114.

⁴² There is no information on the record, for example, that demonstrates that this forgiveness was integrally linked to a larger, economy-wide debt restructuring program that was broadly available and widely used throughout the economy.

To calculate the benefit, we used the benchmarks described in the Benchmarks and Discount Rates section above and the methodology described in 19 CFR 351.505(c)(2) comparing what ZG paid to what ZG would have paid on the comparison loan. We divided the benefit by the combined total sales of GG and ZG (less any sales between the two companies during that period). On this basis, we determine that GG received a countervailable subsidy of .83 percent ad valorem.

C. Income Tax Reduction for High-Tech Industries in Guangdong Province (listed as “Income Tax Reduction Under the ‘Torch’ Program” in the Preliminary Determination)

According to Yue-Fa (1998) No. 16 (Decision on Promoting the Optimization and Updating of Industrial Structure through Scientific and Technological Progress by Guangdong Provincial Party Committee and the Municipal Government of Guangdong Province of the Central Committee), companies placed on the province’s list of high-tech industries pay a reduced income tax rate of 15 percent. Normally, the national income tax rate is 30 percent.⁴³

As shown in GG’s 2006 financial statements, the company was designated as a “Key High-tech Enterprise of the Torch Program” in 1997 through Guo-Ke-Huo-Zi (1997) No. 52.⁴⁴ The company was also placed on Guangdong Province’s list of high-tech enterprises through Yue-Di-Shui-Han (1997) No. 49.⁴⁵

Consistent with the Preliminary Determination,⁴⁶ we determine that the reduced income tax rate applied to GG under the Yue-Fa (1998) No. 16 is a financial contribution in the form of revenue forgone by the GOC, and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the reduction afforded by this program is limited as a matter of law to certain high-tech enterprises listed on Yue-Di-Shui-Han (1997) No. 49, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by GG as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the company's total sales during that period. To compute the amount of the tax savings, we compared the rate GG would have paid in the absence of the program (30 percent) with the rate it paid (15 percent).

On this basis, we determine a countervailable subsidy of 0.75 percent ad valorem for GG under this program.

⁴³ See GG QR at 31, GG/ZG Verification Report at 15 and VE-14, and Zhanjiang/Guangdong Verification Report at page 19.

⁴⁴ See GG QR at Exhibit 5.

⁴⁵ Id.

⁴⁶ Preliminary Determination, 73 FR at 13858-59.

D. Reduced Income Tax Rates for FIEs Based on Location

FIEs are encouraged to locate in designated coastal economic zones, special economic zones, and economic and technical development zones in the PRC through preferential tax rates. This preference was originally created in June 1988 by the Finance Ministry under the “Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIE in Coastal Economic Zone” and was administered during the POI under the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (FIE Tax Law).⁴⁷ Under Article 7 of the FIE Tax Law, productive FIEs located in the designated economic zones pay corporate income tax at a reduced rate of either 15 or 24 percent, depending on the zone. ZG has reported that its tax rate is reduced because of its location.⁴⁸

Consistent with the Preliminary Determination,⁴⁹ we determine that the reduced income tax rate paid by “productive” FIEs under this program confers a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue forgone by the GOC, and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine that the reduction afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

The Department has previously found this program to be countervailable in CFS from the PRC⁵⁰ and LWRP from the PRC.⁵¹

To calculate the benefit, we treated the income tax savings enjoyed by ZG as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the combined total sales of GG and ZG (less any sales between the two companies) during that period. To compute the amount of the tax savings, we compared the rate ZG would have paid for taxes at the national level in the absence of the program (30 percent) with the rate the company paid. On this basis, we determine that GG received a countervailable subsidy of 0.02 percent ad valorem under this program.

E. Income Tax Exemptions/ Reductions Under the “Two Free/Three Half” Program

Under Article 8 of the FIE Tax Law, an FIE that is “productive” and is scheduled to operate for not less than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years. ZG reported that it was in the “two free” period under this program during the POI.⁵²

⁴⁷ See Volume 5 of the Petition at Exhibit 108. A new corporate income tax law came into effect as of January 1, 2008, which is not at issue in this proceeding.

⁴⁸ Zhanjiang/Guangdong Verification Report at 20-21.

⁴⁹ Preliminary Determination, 73 FR at 13859.

⁵⁰ See CFS from the PRC, 72 FR at 60645, and IDM at 12.

⁵¹ See LWRP from the PRC, 73 FR at 35642, and IDM at 10.

⁵² See ZG SQR at 1 and Exhibit 2.

Consistent with the Preliminary Determination,⁵³ we determine that the exemption or reduction in the income tax paid by productive FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC, and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, “productive” FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

The Department has previously found this program to be countervailable in CFS from the PRC.⁵⁴

To calculate the benefit, we treated the income tax savings enjoyed by ZG as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the combined total sales of GG and ZG (less any sales between the two companies) during that period. To compute the amount of the tax savings, we compared the rate ZG would have paid in the absence of the program (see “Reduced Income Tax Rates for FIEs Based on Location,” above) with the rate the company paid. On this basis, we determine that GG received a countervailable subsidy of 0.08 percent ad valorem under this program.

F. Local Income Tax Exemption and Reduction Program for “Productive” FIEs

Under Article 9 of the FIE Tax Law, the provincial governments have the authority to grant an exemption or reduction in local income taxes to “productive” FIEs. The GOC states that, according to the “Equity Joint Venture Tax Law,” the local income tax rate is set at ten percent of the enterprise income tax rate, which is currently 30 percent.⁵⁵

ZG reported receiving a reduced rate or exemption of local income tax during the POI.⁵⁶

Consistent with the Preliminary Determination,⁵⁷ we determine that the exemption or reduction in the local income tax paid by “productive” FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the government, and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, “productive” FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

The Department has previously found this program to be countervailable in CFS from the PRC⁵⁸ and OTR Tires from the PRC.⁵⁹

⁵³ Preliminary Determination, 73 FR at 13859.

⁵⁴ See CFS from the PRC, 72 FR 60645, and IDM at 11-12.

⁵⁵ See GOC QR at 31.

⁵⁶ GG/ZG SQR at 1 and Exhibit 2.

⁵⁷ Preliminary Determination, 73 FR at 13859.

⁵⁸ See CFS from the PRC IDM at 12-13.

⁵⁹ See OTR Tires from the PRC IDM at 22.

To calculate the benefit, we treated the income tax savings enjoyed by ZG as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the combined total sales of GG and ZG (less any sales between the two companies) during that period. To compute the amount of the tax savings, we compared the rate ZG would have paid in the absence of the program (3 percent) with the rate the company paid. On this basis, we determine the countervailable subsidy attributable to GG to be 0.01 percent ad valorem under this program.

G. Reduced Income Tax Rates and Exemption from Local Tax Based on Location in Pudong New Area

Hanhong reported that it is located in Shanghai Pudong New Area, which has been designated as a special economic zone and, as a result, Hanhong pays a reduced rate for both the national and local income taxes.⁶⁰ The GOC confirmed that the Shanghai tax authorities apply a reduced income tax rate for virtually all enterprises located in the Shanghai Pudong New Area.⁶¹

Consistent with the Preliminary Determination,⁶² we determine that the reduced income tax rate paid by Hanhong confers a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue forgone by the GOC, and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the reduction is limited to enterprises located in designated geographical regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Hanhong as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the company's total sales during that period. To compute the amount of the tax savings, we compared the rate Hanhong would have paid in the absence of the program (33 percent) with the rate it actually paid. On this basis, we determine a countervailable subsidy of 0.39 percent ad valorem for Hanhong under this program.

H. VAT and Tariff Exemptions on Imported Equipment

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (GUOFA No. 37) (Circular No. 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items.⁶³ Qualified enterprises receive a certificate either from the NDRC or its provincial branch. To receive the exemptions, a qualified enterprise only has to show this certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.⁶⁴

⁶⁰ See Hanhong QR at 13 and Exhibit 8.

⁶¹ See GOC 2nd SQR at 21.

⁶² Preliminary Determination, 73 FR at 13860.

⁶³ See the Petition at 69-70.

⁶⁴ Id.

GG and ZG received VAT and duty exemptions under this program. GG received these exemptions due to its status as a qualified domestic enterprise, while ZG received its exemption due to its status as a qualified FIE.⁶⁵

Consistent with the Preliminary Determination,⁶⁶ we determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC, and they provide a benefit to the recipients in the amount of the VAT and tariff savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

As described above, FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program. No information has been provided to demonstrate that the beneficiary companies are a non-specific group. As noted above under the “Income Tax Exemptions/ Reductions Under the ‘Two Free/Three Half’ Program,” the Department finds FIEs to be a specific group under section 771(5A)(D)(i). The addition of certain enterprises requiring approval by the NDRC does not render the program non-specific.⁶⁷ Therefore, we determine that this program is specific under section 771(5A)(D)(iii)(I) of the Act.

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

In this investigation, GG and ZG have provided lists of VAT and tariff exemptions that they received for imported capital equipment during the 13-year AUL period. In light of our determination to find subsidies only after December 11, 2001, we have examined VAT and tariff exemptions in 2002 and following years. For all years, the total amount of the VAT and tariff exemptions received by ZG was less than 0.5% of the combined sales of GG and ZG (less any sales between the two companies) and, thus, the benefits are expensed to the respective years of receipt, regardless of whether they are treated as recurring or non-recurring. Therefore, we do not need to reach the issue of whether the importations were tied to the capital structure or capital assets of the firm.

For GG, the total amount of exempted VAT and tariff exemptions exceeded 0.5% of the company’s sales for one year. Moreover, based on GG’s information, the VAT and tariff exemption were for capital equipment. Accordingly, the Department is treating the exemptions as non-recurring benefits consistent with 19 CFR 351.524(c)(2)(iii).

⁶⁵ See GG QR at 25-26 and Exhibit 12; and ZG QR at 20-21 and Exhibit 6.

⁶⁶ Id.

⁶⁷ See CFS from the PRC IDM at Comment 16, discussing and affirming the preliminary determination that this program is specific under section 771(5A)(D)(iii)(I) of the Act despite the fact that the “pool of companies eligible for benefits is larger than FIEs.”

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. See 19 CFR 351.524(b). Specifically, we used the formula described in 19 CFR 351.524(d) and the discount rate described above in the “Benchmarks and Discount Rates” section to calculate the amount of the benefit for the POI. On this basis, we determine that a countervailable benefit of 0.64 percent ad valorem exists for GG.

I. Stamp Tax Exemption Under the Non-tradable Share Reform Program (“NTSR”)

At verification, Department officials found that in 2006, GG converted 12 percent of its total shares from non-tradable shares (“NTS”) to tradable shares (“TS”), pursuant to a pilot government marketization program (i.e., the NTSR). As part of the terms for this conversion, the NTS shareholders agreed to transfer a certain amount of their shares to the TS shareholders. These shares were distributed to the TS shareholders according to the ratio of free or bonus shares relative to the outstanding public shares determined between the NTS and TS shareholders. Company officials explained that stamp taxes for these transfers are waived under the NTSR program.⁶⁸ Furthermore, the shareholders were exempted from paying income tax on the share transfer.

Consistent with the Post-Preliminary Analysis,⁶⁹ we determine that the GOC’s waiver of stamp taxes otherwise due upon the transfer of bonus shares confers a countervailable subsidy. The waiver of stamp taxes is a financial contribution in the form of revenue forgone by the GOC, and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). With respect to specificity, the record evidence shows that in order to participate in the NTSR and benefit from the stamp tax exemption, companies must have NTS. Therefore, we determine that the stamp tax exemption given pursuant to the NTSR is specific within the meaning of section 771(5A)(D)(i) of the Act, because it is limited to only those companies that participated in the NTSR.

As an indirect tax exemption, the stamp tax waiver confers a benefit equal to the amount of stamp tax waived. To calculate the benefit, we divided the total amount of stamp tax waived during the POI by the POI sales of GG. On this basis, we determine the countervailable subsidy to be 0.02 percent ad valorem for GG.

With regard to the income tax exemption, we found in the Post-Preliminary Analysis, and we continue to find, that there is insufficient evidence on the record to determine whether this exemption confers a countervailable subsidy and we plan to seek further information on this aspect of the NTSR in a future administrative review, if this investigation results in a CVD order. See Comment 13 below.

J. Funds for Outward Expansion of Industries in Guangdong Province

This program was established by the Implementing Measures of Guangdong Province concerning the Support of Development of Outward Privately-Held Enterprises (YUEBANFA

⁶⁸ GG/ZG Verification Report at 2-4 and VE-6.

⁶⁹ See Post-Preliminary Analysis at 10; see also OTR Tires from the PRC IDM at Comment G.3.

{2003} No. 17) (Implementing Measures). The purpose of the program is to provide eligible private enterprises in Guangdong Province special funding for the development of export activities.⁷⁰ The Implementing Measures indicate that this program supports the development of international trade and economic cooperation through the establishment of different funds to provide payments to enterprises for international market exploration, export credit insurance assistance, the development of trade through science and technology, export product research and development, support for defense expenses in antidumping duty cases, loan interest grants for various export-related loans and development of outward-looking enterprises. The local Department of Foreign Trade and Economic Cooperation is responsible for approving applications filed under this program and the local Bureau of Finance disburses the approved funds.⁷¹

GG reported receiving a grant under the Outward Expansion Program during the POI.⁷²

Consistent with the Preliminary Determination,⁷³ we determine that the Outward Expansion Program grant is a countervailable subsidy within the meaning of section 771(5) of the Act. It is a financial contribution under section 771(5)(D)(i), and it provides a benefit in the amount of the grant (see 19 CFR 351.504(a)). Finally, because it is contingent upon export performance, the subsidy is specific under section 771(5A)(B).

To calculate the benefit, we divided the amount approved by GG's export sales in the year of approval and found that the amount was less than 0.5%. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt. On this basis, we determine that a countervailable subsidy of 0.08 percent ad valorem exists for GG.

K. Zhanjiang Municipality and ZETDZ Export Related Assistance

GG reported receiving export assistance in the form of grants from the municipal government and ZETDZ in several years.⁷⁴ The GOC has claimed that any benefits under this program are recurring and, consequently, only assistance paid out in the POI is countervailable.⁷⁵ The GOC, however, proffered no evidence in support of its claim.

Consistent with the Post-Preliminary Analysis,⁷⁶ we determine that the export assistance provided by the municipal government and ZETDZ confers a countervailable subsidy on GG. It is a financial contribution under section 771(5)(D)(i), and it provides a benefit in the amount of the grant (see 19 CFR 351.504(a)). The subsidy is specific because it is contingent upon export performance (section 771(5A)(B)). We further determine that these grants are non-recurring subsidies under 19 CFR 351.524(c)(1).

⁷⁰ See GOC QR at 41-46 and Exhibit 98.

⁷¹ See the Petition at 74-75.

⁷² GG QR at 27 and Exhibit 13.

⁷³ Preliminary Determination, 73 FR at 13860-61.

⁷⁴ GG QR at 32; GG 2nd SQR at 15-16; and ZG QR at 25-26.

⁷⁵ GOC 3rd SQR at 53.

⁷⁶ Post-Preliminary Analysis at 9.

To calculate the benefit, we allocated the grants that exceeded 0.5 percent of the export sales in the years in which the grants were approved over the AUL, using the discount rates described in the Benchmarks and Discount Rates section above. We divided the amounts allocated to the POI by GG's export sales in the POI. On this basis, we determine the countervailable subsidy to be 0.05 percent ad valorem for GG.

L. Environmental Subsidy to ZG

ZG reported receiving local government assistance for an environmental protection project.⁷⁷ At the company verification, we reviewed the Zhangjiang Finance Bureau's award notice listing the grant recipients for 2006.⁷⁸ This document indicated that awards were made to "aquaculture and processing key industries," and that only two firms received such awards in 2006.⁷⁹

Consistent with the Post-Preliminary Analysis,⁸⁰ we determine that the assistance provided by the municipal government confers a countervailable subsidy on GG. The assistance is a direct transfer of funds (section 771(5)(D)(i)), with the benefit equaling the amount of the grant (19 CFR 351.504(a)). The subsidy is specific because the actual recipients are limited in number (section 771(5A)(D)(iii)(I)).

To calculate the benefit, we divided the amount of the grant by the combined POI sales of GG and ZG (less any sales between the companies). On this basis, we determine the countervailable subsidy to be 0.05 percent ad valorem for GG.

M. Exemption from Land-Use Taxes and Fees

At verification, the Department learned that neither GG nor ZG paid land-use taxes and fees during the POI.⁸¹ According to the company officials, GG has never paid such taxes or fees, and it was their understanding that no such taxes or fees were owed.⁸² With regard to ZG, company officials explained that the company was exempted from these taxes and fees by virtue of its status as an FIE.⁸³ The exemption for FIEs ended in 2007. Therefore, ZG paid land-use taxes and fees in 2007.

Consistent with the Post-Preliminary Analysis,⁸⁴ we determine that the exemption from land use taxes and fees received by ZG confers a countervailable subsidy. The exemption is a financial contribution in the form of revenue forgone by the GOC, and it provides a benefit to the recipient in the amount of the tax and fee savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the exemption/reduction afforded by this program is

⁷⁷ ZG QR at 26.

⁷⁸ GG/ZG Verification Report at 26.

⁷⁹ GG/ZG Verification Report at Exhibit 25.

⁸⁰ Post-Preliminary Analysis at 9-10.

⁸¹ GG/ZG Verification Report at 21 and 23.

⁸² Id. at 21.

⁸³ Id. at 23.

⁸⁴ Post-Preliminary Analysis at 11-12.

limited as a matter of law to certain enterprises, FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

Because this is an indirect tax exemption, the subsidy is recurring (see 19 CFR 351.524(c)). There is insufficient information on the record as to the amount of taxes that were otherwise due in 2006. Therefore, as (neutral) facts available, to calculate the benefit, we treated the amount paid in 2007 as the amount that would otherwise have been paid by ZG in 2006. We divided these savings by the combined POI sales of GG and ZG (less any sales between the two companies). On this basis, we determine the countervailable subsidy rate to be 0.09 percent ad valorem for GG.

With regard to GG's non-payment of the land-use taxes and fees, there is insufficient evidence on the record to determine whether this non-payment confers a countervailable subsidy. Therefore, we plan to seek further information on this in a future administrative review, if this investigation results in a CVD order.

N. Provision of Electricity for Less than Adequate Remuneration in Zhanjiang Economic and Technological Development Zone (ZETDZ)

In its response, the GOC provided the electricity rate schedules for the municipality of Zhanjiang during the POI, showing the rates charged to the various categories of users.⁸⁵ We verified that GG paid the rate assigned to large scale industrial users and that ZG paid the rate assigned to "normal" industrial users.⁸⁶ Neither company received a discounted rate relative to same-category users in Zhanjiang due to its registration in the ZETDZ.

At verification, we learned that the Zhanjiang Pricing Bureau did not set or recommend electricity rates for that jurisdiction.⁸⁷ Instead, pricing recommendations (more specifically, recommendations for price adjustments) were made by the Guangdong (provincial) Pricing Bureau and those recommendations were reviewed by the NDRC (the national level government). For prices during the POI, the NDRC set a different price adjustment than that recommended by the provincial authorities.⁸⁸ Also at verification, we reviewed electricity rate schedules for other jurisdictions within Guangdong Province.⁸⁹ These showed that rates in Guangzhou were higher than those in Zhanjiang for similarly situated users (e.g., large-scale industrial users). Guangdong Pricing Bureau officials explained that different rates were set for different jurisdictions within Guangdong because of the different costs of supplying these jurisdictions.⁹⁰

Consistent with the Post-Preliminary Analysis,⁹¹ we determine that the facts on the record support a finding of regional specificity with respect to electricity rates in Guangdong Province.

⁸⁵ GOC NAR at Exhibits NA-1 and NA-2.

⁸⁶ Zhanjiang/Guangdong Verification Report at 37-38.

⁸⁷ Id. at 35.

⁸⁸ Id. at 35.

⁸⁹ Id. at Exhibits 13 and 14.

⁹⁰ Id. at 34.

⁹¹ Post-Preliminary Analysis at 9-10.

In accordance with section 771(5A)(D) of the Act, specificity of domestic subsidies is determined by reference to the granting authority. Furthermore, we determine that the provision of electricity is a government financial contribution in the form of the provision of a good or service (section 771(5)(D)(iii)).

To determine whether a benefit was conferred through the provision of electricity, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a) to determine whether the GOC received adequate remuneration. Under 19 CFR 351.511(a)(2)(i), we look first to whether there are market-determined prices within the country (“tier one benchmarks”). According to the GOC, private ownership of power plants is increasing in China, but the two transmission companies (State Grid and China Southern Power Grid) are state-owned and the prices for uploading electricity to the power grid, transmitting and selling electricity to end users are generally regulated by the GOC.⁹² Also, the GOC has provided import prices for electricity imported into China, but has noted that this electricity is uploaded onto the grid for distribution across the grid.⁹³ Therefore, it is not a retail price and, hence, does not reflect a price that would be available to individual enterprises. Moreover, the end-user prices of any imported electricity are likewise regulated by the GOC. Therefore, we determine that there are no tier one market-determined prices in China to use as a benchmark.

Under 19 CFR 351.511(a)(2)(ii), we look next to world market prices (“tier two benchmarks”), where we can reasonably conclude that such a price would be available to users in China. However, the record contains no such information for world market prices for electricity that would be available to users in China.

Finally, under 19 CFR 351.511(a)(2)(iii), we look to whether the government price is consistent with market principles (“tier three benchmarks”). According to the CVD Preamble, this analysis can entail looking at the government’s price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination.⁹⁴ The GOC has submitted the regulations in effect at the time of this investigation regarding reform of electricity prices in China.⁹⁵ The regulations appear to address, *inter alia*, the government’s price-setting philosophy. However, because a key aspect of our understanding of the level of government setting electricity rates came to light only at verification, we did not have the opportunity to seek the extensive information needed to analyze the government’s price-setting philosophy or its costs for electricity. Nevertheless, the information that has been provided indicates that preferential pricing exists within Guangdong Province. Based on the facts available, we find that a benefit exists in the amount of the difference in the rates for the applicable user category between Guangzhou and Zhanjiang.

Because this is the provision of a good or service for less than adequate remuneration, the subsidy is recurring (see 19 CFR 351.524(c)). Therefore, to calculate the benefit, we computed the amounts that GG would have paid for electricity at the higher rate and subtracted the amounts

⁹² GOC NAR at 2-3.

⁹³ Id. at 5.

⁹⁴ CVD Preamble at 65378.

⁹⁵ GOC 3rd SQR at Exhibit S3-1.

it actually paid during the POI. We divided these “savings” by the total POI sales of GG. On this basis, we determine the countervailable subsidy to be 0.07 percent ad valorem for GG.

As stated in the Post-Preliminary Analysis,⁹⁶ in any future administrative review of this proceeding as well as in other China CVD proceedings (where relevant and practicable), we intend to investigate and analyze further the electricity rate-setting authority in China and the considerations that go into setting those rates. We may also consider alternative approaches for determining a benefit, such as through an analysis of the government’s price setting philosophy or its costs. See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago, 62 FR 55003 (October 22, 1997); Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (October 3, 2001) and the accompanying Issues and Decision Memorandum

O. Provision of Land to GG in the ZETDZ for Less than Adequate Remuneration

GG reported that it purchased land-use rights four times. One of the purchases occurred before the “cut-off” date of December 11, 2001.⁹⁷ Another occurred after the POI. ZG also purchased its land-use rights before the cut-off date. Therefore, we have limited our analysis to the two purchases of land-use rights by GG that occurred between the cut-off date and the end of the POI.

In 2005, GG purchased “granted” land-use rights in the ZETDZ. Although the site was located in the zone (an area within the municipality), the Zhanjiang (municipal) Land Bureau conducted the transaction. According to the GOC, there are no exceptional rules for selling land-use rights in economic development zones⁹⁸ and the process followed by the municipal land bureau did not vary depending on whether the land was located in a zone or not.⁹⁹ At verification, we were told that the land bureau set the price for GG’s purchase at the appraised value and that it does so generally (as long as it is satisfied that the appraisal was properly conducted).¹⁰⁰ In response to our questions at the company verification regarding a reference to preferential treatment in GG’s appraisal, GG provided an appraisal for land outside the zone that contained similar language and an affidavit from the appraisal company stating that the questioned language was “boilerplate.”¹⁰¹ GG also provided a contract for the land-use rights in a location outside the zone where the price paid was lower than the price paid by GG.¹⁰²

Also in 2005, GG purchased land-use rights in the ZETDZ through a court-directed auction.¹⁰³ The details of this transaction are proprietary and, therefore, are discussed in a separate memorandum “Auction of Land-Use Rights to Guangdong Guanhao High-Tech Co., Ltd.” (dated September 2, 2008).

⁹⁶ See Post-Preliminary Analysis at 5.

⁹⁷ In CWP from the PRC, the Department determined that it would not find subsidies prior to this date, when the PRC joined the WTO. See CWP from the PRC IDM at Comment 2.

⁹⁸ GOC NAR at 10.

⁹⁹ GOC 3rd SQR at 9.

¹⁰⁰ GG/ZG Verification Report at 32.

¹⁰¹ Id. at 18.

¹⁰² Id. at 20.

¹⁰³ GG NAR at 8.

In LWS from the PRC,¹⁰⁴ the Department found that the provision of land-use rights constitutes the provision of a good within the meaning of section 771(5)(D)(iii).¹⁰⁵ We also found that when the land is in an industrial park located within the seller's (e.g., municipality's or county's) jurisdiction, the provision of the land-use rights is regionally specific (see section 771(5A)(D)(iv) of the Act).¹⁰⁶ Thus, consistent with LWS from the PRC, we determine that GG's two purchases of land-use rights in 2005 give rise to countervailable subsidies to the extent that a benefit was conferred.

With respect to the "granted" land-use rights purchased directly from the Zhanjiang Land Bureau, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a). As discussed above with respect to the provision of electricity, we look first to whether there are market-determined prices within the country. See 19 CFR 351.511(a)(2)(i). The Department recently determined that "Chinese land prices are distorted by the significant government role in the market" and, hence, that tier one benchmarks do not exist.¹⁰⁷ We also found that tier two benchmarks (world market prices that would be available to purchasers in China) are not appropriate.¹⁰⁸ See 19 CFR 351.511(a)(2)(ii). Therefore, we determined the adequacy of remuneration by reference to tier 3 benchmarks and found that the sale of land-use rights in China was not consistent with market principles because of the overwhelming presence of the government in the land-use rights market and the widespread and documented deviation from the authorized methods of pricing and allocating land.¹⁰⁹ See 19 CFR 351.511(a)(2)(iii). There is insufficient new information on the record of this investigation to warrant a change from our earlier findings in this regard.

With respect to the land-use rights purchased through auction, the available record indicates that the government provided the land for the purpose of producing adhesive paper,¹¹⁰ which is non-subject merchandise. Based on a comparison of the benchmark described above with the price paid by GG, this transaction does not give rise to a benefit. Therefore, consistent with the Post-Preliminary Analysis,¹¹¹ we continue to find that there is no subsidy associated with this transaction and, consequently, and we do not address it further.

With respect to the "granted" land-use rights, consistent with the Post-Preliminary Analysis,¹¹² we determine a countervailable subsidy was conferred on GG. The provision of land-use rights is a government financial contribution in the form of the provision of a good or service (section 771(5)(D)(iii)). For the reasons explained above, we are not able to use Chinese or world market prices as a benchmark. Therefore, we compared the price paid by GG for its land-use right with comparable market-based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of, China. Specifically, we

¹⁰⁴ LWS from the PRC, 73 FR at 35639.

¹⁰⁵ LWS from the PRC IDM at 14 and Comment 8.

¹⁰⁶ Id. at 14 and Comment 9.

¹⁰⁷ Id. at 15 and Comment 10.

¹⁰⁸ Id.

¹⁰⁹ Id. at 16 and Comment 10.

¹¹⁰ GG/ZG Verification Report at 20.

¹¹¹ Post-Preliminary Analysis at 7.

¹¹² Id. at 6-8.

are comparing the price GG paid to sales of certain industrial land in industrial estates, parks, and zones in Thailand, consistent with LWS from the PRC,¹¹³ which results in a benefit.

To calculate the benefit, we computed the amount that GG would have paid for its granted land-use rights and subtracted the amount it actually paid, and allocated the “savings” over the life of the land-use rights contract using the discount rate described in the Benchmarks and Discount Rates section above. We divided the amount allocated to the POI by the total POI sales of GG. On this basis, we determine the countervailable subsidy to be 0.17 percent ad valorem for GG.

II. Program Determined to Be Not Countervailable

A. Guangdong Province Intellectual Property “IP” Rights Grants

Consistent with the Post-Preliminary Analysis,¹¹⁴ we determine that grants provided under this program are neither specific in law nor in fact and, hence, do not provide a countervailable subsidy. Record evidence shows that this program is open to all industries and that the authority and legislation pursuant to which the subsidy is provided does not otherwise limit the grants to an enterprise or industry. Further, the recipients are spread across numerous enterprises and industries, and neither GG nor the papermaking industry is a dominant user or disproportionate beneficiary of the program.¹¹⁵

B. VAT Rebates (originally referred to as “Export Incentive Payments Characterized as “VAT Rebates”)

GG reported that the VAT rate levied on LWTP in the domestic market (17 percent) exceeded the amount of VAT exempted upon the export of LWTP (0 or 13 percent depending on how it is classified).¹¹⁶ We confirmed the VAT and VAT rebate rates on LWTP at verification with both the GOC and GG.¹¹⁷ The Department’s regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted “exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.” 19 CFR 351.517(a); see also 19 CFR 351.102 (for a definition of “indirect tax”). Information in the company responses shows that GG paid the VAT on its inputs, and applied for and received a VAT refund on its export sales. To determine whether a benefit was provided under this program, the Department analyzed whether the amount of VAT exempted during the POI exceeded the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Because the VAT rate levied on LWTP in the domestic market (17 percent) exceeded the amount of VAT rebated upon the export of LWTP (0 or 13 percent), the Department determines that, for the purposes of this investigation, the VAT refund received upon the export of LWTP does not

¹¹³ LWS from the PRC IDM at 17.

¹¹⁴ Id. at 8.

¹¹⁵ Id.

¹¹⁶ GG QR at 23-25.

¹¹⁷ Zhanjiang / Guangdong Verification Report at 43-44 and GG/ZG Verification Report at 27-28.

confer a countervailable benefit. Our finding is consistent with our determinations on the same program in several prior cases. See, e.g., CWP from the PRC and LWRP from the PRC.¹¹⁸

III. Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI

We determine that GG, ZG or Hanhong did not apply for or receive benefits under the following programs during the POI. We note that for those respondents to which adverse facts available are being applied, we are assigning subsidy rates based on adverse facts available for most of these programs. See “Application of Facts Available and Use of Adverse Inferences,” above; see also Final AFA Calculation Memorandum.

- A. Loans provided pursuant to the Northeast Revitalization program
- B. Loan guarantees from government-owned and controlled banks
- C. Income tax exemption program for export-oriented foreign investment enterprises
- D. Corporate income tax refund program for reinvestment of FIE profits in export-oriented enterprises
- E. Reduced income tax rate for technology and knowledge intensive FIEs
- F. Reduced income tax rate for high or new technology FIEs
- G. Preferential tax policies for research and development at FIEs
- H. Income tax credits on purchases of domestically produced equipment by domestically-owned companies
- I. State Key Technology Renovation program fund
- J. Export interest subsidy funds for enterprises located in Shenzhen City and Zhejiang Province
- K. Loans and interest subsidies pursuant to Liaoning Province’s five-year framework
- L. Currency retention program
- M. Special fund for technology innovation projects in Guangdong Province
- N. Zhanjiang Municipality grants for patents
- O. Zhanjiang Municipality grants to “Famous Brand/Famous Trademark” enterprises
- P. Government interest discounts
- Q. “Enterprise Innovation Funds” grants
- R. Grants from the Zhanjiang Economic and Technology Development Zone for high and new technology enterprises
- S. Funding for construction of enterprise technology R&D centers from the Guangdong Government
- T. Grants under the Three Science and Technology Expenditure Fund
- U. Research assistance from the local government to GG
- V. Provision of certain papermaking chemicals (DPE, BPS, and ODB2) for less than adequate remuneration

¹¹⁸ See CWP from the PRC IDM at 16; CWP from the PRC – Preliminary, 72 FR 63875, 63884; and LWR from the PRC IDM at 16.

Analysis of Comments

Comment 1: The Department's Authority to Apply the Countervailing Duty Law to China

The GOC argues that the Department has no legal authority to apply the CVD law to China as long as it continues to designate China as an NME for AD purposes. In support of its argument, the GOC provides three points to underline its position. First, the GOC contends that the court in Georgetown Steel definitively ruled that the U.S. statutory scheme does not permit the application of CVD law to NME countries. The GOC asserts that the Department's current interpretation of the Georgetown Steel decision, that the Department has the discretion to decide whether to apply CVD law to NME countries, is contradicted by the very language in the Georgetown Steel decision. The GOC notes that in Georgetown Steel the court upheld the Department's own legal conclusion that the CVD law does not apply to NMEs not because the court found the Department's interpretation to be the only permissible interpretation of the statutory scheme. The GOC also notes that the Georgetown Steel decision has been effectively affirmed by Congress because Congress refused to reverse or modify the Georgetown Steel decision in the 1988 Omnibus Trade and Competitiveness Act and the Uruguay Round Agreements Act, but instead strengthened the AD Law.

Second, the GOC asserts that even if the Department has the legal authority to apply the CVD law to China, the Department's imposition of CVD duties against China constitutes a retroactive amendment to a binding rule, in violation of the APA. The GOC states that the APA requires formal rulemaking to amend binding rules. The GOC contends that because the Department has explicitly codified its refusal to initiate CVD cases against NME countries, such refusal constitutes a binding rule as defined in the APA. The GOC contends that a binding rule emerged under the APA when either: 1) in 1984, the Department adopted its position not to apply the CVD law to NME countries after a specific notice and comment period;¹¹⁹ 2) in 1993, the Department issued the "General Issues Appendix," which was a written statement that resolved various issues related to the CVD law;¹²⁰ or 3) the Department codified its position when it specifically limited the scope of its authority in new CVD regulations to exclude NMEs. The GOC notes that application of CVD law to NME countries may not be changed without following formal rulemaking procedures, which is something that the Department has not yet done with respect to the application of the CVD law to China. The GOC argues that calling a "rule" a "practice" or "policy" does not immunize the Department's action from APA requirements because it is the nature and effect of the action, not the labels, that govern.¹²¹

Third, the GOC contends that the Department's stated rationale that China's present day economy is different from the traditional Soviet-style economies is legally flawed. The GOC notes that the Department does not cite any sources providing evidence that U.S. law recognizes different types of NME countries and should apply different rules to different types of NMEs. In addition, the GOC notes that section 771(18) of the Act makes clear that there is only one definition of a NME and, thus, U.S. law does not recognize "hybrid" NMEs. In contrast, the

¹¹⁹ The GOC cites Textiles, Apparel, and Related Products From the People's Republic of China, 48 FR 46000 (Oct. 13, 1983); and Wire Rod from Poland.

¹²⁰ The GOC cites Steel Products from Austria.

¹²¹ The GOC cites OTR Tires from the PRC IDM at 45.

GOC notes that there is Department precedent for refusing to apply the CVD law to NME countries until after the country is designated by the Department to have a market economy. The GOC cites to Sulfanilic Acid from Hungary,¹²² where the Department refused to apply the CVD law to Hungary in the year immediately prior to Hungary's graduation to market economy status. The GOC argues that the Department must provide a proper legal analysis that explains how China's NME of today is so different from Hungary's NME in 1997, the year before Hungary graduated to market-economy status. In this regard, the GOC argues that in CFS from the PRC the Department recognized inconsistency with Sulfanilic Acid from Hungary by invoking discretion to make case-by-case determinations and this abrupt reversal without explanation underscores the weak legal foundation of the Department's rationale.

Petitioner contests the GOC's assertions that the Department does not have the authority to impose the CVD law against China. In support, Petitioner provides five arguments to underline their position. First, Petitioner argues that the CVD statute authorizes the application of the CVD law to China. Petitioner notes that the broad definitions of the CVD law's coverage mean that it applies to imports from all nations, including China, and that nothing in the statute qualifies or limits this broad country coverage.¹²³ Petitioner asserts that had Congress intended to exclude NME countries from the statute, it surely would have made this intent explicit, most notably, in amending the law since 1979, which includes two major revisions (i.e., the 1988 Omnibus Trade and Competitiveness Act and the 1994 URAA). Further, Petitioner states that contrary to the GOC's arguments, nothing in the legislative history of the statute contradicts its plain meaning or suggests that Congress opposed allowing the Department to initiate or conduct CVD investigations of imports from NME countries. In fact, Petitioner highlights that in legislation enacted in 2000 to authorize permanent normal trade relations with China upon its accession to the WTO, Congress expressly recognized the availability of CVD remedies against imports from China.¹²⁴ Consequently, Petitioner contends that the GOC improperly argues that the Department should supply an exception from the detailed regulatory scheme of the CVD statute that the statute itself does not provide.

Second, Petitioner disagrees with the GOC's position that Georgetown Steel prohibits the Department from applying the CVD law to China. Petitioner believes that the GOC's interpretation misrepresents both the context and ultimate holding of the Georgetown Steel opinion. The case involved a different, and now-repealed, CVD statute and (2) the current statute has been significantly amended since Georgetown Steel to contain key provisions that are fundamentally different from those in former section 303. To the latter point, Petitioner notes that the current statute does not use the ambiguous "bounty or grant" language of Section 303 and, instead, uses language that broadly defines a subsidy in terms of financial contributions and benefits that can be provided by a government in either a market economy or an NME. Petitioner also asserts that the amended language clarifies that, in determining whether a subsidy exists, the Department should not consider: (1) whether the recipient of the subsidy is publicly or privately owned; or (2) the effect of the subsidy.¹²⁵ Petitioner believes that this language

¹²² See Sulfanilic Acid from Hungary IDM at 15 and 17.

¹²³ Petitioner cites sections 701(b)(1), 702(1), and 771(3) of the Act.

¹²⁴ Petitioner cites 22 USC section 6941(4) and H.R. Rep. No. 106-632, at 12 (2000).

¹²⁵ Petitioner cites section 771(5)(C) of the Act.

plainly alters the factors considered in Georgetown Steel with respect to the impracticability of determining subsidization in an NME.

Petitioner also argues that the GOC fails to acknowledge the basis for the Federal Circuit's holding in Georgetown Steel, which held that the now repealed section 303 allowed the Department the discretion not to apply CVD remedies to NMEs and deferred to the Department's decision not to do so.¹²⁶ As such, Petitioner argues that the court did not hold that section 303 precluded the Department from reconsidering its decision in light of an NME's future economic and governmental policy changes, much less that the current CVD statute, which was not at issue in Georgetown Steel, precluded such reconsideration. In addition, Petitioner asserts that in Government of China v. United States,¹²⁷ the CIT denied the GOC's motion for a preliminary injunction of the CFS from the PRC investigation and concluded that Georgetown Steel is no impediment to the application of the CVD law to China.

Petitioner contests the GOC's assertion that Georgetown Steel was effectively affirmed by Congress, in a manner that purportedly bars the application of the CVD law to NMEs. Petitioner believes, to the contrary, that the URAA repealed Section 303, and extensively revised the current CVD law, including the adoption of broad new definitions of "subsidy" and "countervailable subsidy." In addition, Petitioner notes that Congress' most recent actions in adopting permanent normal trade relations with China authorized appropriations to the Department for the purpose of defending U.S. CVD measures with respect to products from China.

Third, Petitioner contends that the GOC's failed to establish how the APA applies to countervailing duty proceedings. Citing CWP at Comment 1, Petitioner notes that Department has stated that the APA does not apply to countervailing duty proceedings because there are largely investigatory and, at best, quasi-adjudicatory in nature. Furthermore, Petitioner asserts that the Department has stated that its policy of non-application of the CVD law to NMEs is not a rule under the APA, but a practice and has never created "a sweeping rule against ever applying the CVD law to NMEs."¹²⁸ Finally, Petitioner argues the Department rejected the GOC's argument that it codified the non-application of the CVD law to NMEs in its new countervailing duty regulations.¹²⁹ Petitioner notes the Department's position was confirmed by the CIT in Government of China v. United States.¹³⁰

Fourth, Petitioner rebuts the GOC argument that Sulfanic Acid From Hungary established that the CVD law does not apply to NMEs and the Department has never explained its departure from this principle. Citing the Georgetown Steel Memorandum, Petitioner asserts the Department noted the key decisions in applying its former practice, explained the changes and adopted a new

¹²⁶ See Georgetown Steel, 801 F.2d at 1318 (citing United States v. Zenith Radio Corp., 562 F.2d 1209, 1219 (C.C.P.A. 1977), affirmed 437 U.S. 443 (1978)).

¹²⁷ See Government of China v. United States, 483 F. Supp. 2d at 1274, 1282. See also Magnets from the PRC IDM at Comment 1.

¹²⁸ See CFS from the PRC IDM at 25 and 27. See also CWP from the PRC IDM at 30.

¹²⁹ See CFS from the PRC at Comment 2.

¹³⁰ See Government of China v. United States, 483 F. Supp. 2d at 1282.

practice.¹³¹ Petitioner also states the Department further explained its rationale in Magnets from the PRC.¹³² Thus, Petitioner argues the Department sufficiently addressed its change in practice and the GOC's argument is misplaced.

Department's Position:

A. The Department Has Legal Authority to Apply the CVD Law to China

Congress granted the Department the general authority to conduct CVD investigations. See, e.g., sections 701 and 771(5) and (5A) of the Act. In none of these provisions is the granting of this authority limited only to market economies. For example, the Department was given the authority to determine whether a "government of a country or any public entity within the territory of a country is providing . . . a countervailable subsidy" See Section 701(a) of the Act. Similarly, the term "country," defined in section 771(3) of the Act, is not limited only to market economies, but is defined broadly to apply to a foreign country, among other entities. See also Section 701(b) of the Act (providing the definition of "Subsidies Agreement country").

In 1984, the Department first addressed the issue of the application of the CVD law to NMEs. In the absence of any statutory command to the contrary, the Department exercised its "broad discretion" to conclude that "a 'bounty or grant,' within the meaning of the CVD law, cannot be found in an NME." See Wire Rod from Poland and Wire Rod from Czechoslovakia. The Department reached this conclusion, in large part, because both output and input prices were centrally administered, thereby effectively administering profits as well. Id. The Department explained that "{t}his is the background that does not allow us to identify specific NME government actions as bounties or grants." Id. Thus, the Department based its decision upon the economic realities of Soviet-bloc economies. In contrast, the Department has previously explained that, "although price controls and guidance remain on certain 'essential' goods and services in China, the PRC Government has eliminated price controls on most products" See Georgetown Steel Memorandum. Therefore, the primary concern about the application of the CVD law to NMEs originally articulated in these Wire Rod cases is not a significant factor with respect to China's present-day economy. Thus, the Department has concluded that it is able to determine whether subsidies benefit imports from China.

The CAFC recognized the Department's broad discretion in determining whether it can apply the CVD law to imports from an NME in Georgetown Steel, 801 F.2d at 1318. In doing so, the CAFC recognized that the statute does not speak to this precise issue and deferred to the Department's decision. The Georgetown Steel court did not find that the CVD law prohibited the application of the CVD law to NMEs, but only that the Department's decision not to apply the law was reasonable based upon the language of the statute and the facts of the case. Specifically, the CAFC recognized that:

{T}he agency administering the countervailing duty law has broad discretion in determining the existence of a "bounty" or "grant" under that law. We cannot say that

¹³¹ See CFS from the PRC.

¹³² See Magnets from the PRC IDM at Comment 1.

the Administration's conclusion that the benefits the Soviet Union and the German Democratic Republic provided for the export of potash to the United States were not bounties or grants under section 303 was unreasonable, not in accordance with law or an abuse of discretion. See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-45, 104 S.Ct. 2778, 2781-83, 81 L.Ed.2d 694 (1984).

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

The GOC argues that the Georgetown Steel court found that the CVD law cannot apply to NMEs. In making this argument, the GOC cites to select portions of the opinion and ignores the ultimate holding of the case and the court's reliance on Chevron to find the Department had reasonably interpreted the law. Id. The Georgetown Steel court did not hold that the statute prohibited application of the CVD law to NMEs, nor did it hold that Congress spoke to the precise question at issue. Instead, as explained above, the court held that the question was within the discretion of the Department.

Recently, the CIT concurred, explaining that "the Georgetown Steel court only affirmed {the Department}'s decision not to apply countervailing duty law to the NMEs in question in that particular case and recognized the continuing 'broad discretion' of the agency to determine whether to apply countervailing duty law to NMEs." See Gov't of the People's Republic of China v. United States, 483 F. Supp. 2d at 1282 (citing Georgetown Steel, 801 F.2d at 1318). Therefore, the court declined to find that the Department's investigation of subsidies in China was ultra vires.

The GOC's argument that Congress' failure to amend the law subsequent to Georgetown Steel amounts to a Congressional action of non-application of the CVD law to NMEs is also legally flawed. The fact that Congress has not enacted any NME-specific provisions to the CVD law does not mean the Department does not have the legal authority to apply the law to NMEs. The Department's general grant of authority to conduct CVD investigations is sufficient. See, e.g., Section 771(5) and (5A) of the Act. Given this existing authority, no further statutory authorization is necessary. Furthermore, since the holding in Georgetown Steel, Congress has expressed its understanding that the Department already possesses the legal authority to apply the CVD law to NMEs on several occasions. For example, on October 10, 2000, Congress passed the PNTR Legislation. In section 413 of that law, which is now codified in 22 U.S.C. § 6943(a)(1), Congress authorized funding for the Department to monitor "compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and countervailing duty measures with respect to products of the People's Republic of China." 22 U.S.C. § 6943(a)(1) (emphasis added). China was designated as an NME as of the passage of this bill, as it is today. Thus, Congress not only contemplated that the Department possesses the authority to apply the CVD law to China, but authorized funds to defend any CVD measures the Department might apply.

This statutory provision is not the only instance where Congress has expressed its understanding that the CVD law may be applied to NMEs in general, and China in particular. In that same trade law, Congress explained that "{o}n November 15, 1999, the United States and the People's

Republic of China concluded a bilateral agreement concerning the terms of the People's Republic of China's eventual accession to the World Trade Organization." 22 U.S.C. § 6901(8).

Congress then expressed its intent that the "United States Government must effectively monitor and enforce its rights under the Agreements on the accession of the People's Republic of China to the WTO." 22 U.S.C. § 6941(5). In these statutory provisions, Congress is referring, in part, to China's commitment to be bound by the SCM Agreement as well as the specific concessions China agreed to in its Accession Protocol.

The Accession Protocol allows for the application of the CVD law to China, even while it remains an NME. In fact, in addition to agreeing to the terms of the SCM Agreement, specific provisions were included in the Accession Protocol that involve the application of the CVD law to China. For example, Article 15(b) of the Accession Protocol provides for special rules in determining benchmarks that are used to measure whether the subsidy bestowed a benefit on the company. *Id.* at 9. Paragraph (d) of that same Article provides for the continuing treatment of China as an NME. *Id.* There is no limitation on the application of Article 15(b) with respect to Article 15(d), thus indicating it became applicable at the time the Accession Protocol entered into effect. Although WTO agreements such as the Accession Protocol do not grant direct rights under U.S. law, the Protocol contemplates the application of CVD measures to China as one of the possible existing trade remedies available under U.S. law. Therefore, Congress' directive that the "United States Government must effectively monitor and enforce its rights under the Agreements on the accession of the People's Republic of China to the WTO," contemplates the possible application of the CVD law to China. *See* 22 U.S.C. § 6941(5).

The GOC fails to discuss these statutory provisions and instead, cites to the fact that Congress has enacted revisions to the AD Law to deal with NME methodologies, including in the 1988 Omnibus Trade and Competitiveness Act, but not to the CVD law. The fact that Congress enacted specific provisions for the application of the AD law, but not the CVD law, to NMEs simply reflects that the Department was applying the AD law to NMEs at the time rather than the CVD law. As the CVD law was not being applied to NMEs at that time, there was no reason to amend the CVD law to address concerns unique to NMEs. In sum, while Congress (like the CAFC) deferred to the Department's practice, as was discussed in Georgetown Steel, of not applying the CVD law to the NMEs at issue, it did not conclude that the Department was unable to do so. To the contrary, Congress did not ratify any rule that the CVD law does not apply to NMEs because the Department never made such a rule.

B. Application of the CVD Law to China Is Consistent with the APA

As an initial matter, the Department notes that the GOC, as well as all other parties in this investigation, have been provided due process through the substantial process that is mandated under the CVD law and the Department's Regulations (e.g., a hearing, submission of written argument, and submission of rebuttal argument). Nevertheless, the GOC incorrectly claims that the Department has retroactively¹³³ changed an allegedly binding rule regarding the application

¹³³ The Department notes that it is unclear why the GOC characterizes the DOC's application of the CVD law to China as "retroactive" in violation of the APA because the GOC did not provide any argumentation on this point.

of the CVD law to NMEs without employing adequate process under the APA. The Department has never promulgated a rule pursuant to the APA regarding the application of the CVD law to NMEs.

The APA's notice-and-comment requirements do not apply "to interpretative rules, general statements of policy or procedure, or practice." 5 U.S.C. § 553(b)(3)(A). As explained in more detail below, the decision as to whether to apply the CVD law to NMEs involves the Department's practice or policy, not a promulgated rule, and is, therefore, not subject to the APA. An agency has broad discretion to determine whether notice-and-comment rulemaking or case-by-case adjudication is the more appropriate procedure for changing a policy or a practice. See, e.g., SEC v. Chenery Corp., 332 U.S. 194, 202-03 (1947) (Chenery Corp.) ("the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency"). Here, the decision of whether a subsidy can be calculated in an NME hinges on the facts of the case, and should be made exercising the Department's "informed discretion." See Chenery Corp., 332 U.S. at 203. The CIT recently agreed, stating that:

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

See Gov't of the People's Republic of China v. United States, 483 F. Supp. 2d at 1282.

The CIT has repeatedly recognized the Department's discretion to modify its practice and has upheld decisions by the Department to change its policies on a case-by-case basis rather than by rulemaking when it has provided a reasonable explanation for any change in policy. See, e.g., Budd Co., Wheel & Brake Div. v. United States, 746 F. Supp. 1093 (CIT 1990) (holding that the Department did not engage in rulemaking when it modified its hyperinflation methodology: "because it fully explained its decision on the record of the case it did not deprive plaintiff of procedural fairness under the APA or otherwise"); Sonco Steel Tube Div. v. United States, 694 F. Supp. 959, 966 (CIT 1988) (formal rulemaking procedures were not required in determining whether it was appropriate to deduct further manufacturing profit from the exporter's sales price). This is because it is necessary for the Department to have the flexibility to observe the actual operation of its policy through the administrative process and as opposed to formalized rulemaking. See Ceramica Regiomontana, S.A. v. United States, 10 CIT 399, 404-05, aff'd, 810 F.2d 1137 (Fed. Cir. 1987). The Department provided a fully reasoned analysis for its change of practice in this case. See Georgetown Steel Memorandum.

The Department's decision to apply the CVD law in this investigation is also not subject to the notice-and-comment rulemaking of the APA because of the nature of the proceedings before the agency. The "APA does not apply to antidumping administrative proceedings" because of the investigatory and not adjudicatory nature of the proceedings, a principle equally applicable to

CVD proceedings. See GSA, S.R.L. v. United States, 77 F. Supp. 2d 1349, 1359 (citing SAA at 892) (“Antidumping and countervailing proceedings . . . are investigatory in nature.”)).

As these cases evidence, the GOC is incorrect when it characterizes the Department’s explanation in CFS from the PRC as side-stepping the GOC’s APA arguments “by simply calling a ‘rule’ a ‘practice.’” In contrast to the GOC’s APA arguments which fail to cite any case law, the Department’s explanation in CFS from the PRC (which is reiterated above) evidences that that the courts have consistently held that the Department does not create binding rules under the APA when it develops its practice on a case-by-case basis in antidumping and CVD proceedings.

The GOC cites to various determinations where it claims the Department established a rule under the APA that it would not apply the CVD law to China. As discussed above, the GOC’s argument premised on these determinations is incorrect because the Department does not create binding rules under the APA through its administrative determinations. Instead, in these determinations the Department expounds on its practice in light of the facts before the Department in each proceeding. Furthermore, in the determinations to which the GOC cites, the Department never found that the Congress exempted China from the CVD law.

For example, the GOC cites to Wire Rod from Poland arguing that, through that case, the Department created a binding rule that the CVD law cannot apply to NMEs such as China. In that case (as well as the other Wire Rod case) which provided the Department’s analysis on the Soviet bloc economies and examined whether the CVD law could be applied, the Department articulated its decisions based on the status of those economies at the time. For example, after analyzing the operation of the market (or lack thereof) in Poland, the Department explained that:

These are the essential characteristics of nonmarket economic systems. It is these features that make NME’s irrational by market standards. This is the background that does not allow us to identify specific NME government actions as bounties or grants.¹³⁴

The Department concluded that Congress had never clearly spoken to this issue. Id. In the absence of any statutory command to the contrary, the Department exercised its “broad discretion” to conclude that “a ‘bounty or grant,’ within the meaning of the CVD law, cannot be found in an NME.”¹³⁵ The Department based its decision upon the economic realities of these Soviet bloc economies. It did not create a sweeping rule against ever applying the CVD law to NMEs. Indeed, the Department’s subsequent actions demonstrate that it did not create a rule against the application of CVD law to NMEs. For example, in 1992, the Department initiated a CVD investigation against China, notwithstanding its status as an NME, after determining that certain industry sectors were sufficiently outside of government control.¹³⁶

¹³⁴ See Wire Rod from Poland, 49 FR at 19374.

¹³⁵ Id.; see also Wire Rod from Czechoslovakia.

¹³⁶ See Lug Nuts from the PRC Initiation. The Department ultimately rescinded the CVD investigation on the bases of the AD investigation, the litigation, and a subsequent remand determination, concluding that it was not a market-oriented industry. See Lug Nuts from the PRC Rescission.

The GOC references a statement in the General Issues Appendix (“GIA”) to the 1993 steel cases, again claiming that a reference to the Department’s practice elevated that practice to the level of a rule. However, the statement is simply an explanation that the CVD law is not concerned with the subsequent use or effect of a subsidy and that “Georgetown Steel cannot be read to mean that countervailing duties may be imposed only after the Department has made a determination of the subsequent effect of a subsidy upon the recipient's production.” General Issues Appendix, 58 FR at 37261. This reference to Georgetown Steel does not set forth a broad rule, but merely acknowledged the Department’s practice regarding non-application of the CVD law to NMEs.

The Department has appropriately, and consistently, determined that formal rulemaking was not appropriate for this type of decision. Contrary to the GOC’s claims, instead of promulgating a rule when it drafted other CVD rules,¹³⁷ the Department reiterated its position that the decision to not apply the CVD law in prior investigations involving NMEs was a practice:

In this regard, it is important to note here our practice of not applying the CVD law to non-market economies. The CAFC upheld this practice in Georgetown Steel Corp. v. United States, 801 F.2d 1308 (Fed. Cir. 1986).¹³⁸

See CVD Preamble, 63 FR at 65360 (emphasis added). In a subsequent determination, the Department continued to explain that it has a practice of not applying the CVD law to NMEs, and did not refer to this practice as a rule. “The Preamble to the Department's regulations states that . . . it is important to note here our practice of not applying the CVD law to non-market economies. . . . We intend to continue to follow this practice.” Sulfanilic Acid from Hungary at IDM Comment 1 (emphasis added). The claim that the Department has somehow created a rule, when it has neither referred to its practice as such nor adopted notice-and-comment rulemaking for this practice, is erroneous.

C. Sulfanilic Acid from Hungary Does Not Preclude the Department’s Determination in this Case

The GOC argues that the Department cannot make a determination in this case that is different from Sulfanilic Acid from Hungary without explaining how “China’s non-market economy of today is so different from Hungary’s non-market economy in 1997.” As an initial matter, the Department has fully explained these differences.¹³⁹ Furthermore, there is no requirement that the Department address each instance where a prior practice was applied when changing that practice. The Department is only required to provide a “reasoned analysis” for its change.¹⁴⁰ As explained by the Supreme Court:

¹³⁷ The Department notes that the GOC argues the Department “codified its position when it specifically limited the scope of its authority in the new CVD regulations to excluded non-market economies.” GOC Case Brief at 9. The Department is unable to directly respond to the GOC’s argument because without citation or quoted text it is unclear to which portion of the Department’s CVD regulations the GOC refers.

¹³⁸ See also GIA at 37261.

¹³⁹ See generally Georgetown Steel Memorandum.

¹⁴⁰ See e.g. Rust v. Sullivan, 500 U.S. 173, 187.

An agency is not required to establish rules of conduct to last forever, but rather must be given ample latitude to adapt its rules and policies to the demands of changing circumstances.

Id., 500 U.S. at 186-87 (citations and internal quotations omitted).

The GOC additionally argues that the Department cannot make a determination in this case that is different from Sulfanilic Acid from Hungary because the AD law only contains one definition of NMEs. Contrary to the GOC's claims, the Department has not established types of NMEs. After its initial analysis of the Soviet-styled economies in the Wire Rod investigations, the Department began a practice of not looking behind the designation of a country as an NME when determining whether to apply the CVD law to imports from that country (assuming no claim for a market oriented industry was made).¹⁴¹ Now, the Department has revisited its original decision not to apply the CVD law to NMEs and has determined that it will re-examine the economic and reform situation of the NME on a case-by-case basis to determine whether the Department can identify subsidies in that economy, much as it did in the original Wire Rod investigations.¹⁴² However, the determination of whether the CVD law can be applied does not necessarily create different types of NMEs. It is simply recognizing the inherent differences between NMEs.

The GOC also argues that in CFS from the PRC the Department was unwilling to explain its "abrupt reversal" from Sulfanilic Acid from Hungary and, instead, invoked its discretion to make case-by-case determinations. Contrary to the GOC's arguments, the Department provided a detailed explanation of its change in practice in CFS from the PRC.¹⁴³ Furthermore, as described above, the Department's ability to develop its practice on a case-by-case basis is well-grounded in administrative law and has been fully recognized by the courts.

Comment 2: Cut-off Date for Recognition of Subsidies

In their case brief, Petitioner argues that the Department should not adopt the December 11, 2001, cut-off date for determining whether to countervail potential subsidies in China for the final determination. Petitioners assert that Section 701 of the Act, which directs the Department to determine and countervail illegal subsidies, does not make exceptions for non-WTO members or countries that have not agreed to the obligations in the SCM Agreement. Moreover, Petitioners contend that there is nothing in the Act, the SCM Agreement, or China's Protocol of Accession that directs application of countervailing duties only to subsidies that were conferred after China's WTO accession. Petitioners note that the SCM Agreement, which China became a party to under the Protocol of Accession, provides that subsidies granted prior to WTO entry shall be included in the overall rate of subsidization.

According to Petitioners, the cut-off date violates most-favored-nation treatment, because it provides special benefits to Chinese exporters that are unavailable to other WTO Members. Petitioners assert that the Protocol for Accession required China to notify the WTO of all subsidies that fall within the definition of Article 1 of the SCM Agreement, and, thus, the cut-off

¹⁴¹ See e.g. Sulfanilic Acid from Hungary, 67 FR at 60223.

¹⁴² See e.g. Georgetown Steel Memorandum.

¹⁴³ See, e.g., CFS from the PRC IDM at Comments 3 and 6.

date provides China with substantial rights not given or implied in the WTO accession negotiations or documents. Petitioners also assert that the cut-off date conflicts with the Department's regulations and prior practice because the Department has long recognized that non-recurring subsidies should be countervailed over the entire AUL of an industry's assets.

Petitioners assert that, in CFS from the PRC, the Department cited reforms such as foreign-trading rights and the abolition of central planning for labor allocation as evidence of China's transition away from a Soviet-style economy. Noting that these reforms occurred well before China's accession, Petitioners argue that application of the countervailing duty law to China does not support the use of China's accession as a cut-off date.

The GOC believes that the Department's adopted cut-off date for determining when to countervail potential subsidies in China, December 11, 2001, is too early in time. In support, the GOC provides three principal arguments to underline its position. First, the GOC asserts that the April 9, 2007, CFS from the PRC Amended Preliminary is the first instance in which the Department asserted its legal authority to apply the CVD law to China. Therefore, the GOC argues that using December 11, 2001, as a cut-off date subjects prior periods of time to the discipline of the CVD law when parties would have had no reasonable expectation that the CVD law would apply.

Second, the GOC argues that a later cut-off date is consistent with prior Department practice on this issue. The GOC asserts that the CVD Preamble and Georgetown Steel instruct the Department to apply CVD law only after a non-market economy has been found subject to CVD law. The GOC asserts that in Sulfanilic Acid from Hungary, the Department determined that the appropriate cut-off date to examine or value subsidies was the date that Hungary graduated from NME status. The GOC notes that a formal graduation date from NME to market economy is not present in this case. Therefore, the GOC argues that the most analogous date would be April 9, 2007, the publication date of the CFS from the PRC Amended Preliminary and the date that the Georgetown Steel Memorandum entered the public domain.

Third, the GOC argues that establishing a later cut-off date would be consistent with the Department's logic for continuing to apply NME status in the AD cases against China. The GOC contends that the WTO documents upon which the Department relies in the Lined Paper Memorandum to continue applying its NME methodology in AD cases do not support a finding that market reforms took effect in China until 2005. In support of their argument, the GOC highlights five sub-points to illustrate how the Lined Paper Memorandum presents the Department's case that China is not yet a market economy. First, the GOC notes that the Lined Paper Memorandum highlights the slow process of liberalizing the renminbi. Second, the GOC notes that the Lined Paper Memorandum discusses restrictions on foreign investment that continue on an ad hoc basis even after the WTO accession. Third, the GOC contends that the Department has relied on the WTO China Trade Policy Review¹⁴⁴ to justify continued application of NME status to China, which covers a period of time through the end of 2005. Fourth, the GOC states that the Lined Paper Memorandum cites to IMF studies from 2005 about

¹⁴⁴ See Trade Policy Review, People's Republic of China, WT/TPR/S/161 (February 28, 2006) ("WTO China Trade Policy Review").

the limited extent to which the state-owned commercial banks were operating on market principles. Finally, the GOC asserts that the Lined Paper Memorandum discusses limitations on private ownership and the changes that took place in 2006. Therefore, the GOC argues that Lined Paper Memorandum supports using a cut-off date, at a minimum, of January 1, 2005. In addition, the GOC notes that in the CFS from the PRC case, the Department considered China to be sufficiently market oriented to justify the application of CVD law for the period of 2005.

Petitioner disagrees with the GOC's argument that the Department's adopted cut-off date did not provide "adequate notice." Citing its case brief, Petitioner states that it has provided ample evidence as to why the Department should not establish any cut-off date and why the cut-off date has provided more favorable treatment to China than other U.S. trading partners. Therefore, for these reasons, as spelled out in its case brief, Petitioner asserts that the GOC's argument on this point is absurd and should be rejected.

Petitioner also disagrees with the GOC's argument that the Department's decision to continue NME treatment for China as stated in the Certain Lined Paper Products case means that the Department must revise its cut-off date, or eliminate the findings and apply market economy dumping rules to China. Petitioner believes the Department should decline the GOC's proposal of using an April 2007 or January 2005 cut-off date. Petitioner argues that the GOC concentrates on the determination that China remains an NME in the antidumping context such as in the Certain Lined Paper Products case as opposed to the status of China's economy for purposes of the CVD law, which is seen in the Georgetown Steel case.¹⁴⁵ Petitioner believes that using the correct, later comparison leads to an analysis that reveals that China's NME has undergone sufficient changes since the opinion in Georgetown Steel such that the application of the CVD law is now possible, even if China is still considered an NME for AD purposes.¹⁴⁶ Moreover, the Department's analysis in Georgetown Steel does not conflict with its Certain Lined Paper Products analysis.¹⁴⁷ Petitioner also points to CWP from the PRC, where the Department further notes that economic reform is a process that occurs over time and, although, there continue to be nonmarket aspects of the Chinese economy today, the cumulative effects of reforms implemented before WTO accession lead to economic changes that permit the measurement of subsidies.¹⁴⁸

The alternative cut-off dates suggested by the GOC, Petitioner contends, are also undisputedly long after the GOC was on explicit notice of the applicability of the CVD law to China. Citing to the WTO negotiations, U.S. code and the SCM Agreement, Petitioner argues that the GOC was adequately put on notice of the applicability of the CVD law and it should have had no reasonable basis to believe that application would be limited by any subsidies recognition cut-off date policy.¹⁴⁹ Thus, the Department should reject the GOC's claims of lack of notice and suggestions for grandfathering all but the most recent subsidies.

¹⁴⁵ Petitioner cites Georgetown Steel Memorandum at 2.

¹⁴⁶ Petitioner cites Georgetown Steel Memorandum at 2.

¹⁴⁷ Petitioner cites the Georgetown Steel Memorandum at 9.

¹⁴⁸ See CWP from the PRC IDM at Comment 2.

¹⁴⁹ Petitioner cites 22 U.S.C. 6943(a)(1); 22 U.S.C. 6931; and China Protocol of Accession at Part 1.1, para. 1, SCM

Petitioner further argues that the GOC is incorrect that, as a matter of law, the Department's decision in Sulfanilic Acid from Hungary requires a cut-off date of April 9, 2007. In Magnets from the PRC, the department found that Sulfanilic Acid from Hungary is not categorically applicable to all NMEs and that it was in accord with a then-existing practice. Accordingly, the Department has provided a reasonable explanation sufficient to justify a change in practice. Therefore, Petitioner concludes that the Department should measure the subsidies according to its normal AUL methodology in CVD cases, and not according to dates that the GOC divines from AD analysis.

Rejecting Petitioner's argument that the statute and regulations mandate that the Department reject any cut-off date, the GOC contends that Petitioner ignores the fact that the Department has only recently determined that China's economy is now sufficiently market-oriented to be subject to the market-economy-based CVD law. The issue, according to the GOC, is how the Department should address the fact that, in some cases, the applicable AUL will include a period of time for which the Department has determined that China's economy was so controlled by the government that it should be impossible to apply the CVD law. The GOC notes that Petitioner's arguments do not address this core issue primarily because the Department has repeatedly ruled that it is impossible to calculate countervailable subsidies for NME countries.¹⁵⁰ The GOC contends that there is no basis to jettison a cut-off date or move it backwards in time.

The GOC argues that contrary to Petitioner's claims, China is not receiving preferential treatment by application of a cut-off date. The GOC notes that China is the only WTO Member country against which the Department is imposing both CVD duties and AD duties based on the NME methodology at the same time. Therefore, the GOC believes that it is unreasonable for Petitioner to assert that China is receiving preferential treatment in the U.S. enforcement of its CVD and AD laws.

Department's Position:

Consistent with recent China CVD cases (CWP from the PRC, LWRP from the PRC, LWS from the PRC, and OTR Tires from the PRC), we continue to find that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law, and have adopted December 11, 2001, the date on which the PRC became a member of the WTO, as that date.

Our decision to adopt this date is not based on whether the CVD law can or cannot be applied to non-WTO members. We fully agree with Petitioner that the statute does not differentiate between countries that have acceded to the WTO and those that have not. As such, the reliance on CVD investigations in which the Department investigates non-recurring subsidies that predate membership in the WTO is incorrect. Instead, we have selected this date because of the reforms in the PRC's economy in the years leading up to its WTO accession and the linkage between those reforms and the PRC's WTO membership. See Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001). The changes in the PRC's economy

¹⁵⁰ The GOC cites the Georgetown Steel Reply Brief for the United States of America (The Commerce Department), dated February 11, 1986, submitted to the CAFC, Case No. 85-2805 at 11.

that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Chinese producers. For example, the GOC eliminated price controls on most products; since the 1990s, the GOC has allowed the development of a private industrial sector; and in 1997, the GOC abolished the mandatory credit plan. See Georgetown Steel Memorandum. Additionally, the PRC's Accession Protocol contemplates application of the CVD law. While the Accession Protocol, in itself, would not preclude application of the CVD law prior to the date of accession, the Protocol's language in Article 15(b) regarding benchmarks for measuring subsidies and the PRC's assumption of obligations with respect to subsidies provide support for the notion that the PRC economy had reached the stage where subsidies and disciplines on subsidies (e.g., countervailing duties) were meaningful.

Petitioners contend that section 701(a) of the Act directs the Department to determine and countervail illegal subsidies without exception. This argument ignores that the imposition of CVDs requires the Department to be able to identify and to measure subsidies. The Department addressed the virtually identical concern in Wire Rod from Czechoslovakia.¹⁵¹ Specifically, we examined whether "any political entity is exempted *per se* from the countervailing duty law" and found that none were, but then went on to address the additional question of whether the law could be applied to nonmarket economy countries like Czechoslovakia. We concluded that state intervention in that economy, such as government control of prices, did "not allow us to identify specific NME government actions as bounties or grants."

The Department's analytical approach in Wire Rod from Czechoslovakia was upheld by the CAFC in Georgetown Steel.¹⁵² As discussed in response to Comment 1, the Court found that the Department had the discretion not to apply the CVD law where subsidies could not meaningfully be identified or measured. In the instant investigation, our analysis has led us to conclude that, the economic changes that occurred leading up to and at the time of WTO accession allowed us to identify or measure countervailable subsidies bestowed upon Chinese producers. In this regard, the Department is not providing China with special/preferential treatment nor is the Department expanding the criteria for a subsidy beyond those found in the statute. Rather, the Department is simply acknowledging its ability to identify and measure subsidies as of December 11, 2001, based on the economic conditions in China. Therefore, the Department is fully within its authority in not applying the countervailing duty law to the PRC prior to December 11, 2001.¹⁵³

We acknowledge that there was not a single moment or single reform law that suddenly permitted us to find subsidies in the PRC. Many reforms, including the reforms cited in Petitioner's case brief, were put in place before the PRC acceded to the WTO. On the other hand, the GOC has pointed to areas identified by the Department where the PRC economy continues to exhibit nonmarket characteristics. These examples only serve to demonstrate that economic reform is a process that occurs over time. This process can also be uneven: reforms may take hold in some sectors of the economy or areas of the country before others. We have rejected the approach of making specific findings for specific programs, opting instead for a

¹⁵¹ See Wire Rod from Czechoslovakia at 19371.

¹⁵² See Georgetown Steel, 801 F.2d at 1318.

¹⁵³ See Id.

uniform date of application based on the economic changes that have occurred across the entire Chinese economy. First, the cumulative effects of the many reforms implemented prior to the PRC's WTO accession give us confidence that by the end of 2001, subsidies in the PRC could be identified and measured. Second, the program-by-program, company-by-company approach is not administratively feasible. Using the instant proceeding as an example, we are investigating two paper companies located in different provinces and nearly 30 alleged subsidies. While certain programs such as reduced income tax rates can be relatively easy to investigate, alleged subsidies such as the provision of land for less than adequate remuneration and policy lending are not. They require analysis of several levels of government and banks because practices can vary from jurisdiction-to-jurisdiction and between different bank branch offices. If the Department were first required to determine whether subsidies could be identified and measured on a land plot-by-land plot or loan-by-loan basis and then investigate the subsidy, the Department could not complete CVD investigations on Chinese products within the statutorily mandated deadlines. These significant administrative concerns support a bright-line cutoff that allows the Department to focus its analysis on investigating the alleged countervailable subsidies. Furthermore, this bright line provides certainty to the parties concerned.

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

Turning to the arguments made by the GOC, we disagree that adoption of the December 11, 2001 date is unfair because parties did not have adequate notice that the CVD law would be applied to the PRC prior to April 9, 2007 (the date of the CFS from the PRC Amended Preliminary). Initiation of CVD investigations against imports from the PRC and possible imposition of duties was not a settled matter even before the December 11, 2001, date. For example, in 1992, the Department initiated a CVD investigation on lug nuts from the PRC.¹⁵⁴ In 2000, Congress passed PNTR Legislation (as cited in comment 1), which authorized funding for the Department to monitor, "compliance by the People's Republic of China with its commitments under the WTO, assisting United States negotiators with the ongoing negotiations in the WTO, and defending United States antidumping and *countervailing duty measures with respect to products of the People's Republic of China.*" 22 U.S.C. §6943(a)(1) (emphasis added). Thus, the GOC was on notice that CVDs were possible well before the preliminary determination in CFS from the PRC.

We further disagree that Sulfanilic Acid from Hungary is controlling here. As noted in response to Comment 1, the Department has revisited its original decision not to apply the CVD law to NMEs and has determined that it will reexamine the economic and reform situation of the NME on a case-by-case basis to determine whether the Department can identify subsidies in that country.

Finally, the GOC points to several nonmarket characteristics of its economy the Department identified in its Lined Paper Memorandum to support the agency's continued treatment of the PRC as an NME for AD purposes. According to the GOC, these characteristics existed in 2005

¹⁵⁴ See Lug Nuts from the PRC Initiation, 57 FR at 877.

and 2006, and support the adoption of a later cut-off date. We disagree. As we acknowledged above, economic reform is a process that occurs over time, and it may progress faster in some sectors of the economy or areas of the country than in others. Unquestionably, there continue to be nonmarket aspects of the Chinese economy even today. Nevertheless, we have concluded that the cumulative effects of the many reforms implemented prior to the PRC's WTO accession lead to economic changes allowing us to identify and to measure subsidies bestowed upon producers/exporters in the PRC after December 11, 2001.

For the same reasons provided in CWP from the PRC and other recent China CVD cases, the Department finds that it can determine whether the GOC has bestowed countervailable subsidies on Chinese producers from the date of the PRC's WTO accession. See CWP from the PRC IDM at Comment 2; see also LWRP from the PRC IDM at Comment 4; see also LWS from the PRC IDM at Comment 2. Moreover, we reiterate our position, as stated in CWP from the PRC, that the GOC recognizes the changing nature of the PRC economy in that its Accession Protocol considers the application of the CVD law to the PRC, even while it remains an NME. Therefore, for this final determination, we affirm the date of December 11, 2001, as the date from which we will measure countervailable subsidies in the PRC.

Comment 3: Adverse Facts Available (“AFA”)

Petitioner argues that Shenzhen Yuanming, Xiamen Anne, and MDCN failed to cooperate with the Department to the best of their ability and, as a result, have impeded this investigation. Petitioner notes that in the Preliminary Determination, the Department found that MDCN and Shenzhen Yuanming did not cooperate to the best of their ability. Petitioner maintains that the Department should continue to do so in the Final Determination. Further, Petitioner argues that the same is true of Xiamen Anne because it refused to permit on-site verification.¹⁵⁵ Based on its contention that all three of these respondents failed to cooperate, Petitioner asserts that the Department should base its Final Determination for these companies on total AFA.¹⁵⁶

Petitioner also asserts that there were instances in which the GOC and other company respondents which participated in the investigation, failed to act to the best of their ability in this investigation. Petitioner contends that among other things, the GOC and the company respondents in some instances repeatedly refused to provide certain documents or misrepresented the content of documents to the Department. As an example, it cites the GOC's initial questionnaire response in which it claims the GOC provided thousands of pages of legal argument and un-requested documents. It contends that the GOC habitually refused to provide on a timely basis, and in some cases did not ever provide, the various national and sub-national plans affecting the paper industry in China, despite repeated requests from the Department and that this pattern and practice continued at verification, when Department officials were precluded from accessing relevant government databases or hard copy documents and other records. It also claims that the GOC and GG/ZG alike devoted significant effort to denying the existence of or otherwise downplaying the meaning of numerous designations bestowed upon preferred LWTP producers like GG and ZG, such as “key,” “backbone,” and “pillar”. Petitioner argues that in

¹⁵⁵ See Lightweight Thermal Paper from China: Email Correspondence with Respondent Xiamen Anne Paper Co., Ltd. (May 7, 2008).

¹⁵⁶ See Preliminary Determination at 13853; see also Post-Preliminary Analysis at 15.

circumstances where these delays or misrepresentations by respondents have resulted in necessary information not being available, or have impeded the investigation, the Department should use facts available and adverse facts available as appropriate.

In rebuttal, respondents GG and ZG claim that they have fully and timely answered every questionnaire and underwent and passed a rigorous verification. Characterizing Petitioner's claims as diversionary and spurious, respondents note that parties will differ on how to view various facts and apply them to the relevant laws and regulations, and that argumentation regarding those facts is part of the process that allows the Department to make its determination. No rebuttal was submitted by the GOC on this issue.

Department's Position:

We agree that Shenzhen Yuanming, Xiamen Anne, and MDCN have not cooperated to the best to their ability and, therefore, have calculated their respective final determination subsidy rates based on AFA as explained in the Federal Register and Memorandum to File, RE: Calculation of Adverse Facts Available Rates.

Regarding Petitioner's argument that we should use facts available for our subsidy determination and rate calculation for cooperating respondents in those instances where, Petitioner claims, respondents failed to provide necessary information or have impeded the investigation, the Department considered the information that participating respondents have provided on each program. The Department has determined that only in the cases of the provision of electricity at less than adequate remuneration and exemption from land use taxes and fees received by ZG was it necessary to use facts otherwise available to measure the benefit of the subsidy.

Comment 4: Sales Denominator for GG and ZG

First, Petitioner contends that the Department should exclude transportation expenses from the ZG sales denominator. Second, Petitioner notes that ZG's reported sales amount to GG is less than the amount that GG recorded as purchases from ZG on its financial statements. Petitioner argues that the Department should use the total from GG's financial statements as the intercompany sales amount used to compute the combined GG/ZG sales denominator. Finally, Petitioner contends that the Department should deduct costs borne by either company from the sales value of GG and ZG.

In their rebuttal brief, GG and ZG stated that they could not respond to Petitioner's argument because it was not clear.

Department's Position:

Regarding Petitioner's first point, we agree and have made the change for this final determination. We note that we excluded these expenses in the Post-Preliminary Analysis.¹⁵⁷

¹⁵⁷ See GG/ZG Post-Preliminary Calculation Memorandum.

With regard to Petitioner's second point, we disagree. Petitioner refers to a note in GG's financial statements under the "Major Items in Consolidated Financial Statement."¹⁵⁸ GG's consolidated financial statements cover affiliates that we are not treating as cross-owned with GG. ZG's reported sales, by contrast, are its sales to GG. Therefore, the two totals are on different bases and should not necessarily match. At verification, we confirmed that ZG's reported sales to GG reconciled to its accounting records and to its financial statements.¹⁵⁹ Therefore, we are using ZG's reported sales to GG to compute the combined GG/ZG denominator for this final determination. See GG/ZG Calculation Memorandum.

Regarding Petitioner's final point, we also disagree. The terms of sale for the three components of the combined GG/ZG sales denominator (i.e., GG sales + ZG sales – intercompany sales) were the same. Petitioner has not clearly explained what should change about this denominator or why it should change. All three components of this denominator are on the same basis and reflect the value of the products sold.

Comment 5: Government Policy Lending – Specificity

Petitioner contends that the GOC has enacted numerous policies to foster and encourage its paper industry, these policies include directions to Chinese financial institutions to lend to Chinese paper companies, and Chinese banks dutifully took these industrial policies into consideration when lending to producers of LWTP. Citing OTR Tires from the PRC at 99, Petitioner claims that the Department has repeatedly rejected arguments put forward by the GOC that its industrial plans and policies are meaningless and their terms should be ignored.

Petitioner points to several national level policy documents which, in its view, direct loans to the paper industry: the 10th Five-Year Plan, the Circular of State Economic and Trade Commission on Promulgating the "10th Five-Year Plan of Papermaking Industry" ("2001 Paper Plan");¹⁶⁰ the Integration Plan, the 2007 Paper Plan, the Catalogue for the Guidance of Foreign Investment Industries (2004 revision);¹⁶¹ and the Guidance Catalogue. Regarding the 10th Five-Year Plan, Petitioner states that the Department has already noted a specific reference to the GOC's intention to actively develop its pulp and paper industries.¹⁶² Similarly, the Department commented in CFS from the PRC that the 2001 Paper Plan speaks of financing for the adjustment and development of the industry and the Department also dismissed GOC's claims that the 2001 Paper Plan was inoperative.¹⁶³ Petitioner points out that the Integration Plan also includes specific references to promoting pulp and paper production, and to the GOC "motivating" loans to achieve that. Regarding the 2007 Paper Plan, Petitioner acknowledges that it was promulgated after the POI in this case, but claims it demonstrates that the GOC's goals and support mechanisms continued to exist even beyond the POI. In addition to these industrial policy plans, Petitioner claims that numerous paper products are identified as "encouraged" in

¹⁵⁸ GG QR at Exhibit 5.

¹⁵⁹ See GG/ZG Verification Report at 11-12.

¹⁶⁰ GOC QR at Exhibit 90.

¹⁶¹ Petition at Exhibit 45.

¹⁶² CFS from the PRC IDM at Comment 8.

¹⁶³ CFS from the PRC IDM at 51.

the catalogues referenced above, with the Guidance Catalogue stating that encouraged projects should benefit, inter alia, from credit support from GOC financial institutions.

Petitioner further contends that provincial and municipal policies also direct lending to the paper industry. According to Petitioner, the Department explained in CFS from the PRC that local governments align their industrial plans with those of the national government and that local governments have significant influence over local banks which they use to ensure that industrial policy is carried out. Petitioner notes that despite repeated questioning by the Department, the GOC did not provide the provincial or municipal paper plans until after Petitioner submitted them (after finding them on the Internet). Petitioner speculates that that the plans were not provided because they show the paper industry's preferred status. For example, the Guangdong Paper Plan characterizes papermaking as a "pillar" industry and respondents GG and ZG as "pillars" of the local paper industry and "backbone" enterprises. As such, the Guangdong Paper Plans directs that financial institutions should support them. Similarly, according to Petitioner, the Zhanjiang City 11th Five-Year Plan identifies papermaking as a "pillar" and "backbone" industry, and makes reference to the government playing a guiding role in financing "key" programs.

The GOC contends that the Department erred in the Preliminary Determination when it found that the policies and plans at issue mandate a preference in relation to lending to the paper industry, despite repeated denials by the GOC that such mandates exist. Specifically, the GOC argues that the Department's preliminary finding of de jure specificity with respect to policy lending cannot be sustained because the policies and plans at issue cannot be construed as requiring any specific action or, indeed, any action at all. Citing Article 2.4 of the SCM Agreement and section 771(5A)(D)(i) of the Act, the GOC contends that the Department must have positive evidence that the government "expressly limits access to the subsidy to an enterprise or industry." Since the Preliminary Determination, the record at verification has corroborated the GOC's position that no express preference exists for the paper industry, according to the GOC.

The GOC further contends that because the Department has not established de jure specificity, it must demonstrate de facto specificity. In the GOC's view, the record does not show that the banks in China cater to the paper industry in a manner that evidences any preference, or that bank loans to the paper are disproportionate or on better terms than the loans received by other industries. Thus, the GOC claims, if any financial contribution and benefit exists, it occurs on a widely available, generalized basis that would not support a finding of de facto specificity.

Department's Position:

As stated in the "Analysis of Programs – Government Policy Lending Program," we determine that this program is de jure specific because of the GOC policy, illustrated in the various plans and related documents, to encourage and support the growth and development of the Chinese paper industry. Several of these plans and policies were addressed in CFS from the PRC¹⁶⁴ and

¹⁶⁴ CFS from the PRC IDM at 49–53.

we reaffirm that analysis here. Additionally, we addressed the provincial and municipal plans in the Preliminary Determination¹⁶⁵ and we reaffirm that analysis here.

Regarding the GOC's claims about the non-binding nature of these plans and policies, and the lack of any relationship between the national government and local government plans, see our response to Comment 6 (Government Policy Lending - Financial Contribution).

Finally, we find that the government's industrial policy does influence bank lending decisions. Due to the proprietary nature of the information, our position regarding the impact of industrial policy on particular bank documents is explained in the BPI Memorandum.

Comment 6: Government Policy Lending – Financial Contribution

The GOC claims that SOCBs in China are not “authorities” within the meaning of section 771(5)(B) of the Act. Citing, *inter alia*, DRAMS from Korea,¹⁶⁶ the GOC states that the Department considers five factors in determining whether an entity should be considered an authority and has previously concluded in certain cases that majority-owned and 100-percent government-owned entities are not authorities. Instead, according to the GOC, the Department's five-factor test attempts to ascertain whether the entity is exercising elements of government authority.

In support of its argument, the GOC first points to the verification in CFS from the PRC and, in particular, the summarized statement of various experts who met with the Department regarding the movement away from local government influence over bank operations in recent years; the lack of central government control over the flow of bank lending; and, the effectiveness of the China Bank Regulatory Commission (“CBRC”).¹⁶⁷ The GOC attributes this decline in central and local government influence over banking decisions to several factors: the banks' adoption of modern corporate governance systems; more centralized authority for loan approvals, including a requirement that no one person can approve a loan; the accountability of bank officials for lending decisions; the creation of the CBRC, along with its enforcement activities in supervising and inspecting bank practices; and the introduction of international strategic investors in SOCBs. These facts, according to the GOC, support a finding that SOCBs are not authorities. The GOC points next to the verification in this investigation where, it claims, the Department confirmed that SOCBs are not exercising elements of government authority through their lending practices and are not otherwise controlled by the government in their issuance of loans. According to the GOC, SOCBs operate under the Commercial Banking Law,¹⁶⁸ as do all banks in China, and are regulated by the CBRC.¹⁶⁹ Further, the GOC contends, any link between industrial policy and bank lending was extinguished by the State Council's July 2004 Decision on Reform of the Investment Regime,¹⁷⁰ with the extent of this reform exemplified in the

¹⁶⁵ Preliminary Determination, 73 FR at 13858.

¹⁶⁶ DRAMS from Korea IDM at 16-17.

¹⁶⁷ “Countervailing Duty Investigation: Coated Free Sheet Paper from China – Government of the People's Republic of China Verification Report: Policy Lending” (August 20, 2007), provided in GOC QR at Exhibit 80.

¹⁶⁸ Petition at Exhibit 24.

¹⁶⁹ GOC National Verification Report at 7.

¹⁷⁰ GOC QR at Exhibit 100 and GOC National Verification Report at 7.

difference between the 10th and 11th Five-Year Plans¹⁷¹ where the word “plan” changed from “*Jihua*” to “*Guihua*.”¹⁷² Consistent with this, in no instance during verification did any government official at any level indicate that industrial policy dictates any particular action from SOCBs, according to the GOC. To the extent that any aspect of papermaking is encouraged, the GOC claims, it is pulp-paper integration projects (where the government provides funds directly, not through loans from SOCBs), and the Department verified that none of the respondents participated in such integration projects.

The GOC claims that the Department further confirmed at verification that national level plans have little influence on what local levels promulgate in their plans and that there is no mechanism to enforce or implement the national plan at the local level. In Shanghai, according to the GOC, the Department verified that the local paper plan¹⁷³ wasn’t even prepared by the government, but instead was written by a trade association. Thus, the GOC contends, the notion of top-down administration of plans was completely rejected by local authorities.

Similarly, verification at the banks showed that they provide loans in their own self-interest, managing risk and turning a profit, and do not exercise any element of government authority, according to the GOC. With respect to the loans made to the responding companies, the GOC states that the banks demonstrated that industrial policy plays a minimal role, if any, and is only relevant in the bank’s risk analysis, not in the pricing of the loan.

If the Department does not find SOCBs to be authorities, the GOC contends that the Department should also find that SOCBs were not entrusted or directed to provide policy lending to paper companies. Citing the SAA,¹⁷⁴ the GOC states that Congress intended the agency to look at entrustment or direction on a case-by-case basis. The GOC also points to Hynix, arguing that the courts have directed the agency to consider counterevidence that an alleged program was formulated by independent commercial actors motivated by commercial considerations in making a finding of entrustment or direction. Given the Department’s findings at verification (described above), the GOC argues that the Department must conclude that banks in China have complete discretion to do as they will and, hence, no entrustment or direction of bank lending to the LWTP industry may be found.

Petitioner argues, to the contrary, that the GOC controls the Chinese financial sector. In support, Petitioner points to numerous findings made by the Department in CFS from the PRC. Specifically, the Department determined that: (i) the Chinese Commercial Banking Law requires banks to carry out their business under the guidance of state industrial policies;¹⁷⁵ (ii) the State

¹⁷¹ The Tenth Five-Year Plan for the National Economic and Social Development of the People’s Republic of China (“10th Five-Year Plan”), submitted in the GOC QR at Exhibit 88; and Guidelines of the Eleventh Five-Year Plan for National Economic and Social Development (2006-2010) (“11th Five-Year Plan”), submitted in the GOC QR at Exhibit 89.

¹⁷² See, e.g., GOC National Verification Report at 6, where an NDRC official explained that both terms translated to “plan” in English, but have different meanings in Chinese. According to this official, the use of “*Guihua*” in the 11th Five-Year Plan signifies that this is the first plan issued since the PRC became a market economy.

¹⁷³ See Shanghai Papermaking Industry Eleventh Five-Year Development Plan (“Shanghai Paper Plan”), submitted in the GOC 2nd SQR at Exhibit S2-5.

¹⁷⁴ SAA at 926.

¹⁷⁵ Citing CFS from the PRC IDM at Comment 8; see also Law of the People’s Republic of China at Exhibit 24 of

Council has instructed banks to lend to projects and enterprises that meet state industrial policies;¹⁷⁶ and (iii) the GOC retains the ability to affect lending decisions of banks, including nominally commercial banks,¹⁷⁷ and to direct lending to preferred industries and projects.¹⁷⁸ Additionally, Petitioner points to the high level of state ownership of banks¹⁷⁹ and the ability of the GOC to hire and fire bank managers¹⁸⁰ as factors which give the GOC unparalleled ability to realize its industrial objectives. Petitioner claims that the banks respond to a variety of pressures from within the bureaucracy or the Communist Party, or local governments, and further contends that the effects of this are apparent -- disproportionate lending to state-owned enterprises (“SOEs”) and favored industries.¹⁸¹

According to Petitioner, the most convincing demonstration of the GOC’s policy relating to paper production is the dramatic increase in China’s production of that product, including LWTP.¹⁸² Petitioner also points to the Hainan and Zhanjiang projects called for in the Integration Plan, which could only have been built with support from the GOC and the banks it owns.

Finally, Petitioner claims that the evidence developed in this investigation demonstrates that the GOC’s policies resulted in the provision of loans to GG and ZG. First, both companies received grants under a myriad of programs, showing that these companies are favorites of the GOC. Second, each of the banks visited at verification admitted that it considers industrial policies when making lending decisions.¹⁸³ Third, GG reported that it received loans in connection with projects listed in the Guangdong Paper Plan.¹⁸⁴ Fourth, Petitioner cites to various proprietary documents to support its claim. These are addressed in the BPI Memorandum.

Thus, Petitioner concludes, evidence shows that the national, provincial, and municipal governments of the PRC effectuate policies to provide countervailable loans to the Chinese paper industry and, acting pursuant to these policies, Chinese financial institutions provided loans to GG and ZG that constitute a direct transfer of funds by a government authority.

the Petition.

¹⁷⁶ Citing the Department’s July 9, 2007, Memorandum to the File placing certain documents on the CFS from the PRC record, including “Circular of the State Council on Accelerating the Structure Adjustment of the Industries with Production Capacity Redundancy,” *Guo Fa* (2006) No. 11, submitted as Exhibit 25 of the Petition.

¹⁷⁷ Citing CFS from the PRC IDM at 55.

¹⁷⁸ Id. at 56-57.

¹⁷⁹ Citing Diana Farrell et al., “Putting China’s Capital to Work: the Value of Financial System Reform,” (McKinsey & Company, May 2006) at 35, submitted as Exhibit 59 of the Petition.

¹⁸⁰ Citing, inter alia, Xu Xiaoling, Deputy Governor of the People’s Bank of China, “Condition and Environment for Improving Corporate Governance Structure of China’s Financial Enterprises” (People’s Bank of China, April 23, 2005) at 4-6, submitted as Exhibit 61 of the Petition.

¹⁸¹ Citing, inter alia, Bernard Laurens & Rudolfo Maino, “China: Strengthening Monetary Policy Implementation,” International Monetary Fund (January 2007) at 9, submitted as Exhibit 70 of the Petition.

¹⁸² Citing Dr. Sabine Schwaiger & Dr. Gerhard Wallenwein, “Thermal Paper 2005 – 2010” (Laves Chemie Consulting, March 2006) at 19, submitted at Exhibit 1 of the Petition.

¹⁸³ Citing GOC National Verification Report at Exhibit 3; Zhanjiang/Guangdong Verification Report at 12-14 and 16. Although the banks told the Department that industrial policies counted for little in their analysis, Petitioner claims that the Department was not able to review support for the claim. Id. at 8, 9, and 15.

¹⁸⁴ Citing GG 3rd SQR at 2-5.

In its rebuttal brief, Petitioner claims that the Department has thoroughly examined the nature of the Chinese banking system on a number of recent occasions and has concluded that the SOCBs are State actors.¹⁸⁵ According to Petitioner, the GOC has provided no compelling reason why the Department should revisit those decisions. Thus, while the GOC is correct that its consistent position in its submissions to the Department and the talking points distributed to officials prior to verification is that banks make loans based only on commercial considerations, Petitioner states that mere assertion does not make this true.

Department's Position:

The Department's analysis in CFS from the PRC supports our finding that SOCBs are authorities within the meaning of section 771(5)(B) of the Act. The GOC has pointed to many reforms that were examined in CFS from the PRC and, while the Department has acknowledged that some progress has been made in recent years, we nonetheless concluded that "the extent of government influence over the banking sector ... is very significant."¹⁸⁶ Additionally, as discussed above under "Analysis of Programs – Government Policy Lending Program," those aspects of the GOC's banking system that led to our conclusion in CFS from the PRC have continued through this POI.

The GOC also points to evidence in this investigation which, it claims, shows that the SOCBs are not controlled by the government in their lending actions. We note, as we did in CFS from the PRC, that the Commercial Banking Law requires banks to carry out their lending business under the guidance of state industrial policy.¹⁸⁷ This has not changed, as evidenced by the 2006 prospectus for the global offering made by the Industrial and Commercial Bank of China ("ICBC"), which states, "PRC banking regulations require commercial banks to take government macroeconomic policies into consideration in making lending decisions. Accordingly, commercial banks are encouraged to limit their lending to restricted industries in accordance with relevant government policies."¹⁸⁸ Similarly, as discussed by the Department in CFS from the PRC,¹⁸⁹ the State Council's July 2004 Decision on Reform of the Investment Regime directs that the government should recede and banks should make independent decisions, indicating that the legacy of State control was a problem in 2004 and, moreover, that the problem continued in later years, as reflected in the 2006 Work Report of the Government, which states: "[r]eform of the investment system will focus on implementing a system that grants independence in investment coupled with responsibility for risk."¹⁹⁰

Also, despite the claimed non-binding nature of government policies and plans, and any difference arising from the use of the terms "*Jihua*" in the 10th Five-Year Plan and "*Guihua*" in the 11th Five-Year Plan, evidence indicates that the terms of State policies and plans continue to

¹⁸⁵ Petitioner points to CFS from the PRC IDM at 42 and 55; OTR Tires from the PRC IDM at 100–105; and Lined Paper Memorandum at 55.

¹⁸⁶ CFS from the PRC IDM at 60-61.

¹⁸⁷ CFS from the PRC IDM at 58 and Petition at Exhibit 24, Article 34.

¹⁸⁸ GOC QR at Exhibit 22, page 60.

¹⁸⁹ CFS from the PRC IDM at 59.

¹⁹⁰ Report of the Work of the Government (2006) ("2006 Work Report of the Government"), submitted in GOC QR at Exhibit 95, under the heading "6. Pressing Ahead with Reform and Opening Up."

be carried out. For example, in describing the new “endorsement” process for enterprise projects, an NDRC official stated that projects are endorsed at the local level based upon the Guidance Catalogue.¹⁹¹ Also, GOC officials were not able to satisfactorily explain why the 2007 Papermaking Industry Plan had an effective date, if its goals were not binding.¹⁹² We note that the GOC has argued that the Shanghai Paper Plan was not prepared by the GOC but, rather, by an industry trade association. At verification, however, we were not able to meet with the industry association that purportedly drafted this plan to confirm GOC statements about the industry’s and the government’s respective roles in the creation of this document.¹⁹³ Therefore, for this final determination we take no position as to whether the Shanghai Paper Plan constitutes a government plan.

The GOC has further pointed to statements made at verification to argue that national level plans have little influence on local governments. However, there is ample evidence from these same government officials about the consistency of the national and local plans. For example, one NDRC official explained that there are not conflicts between the national and local level plans because of the uniform thinking that exists between the various levels,¹⁹⁴ and how input for the national plan is solicited from local governments to make it more likely that the goals of the national plan will be carried out at the local level.¹⁹⁵ Local level officials also indicated the influence on national level plans and directives in preparing their five-year plans.¹⁹⁶ The GOC officials have stated that no punishment provisions apply to local governments that do not carry out national government plans. As explained above, however, the various governmental levels work in unison to achieve, *inter alia*, the industrial policy goals set by the State. Moreover, local governments are expected to comply with national government policies such as Decision No. 40. For example, during the verification in CWP from the PRC, a GOC official explained, “Apart from these three levels {laws, regulations, and rules}, there are also documents that concern intra-governmental compliance with central government policies, compliance that is expected on the part of local governments in many cases because of inter-governmental liabilities.”¹⁹⁷

In regard to the GOC’s claim that the Department has not followed the approach taken in DRAMs from Korea and the other cited cases in determining whether the SOCBs are authorities, we note that our “authority” determination here is based primarily on our approach and findings in CFS from the PRC. Moreover, we do not believe that the evidence on this record is adequate to conduct such a five factor analysis in full. Nevertheless, the record contains evidence relevant

¹⁹¹ GOC QR at Exhibit 87 and GOC National Verification Report at 5; see also statement by Shanghai DRC Official that projects must conform to Decision No. 40, at page 7 of the Shanghai Verification Report.

¹⁹² GOC National Verification Report at 14-15.

¹⁹³ Shanghai Verification Report at page 3.

¹⁹⁴ GOC National Verification Report 10 and 18.

¹⁹⁵ Id. at 10 and 12.

¹⁹⁶ See, e.g., Shanghai Verification Report at 6, regarding reliance on NDRC document identified as “The State Council, Several Opinions on Improving the Compilation Work of National Economic and Social Development GUOFA (2005) No. 33); and Zhanjiang / Guangdong Verification Report at page 5, regarding taking the Integration Plan into account.

¹⁹⁷ See CWP Verification Memorandum, placing on the record an excerpt from “Countervailing Duty Investigation: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China - Government of the People’s Republic of China National Verification Report” (March 5, 2008). See also “State Council, Several Opinions on Improving the Compilation Work of National Economic and Social Plan,” submitted in the GOC QR (Jan 31, 2008) at Exhibit 92.

to certain of those factors that further supports a finding that the SOCBs are authorities. Given the proprietary nature of this information, additional evidence relating to the scope of the Integration Plan, the influence of industrial policy on bank loans, and the particular banks that made loans to the respondents is discussed separately in the BPI Memorandum. We will reconsider this issue and the appropriateness of applying the five factor test in any future administrative review if this investigation results in a CVD order.

Finally, because we have determined that the SOCBs are authorities, we do not reach the issue of whether they were entrusted or directed by the GOC to make policy loans to the Chinese paper industry.

Comment 7: Government Policy Lending - Whether Particular Banks Are “Authorities”

If the Department continues to find that SOCBs are authorities (and, hence, provide a financial contribution when they lend to GG and ZG), the GOC claims that the Department must explain why two particular banks fall within this grouping. These banks do not share the same legacy of prior state control that might be attributed to other Chinese banks, according to the GOC. Nor do they have the same type or level of government ownership that has driven the Department’s past “authority” determinations, in the GOC’s view. Specifically, the GOC points out, one has no direct government owners; its shareholders are highly diversified; no senior manager holds a position in government¹⁹⁸ and board members are selected by open election.¹⁹⁹ The GOC contends that similar facts and circumstances exist for the other bank: its largest shareholder is a U.S. company while GOC ownership is minute, and the bank’s annual report shows no evidence of GOC control over its operations.²⁰⁰

Department’s Position:

While certain ownership information has been provided with respect to these banks, the information does not demonstrate that these are private banks, nor is it sufficient to determine that these banks are not authorities. Because of the proprietary nature of this information, this argument is further addressed in the BPI Memorandum.

Comment 8: Chinese Interest Rates as the Benchmark

The GOC argues that the Department’s regulations do not authorize the use of out-of-country benchmarks for loans and that there is equally no requirement that the loans used as benchmarks be ‘market-determined.’²⁰¹ According to the GOC, when there are no comparable commercial loans, the regulations allow the Department to use a national average interest rate for comparable commercial loans. Further, the GOC notes that interest rates, particularly short-term rates, are a

¹⁹⁸ Citing GOC 1st SQR at 12-13.

¹⁹⁹ Citing Shanghai Verification Report at 9.

²⁰⁰ Citing ZG 2nd SQR at 5 and supporting documentation.

²⁰¹ The GOC contrasts provisions in the regulations related to loans with those related to goods and services. The GOC argues that 19 CFR 511 explicitly authorizes the use of out-of-country benchmarks and uses the term “market-determined.” See 19 CFR 351.505 (loans) and 19 CFR 351.511 (goods and services).

function of government policy worldwide. Therefore, Chinese interest rates should be used to calculate benchmarks.

Petitioner points out that there are special difficulties inherent in using a Chinese benchmark for loans. The Department has already addressed and dismissed the GOC's arguments concerning use of out-of-country benchmarks in CFS from the PRC, LWS from the PRC, and OTR Tires from the PRC. Petitioner cites the Department's March 5, 2008 Memorandum to File regarding Loan Benchmark Information at Exhibits 1 and 2 which included over 90 pages of analysis of the Chinese financial system. Further, Petitioner notes, the GOC has not placed new information on the record to overturn these determinations.

Department's Position:

The Department has previously determined that loan benchmarks must be market-based and that Chinese interest rates are not reliable as benchmarks because of the pervasiveness of the GOC's intervention in the banking sector. In our analysis of the PRC as a non-market economy in the antidumping duty investigation of Lined Paper from the PRC-AD,²⁰² the Department found that the PRC's banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the sector.²⁰³ In CFS from the PRC, the Department found that the GOC still dominates the domestic Chinese banking sector and prevents banks from operating on a fully commercial basis.

We continue to find that these distortions are present in the PRC banking sector and, therefore, determine that the interest rates of the domestic Chinese banking sector do not provide a suitable basis for benchmarking the loans provided to respondents in this proceeding.

Moreover, while foreign-owned banks do operate in the PRC, they are subject to the same restrictions as the SOCBs. Further, their share of assets and lending is negligible compared with SOCBs. Therefore, as discussed in greater detail in CFS from the PRC, because of the market-distorting effects of the GOC in the PRC banking sector, foreign bank lending does not provide a suitable benchmark.²⁰⁴

These determinations led us to rely on an external benchmark.

Comment 9: Benchmark Rates

The GOC and Petitioner make a number of arguments regarding the calculation of the benchmark interest rates. Because of the proprietary nature of certain of the requested adjustments, they are addressed in the BPI Memorandum. The others are addressed here topic by topic.

²⁰² See Lined Paper Products From the PRC-AD.

²⁰³ See May 15 NME Status Memorandum and the Lined Paper Memorandum, both of which are referenced in Lined Paper Products From the PRC-AD. See also CFS from the PRC IDM at Comment 10.

²⁰⁴ See CFS from the PRC IDM at Comment 10.

A. Use of Regression Analysis to Determine the Benchmark Interest Rate

GOC argues that the regression analysis is an invalid method for determining the benchmark interest rate. In support, the GOC points to an expert economist's report, which concludes that there is neither theoretical nor empirical justification for using GNI as a proxy for the level of market interest rates, and that national savings rates and inflation are two key factors that should be used instead.²⁰⁵ The GOC also argues that there is no statistically significant relationship between the average governance indicator and the CPI adjusted lending rate. The GOC concludes that the Department's calculated interest rate is not, in a statistical sense, a meaningful estimated interest rate for China.

Petitioner asserts that the use of gross national income is appropriate to identify the best comparison group of countries for the regression analysis. Petitioner points out that the Department has not, contrary to GOC contentions, used gross national income as an indicator of interest rates, rather the Department used it to identify a group of countries at roughly a similar level of development to China. Finally, Petitioner notes, the Department has already concluded that the PRC's banking sector does not operate on a commercial basis to support the use of an internal benchmark. Petitioner argues that there is no new information on the record to overturn the Department's preliminary finding.

Department's Position:

We disagree with the GOC's argument that the assumptions underlying the benchmark calculation are flawed and that there is no relationship between gross national income and interest rates. As we explained in the Preliminary Determination, we calculated an external benchmark using the regression-based methodology first developed in CFS from the PRC and more recently updated in OTR Tires from the PRC and Citric Acid from the PRC.²⁰⁶ This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes similar to that of the PRC, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to state-imposed distortions in the banking sector discussed above in Comment 8, Chinese Interest Rates as the Benchmark.

B. Interest Rates Used in the Regression

Petitioner argues that the benchmark used by the Department for short-term RMB loans is understated for each year between 2003 and 2006 because the calculation includes some countries that are not lower-middle income and excludes other countries that are lower-middle income. Petitioner believes the discrepancies are due to revisions of per capita GNI submitted to the World Bank after it makes its initial classifications. Petitioner states that the World Bank reports the updated per capita GNI data but does not revise its initial classifications of a country's status, even if submitted revisions would change a country's classification. Petitioner argues that the Department should use the most recently revised per capita GNI figures data to

²⁰⁵ See Exhibit 39, page 15 of the GOC QR.

²⁰⁶ See CFS from the PRC IDM at comment 10, OTR Tires from the PRC IDM at comment E.4 and Citric Acid from the PRC at 54372-74.

determine whether a country should be considered a lower-middle income economy since this is consistent with the Department's use of the most recent estimate of each country's governance factors.

Petitioner further argues that Ecuador should be excluded from the regression analysis after 2001 because Ecuador dollarized its economy in 2000 and 2001. Petitioner contends that dollarization decoupled the expected relationship between Ecuador's governance factors and its lending rates vis-à-vis other countries in the Department's regression analysis whose lending rates are based on lending in that country's national currency.

The GOC argues in rebuttal that Petitioner's argument for exclusion and inclusion of various countries within the set of interest rates used by the Department to calculate its benchmark is premised on the flawed Department assumption that gross national income bears some relationship with interest rates (as discussed above). The GOC argues that the flaws are irreparable and that use of the resulting benchmark is contrary to U.S. law and the WTO. Alternatively, if the Department truly sought to substantiate its assumption, then it should include the GNI of the countries concerned in its regression analysis.

The GOC argues that the IMF IFS lending rates used in the Department's regression analysis are a mix of both short-term and medium-term rates. They argue that the Department's upwards adjustment of the results of the regression analysis to calculate a long-term benchmark is in fact punitive since the benchmark is based on long-term rates. The GOC concludes that the use of the data is limited to establishing an overall average interest rate for both short-term and long-term loans and need not be adjusted further.

In rebuttal, Petitioner asserts that the lending rates for virtually all of the countries used in the Department's regression analysis are short-term rates. Further, Petitioner argues that the GOC ignored the country-specific notes in the IFS publication that provide additional details regarding the type and term of the published lending rate for each country used in the Department's regression analysis.

Further, Petitioner notes that in Usinor,²⁰⁷ the CIT found no reason to question the Department's discretion to determine that the rates used were consistent with the Department's proposed definition of long-term. Further, Petitioner notes, both Inland²⁰⁸ and Usinor are pre-Uruguay (mid-1990s). Therefore, Petitioner asserts, their conclusions may not be applicable for a POI nearly 15 years later.

Department's Position:

Petitioner correctly notes that revisions to per capita GNI data are submitted periodically to the World Bank after initial classifications are made and the revised data may not support the initial classification. However, the Department does not agree that this should cause us to adjust the group of countries included in short-term RMB benchmark calculations. First, the revisions of per capita GNI data do not occur according to a set schedule (e.g., yearly). Thus, we would need

²⁰⁷ See Usinor, 893 F. Supp. at 1135.

²⁰⁸ See Inland, 967 F. Supp. at 1338.

to review the data continuously for updates. Second, based on the revisions, countries can move in, then out, then back into the different groupings. In light of this, taking account of the per capita GNI revisions would impair the transparency and predictability of the Department's benchmark calculations and impose an unnecessary administrative burden on the Department. Therefore, we have continued to select the countries that are similar to the PRC in terms of gross national income based on the World Bank's initial classification in each of the relevant years.

We agree with Petitioner that Ecuador dollarized its economy in 2000 and 2001. Therefore, Petitioner is correct that Ecuador should be excluded from the regression analysis after 2001.

With respect to the GOC's arguments about the possible inclusion of medium-term interest rates in the regression, the Department agrees that certain of the interest rates used in our regression analysis may reflect maturities of longer than one year. To address this concern, we will continue to use the same interest rate data and regression-based benchmark rate, but are now treating it as a benchmark for loans with terms of two years or less.

C. Governance Factors in the Regression Analysis

Petitioner argues that the "voice and accountability" factor from the World Bank report is a relevant factor that gives rise to differences in perceived risk which affects a lender's risk analysis and concomitant interest rate. Petitioner argues that the Department's rationale for excluding the factor is unclear. As such, Petitioner concludes that the "voice and accountability" factor should be included in the Department's determination of each country's average governance factor.

The GOC argues that the Department has not identified all of the important variables that affect interest rates and insufficiently justifies its current use of the five factors. Further, the GOC argues that there is no meaningful relationship between the selected governance indicators and interest rates.

Department's Position:

We have not adopted Petitioner's position regarding inclusion of all of the governance factors in the interest rate regression nor do we agree with the GOC's position. As we explained in detail in CWP from the PRC, we continue to exclude "voice and accountability" from the average of governance indicators in performing the regression analysis for the interest rate benchmark.²⁰⁹ The Department finds that the other governance indicators are more indicative of the factors that contribute to perceived risk in a country and that "voice and accountability" is not a factor that a lender would consider when determining the risk associated with lending to a business in a particular country.

D. Calculation of the Long-term Adjustment

Petitioner notes that in the Preliminary Determination, the Department derived its long-term loan benchmark by adjusting the short-term benchmark using an adjustment factor that compared the

²⁰⁹ See CWP from the PRC IDM at Comment 8.

one-year BB corporate bond rate to the average BB corporate bond rate for the term of the loan in question. Petitioner argues that the Department should use the average of the three-month and one-year BB corporate bond rates instead of the one-year rates, because the short-term loans under review have varying terms. As an example, Petitioner notes that the Department's current methodology, which uses the corporate bond rate closest to the duration of the loan in question, does not make an adjustment for a long-term loan slightly over one-year because the adjustment factor would compare to the one-year bond rate, the same rate closest to the duration of the loan.

The GOC argues that the difference between long-term and short-term interest rates cannot be based on below investment grade bonds and that the use of BB rated bonds is arbitrary and inappropriate for creditworthy companies. Therefore, the GOC argues that the Department should compute the adjustment using Aaa to Baa rated bonds for creditworthy companies since there is no reason presented for or by the Department to reach below that category.²¹⁰

Petitioner rebuts the GOC's claim and supports the Department's use of BB-rated bonds because it is a calculation of the percentage difference between the bond rate of one year and the bond rate of the loan in question. Contrary to the GOC's contention, Petitioner notes that the Department has explained that it picked the BB-rated bonds because it is "near the middle of the overall range."²¹¹

Department's Position:

We have not adopted Petitioner's suggestion for modifying the long-term adjustment factor. While Petitioner is correct that the terms of the loans taken out by the Chinese respondents can vary, the adjustment is being made to the benchmark interest rate, as described above in the "Benchmarks" section, that includes short and medium-term rates. Therefore, rather than looking to the term of the Chinese loans, we look to the term of the benchmark, *i.e.*, up to two years. Because of this we have adjusted the long-term adjustment to be the ratio of the two-year corporate bond rate to the bond rate for the long-term loan in question.

Regarding the GOC's comment concerning the use of BB-rated bonds and uncreditworthy companies, the regulations at 19 CFR 351.505(a)(3)(iii) specify a formula for the interest rate benchmark, i_b for uncreditworthy companies. The regulations essentially direct the Department to derive i_b by equating returns on loans to companies in the Aaa to Baa and Caa to C ranges on a risk-adjusted basis. The fact that 19 CFR 351.505(a)(3)(iii) relies on interest rates and default rates for companies in the Aaa to Baa range to calculate i_b does not in any way imply that the long-term interest rate benchmark under 351.505(a)(3)(i) or (ii) must be based on interest rates charged to companies in the Aaa to Baa range. In fact, in cases where the Department must rely on a national average long-term interest rate for benchmarking purposes, there is no statutory or regulatory requirement that the rate reflect only lending to companies in the Aaa to Baa range. In fact, such a rate would likely reflect lending to companies in a ratings range broader than Aaa to Baa.

²¹⁰ The GOC requests that the Department place Bloomberg data on the record for BB, Aaa, and Baa-rated bonds.

²¹¹ See Preliminary Determination at 13856.

Given that the Department has decided to reject all internal PRC interest rates for benchmarking purposes, the question before the Department is what long-term mark-up to use to construct the long-term RMB interest rate benchmark. In view of the transitional nature of financial accounting and reporting standards and practices in the PRC, as well as the PRC's underdeveloped credit rating capacity, the Department has determined that company-specific mark-ups (to account for investment risk) should not be the general rule. Instead, the Department is relying on a single mark-up for all companies not found to be uncreditworthy. That mark-up should, therefore, reflect the average investment risk associated with companies in the PRC not found uncreditworthy by the Department. Since the Department has (1) no objective basis to determine this average investment risk and (2) no basis to presume it is for companies with an investment-grade rating only, we have continued to use rates for BB-rated bonds, the highest non-investment grade, to calculate the mark-up for this final determination.

E. Application of the Long-Term Adjustment

Petitioner argues that for the final determination the Department should follow OTR Tires to avoid a mismatch between the real short-term benchmark and the nominal based adjustment to convert the short-term to a long-term rate. Petitioner notes that in OTR Tires, the Department applied the adjustment to the sum of the real short-term benchmark and China's inflation rate, both for long-term loan benchmarks and for discount rates. Here, Petitioner asserts, the Department applied the long-term loan adjustment only to the real short-term benchmark interest rates. Given that the adjustment is calculated using nominal rates, Petitioner argues that the methodology in OTR Tires from the PRC is correct.

Department's Position:

We agree with Petitioner and have adjusted our calculation for this final determination.

Comment 10: Whether to Countervail Certain Loans Received from Shareholders

Petitioner argues that the Department should find certain loans to ZG received from non-bank government-owned financial institutions to be countervailable. Petitioner asserts that with regard to financial contribution, these loans should not be treated differently from the bank loans being investigated under the policy lending program as the lenders are controlled by the government. Petitioner likens the situation to that in OTR Tires from the PRC and further argues that certain of these loans should be treated as forgiven because they were not repaid on their maturity date. Because certain information in Petitioner arguments is proprietary, we have addressed this information in Comment 10 of the BPI Memorandum in greater detail.

Petitioner also argues that the Department should find ZG to be uncreditworthy in a year not covered by its previous allegation for purposes of selecting benchmarks for debt forgiveness in that year, based on information already on the record. See BPI Memorandum.

GG claims that Petitioner failed to establish or even address whether the shareholders providing the loans are "authorities" within the meaning of the statute or are capable of providing a "financial contribution." GG asserts that the Department must conduct the five-factor test to determine whether an entity is an authority under the statute, considering government ownership,

government presence on the board of directors, government control over the entities activities, the entity's pursuit of governmental policies and whether the entity is established by statute, as it has done in previous cases.²¹² GG contends that Petitioner's failure to demonstrate that the lenders are "authorities" negates the rest of its arguments regarding these loans. GG argues that the shareholders are not authorities under the statute and that even if they did provide a financial contribution to GG and ZG, it would not be countervailable.

Department's Position:

As explained under the Analysis of Programs -- Shareholder Loans, we have determined that certain aspects of these loans from non-bank government-controlled lenders provide countervailable benefits.

We find those lenders to be "authorities" within the meaning of section 771(5)(B)(i) of the Act. Under GG's argument, the Department must make a determination of whether these government-owned shareholders are "authorities" within the meaning of the Act by performing the five-factor test on each lender. GG, however, does not cite any specific information on the record that calls into question government control of the shareholders. While we agree that the Department has used such a test in some prior cases,²¹³ there is insufficient evidence on the record of this investigation to do so with respect to these shareholders. We recognize that certain statements at verification by officials representing the shareholder firms challenge the presumption that majority ownership establishes government control. We discuss these statements in the BPI Memorandum. However, beyond the levels of government ownership for these companies, neither the GOC nor GG/ZG has provided the information that is needed to conduct the analysis. We will reconsider the necessity and feasibility of applying the five-factor test during an administrative review, should this investigation result in a countervailing duty order.

Further, as explained in the Analysis of Programs – Shareholder Loans, we determine that the accrued interest on certain loans received from the non-bank lenders may be treated as forgiven, consistent with the finding of debt forgiveness in OTR Tires from the PRC. However, there is a reasonable expectation that a certain portion of the outstanding non-bank loans may be repaid, based on ZG's claim that settlement of this outstanding debt is still under discussion.²¹⁴ Therefore, we have not treated the outstanding principal balances as having been assumed or forgiven by the government. Instead, we are treating the outstanding principal balance as a preferential loan during the POI. See Comment 10 of the BPI Memorandum and GG/ZG Final Calculation Memorandum for further discussion.

Related to the calculation of the benefit of certain debt forgiveness, we determine that Petitioner's request that ZG be treated as uncreditworthy in an additional year does not satisfy

²¹² See, e.g. DRAMS from Korea.

²¹³ See, e.g. DRAMS from Korea IDM at 16-17, and Magnesium from Canada at 30954. We note, however, that in other cases, we have not applied this test where a government-owned company provided a financial contribution to the respondent. See e.g. Hot Rolled Steel from India 04 AR - Preliminary at 1516 (unchanged in final), where the Department countervailed the provision of iron ore from a mostly government-owned mine without any reference to the five-factor test.

²¹⁴ ZG 4th SQR at 5.

the Department's requirements of a specific allegation that is supported by information establishing a basis to believe or suspect that the firm is uncreditworthy. See 19 CFR 351.505(a)(4) - (6). See BPI Memorandum.

Comment 11: Provision of Electricity for Less Than Adequate Remuneration

The GOC argues that the Department erred in finding that the provision of electricity to GG and ZG conferred a countervailable subsidy and in concluding that the electricity was provided at less than adequate remuneration. The GOC cites the ZG Verification Report and the Post-Preliminary Analysis, and argues that nowhere does the Department identify any fact which suggests that the rates paid by GG and ZG were preferential other than the existence of rate variations within Guangdong province. The GOC argues that rate variations alone are insufficient to prove regional specificity or to calculate a benefit, and that the Department ignores evidence on the record which explains the rate setting process, variances among localities and the NDRC's role.²¹⁵

On the issue of specificity, the GOC argues that the facts of the present case and CWP from the PRC are identical and that a similar conclusion should be made by the Department.²¹⁶ The GOC concludes that the Department's finding of specificity is strictly mechanical without consideration of facts and is, therefore, arbitrary.

Petitioner argues that the Department should continue to find that the provision of electricity to GG and ZG by the GOC is a countervailable subsidy, as determined in the Post Preliminary Analysis, because the GOC has not fully and accurately reported how electricity prices are set in China. Petitioner argues that this merits the use of facts available. Petitioner notes that the record confirms that GG and ZG received electricity at rates lower than similarly situated companies in Guangzhou. Petitioner argues the lower rates are not a result of market forces. Rather, the lower rates are a result of preferential discretion of the NDRC, which maintains the authority to set electricity prices throughout China. Petitioner concludes that the GOC's provision of electricity to both GG and ZG is countervailable because it is regionally specific under section 771(5A)(D)(iv) and provided for less than adequate remuneration.

Department Position:

As discussed in the Post Preliminary Analysis²¹⁷ and above in the Programs section, specificity of domestic subsidies is determined by reference to the granting authority. See section 771(5A)(D) of the Act. During verification we learned that the NDRC is the granting authority

²¹⁵ Such evidence as the NDRC pricing guidelines which state that rates for uploading, transmission and sale are based on principles of supply and demand, cost recovery, competition, and reasonable profit. The Guangdong Province cost adjustment report for electricity rates that contain detailed calculations and recommendations for prices adjustments based on information provided by the provincial price bureau. The recommendation focused on factors such as fuel, maintenance, labor and fixed asset costs. Finally, the GOC officials explained that rates vary across the province because of different supply and demand, infrastructure and cost efficiencies associated with power generation in particular regions. See Zhanjiang / Guangdong Verification Report at 34-38. See also Post-Preliminary Analysis at 3-5.

²¹⁶ See CWP from the PRC IDM at comment 9.

²¹⁷ See Post-Preliminary Analysis at 3.

because it sets the rate for Guangdong Province. Specifically, during the POI, the NDRC set a different price adjustment for the Guangdong Province than that recommended by the Guangdong provincial authorities. We disagree with the GOC that the facts of the present case and CWP from the PRC are identical. In CWP from the PRC, the record suggested that each region set its own prices. In the present case, we discovered that the national government set the price in Guangdong Province. As the GOC argued in CWP from the PRC, one proper approach to finding specificity with regard to electricity is to determine if similarly situated customers within the region receive the same price. As applied in CWP from the PRC, we found that prices did not prefer a specific enterprise, industry or group “beyond acceptable commercial practice related to standard customer classification and the amounts of electricity consumed.”²¹⁸ Following this same analysis in this case, we find that the rates set for all regions of Guangdong differed among similarly situated customers. The facts that NDRC has the authority to set electricity rates and that the rates paid by respondents are lower than similarly situated companies in Guangdong distinguish the facts in this investigation from those in CWP from the PRC.²¹⁹ As such, we determine in this case that there is regional specificity with respect to electricity rates in Guangdong Province.

To determine whether a benefit was conferred, we performed a benchmark analysis in accordance with 19 CFR 351.511(a)(2). We found neither “tier one” market-determined prices in China nor “tier two” world market prices to use as a benchmark. Therefore, in accordance with 19 CFR 351.511(a)(2)(iii), the Department looked to whether the government price {for electricity} was consistent with market principles. The GOC’s argument overlooks the fact that a key aspect of our understanding of the level of government involvement in rate setting came to light only during verification, as discussed in the Post Preliminary Analysis. We did not have the opportunity to seek the extensive information needed to analyze the government’s price-setting philosophy or its costs for electricity. As a result, there is insufficient record evidence concerning the GOC’s price-setting policy to determine whether the government price is consistent with market principles. The facts available in this investigation indicate that electricity is being provided to GG and ZG at preferential rates and, hence, for less than adequate remuneration.

Comment 12: Provision of Land for Less Than Adequate Remuneration

The GOC claims that the provision of land-use rights does not confer a financial contribution because the sale of usage rights does not fall within any categories described by section 771(5)(D) of the Act. While the Zhanjiang Land Bureau did sell something, it was neither a good nor a service, according to the GOC. Instead, it was realty. In support, the GOC points Black’s Law Dictionary, claiming that land does not fall under the definition of either “good” or “service.” The GOC acknowledges the Department’s explanation in LWS from the PRC of why it treats land as a good or service. However, Department practice has no real bearing when the practice is inconsistent with the law and, the GOC claims, land cannot be considered a financial contribution as a matter of law.

²¹⁸ See CWP from the PRC IDM at Comment 9.

²¹⁹ Id.

The GOC further objects to the benchmark used by the Department to measure whether adequate remuneration was received. First, the GOC contends that the statute requires the Department to consider adequate remuneration in relation to prevailing market conditions in the country subject to investigation or review. Thus, when domestic benchmarks are available, as they are here, the GOC claims they must be used. According to the GOC, the valuation of land does not require a traditional market because land is not bought and sold as a good. Instead, the GOC contends, land requires a productive and valued use. For this reason, in the GOC's view, prices in Thailand are not permissible under the statute because those prices reflect factors unique to Thailand and they cannot reflect prevailing market conditions in China.

The GOC rejects the Department's prior justifications for using an out-of-country benchmark in Softwood Lumber from Canada and CFS from Indonesia. Specifically, the GOC states that the use of cross-border benchmarks for Lumber was specifically rejected by a binational panel convened under NAFTA Article 1904 and claims that use of such benchmarks in CFS from Indonesia does not make the practice correct. The GOC also points to statements by the Department in litigation involving Softwood Lumber from Canada regarding comparability problems with cross-border benchmarks. According to the GOC, land is even more unique than lumber in this respect, and economic conditions affecting land use in Thailand are not and cannot be considered comparable to conditions in China.

The GOC further claims that Article 14 of the SCM Agreement exhibits a clear preference for in-country benchmarks. Citing United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber Products from Canada, Report of the Appellate Body, WT/DS257/AB/R,²²⁰ the GOC contends that while the SCM does not prohibit third-country benchmarks, they can only be used in limited circumstances and there must be a rational basis for the selected surrogate. Moreover, according to the GOC, China's Protocol of Accession does not alter the requirements of SCM Article 14. Thus, the GOC claims, the Department must use the following benchmarks, in order of preference: an unadjusted, in-country benchmark; an adjusted in-country benchmark; or a third country benchmark.

Even if the Department does not believe there is a competitive market for land-use rights in China, the GOC claims that the Department should find Chinese prices are consistent with market principles. In support, the GOC points out that minimum prices are set, standards have been put into place to appraise land values, and pricing benchmarks are calculated by professional appraisers taking into account zoning, the location of the site, and whether the land has been leveled for construction. The GOC acknowledges that the Department rejected this approach in LWS from the PRC, but it appears that the agency was concerned there with particular land prices and not with the benchmark prices. Therefore, the GOC argues, the Department should measure any benefit to GG by reference to the benchmark price for that grade of land in Zhanjiang.

Finally, the GOC contends that the Department has no basis to find regional specificity because there is no evidence of a regional preference or even a preference within the ZETDZ.

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GG concurs in the GOC's comments.

Petitioner agrees with the Department's position in the Post-Preliminary Analysis that land-use rights are properly treated as the provision of a good or service under the Act. Petitioner further agrees that it is appropriate to use a third-country benchmark to measure adequate remuneration, though argues that land prices in Taiwan would be a better choice than prices in Thailand. With regard to specificity, Petitioner contends that the land-use rights are specific because GG and ZG enjoy preferential government treatment under the Guangdong Paper Plan and the Zhanjiang 11th Five-year Plan. Petitioner cites to these plans to argue that these governments seek to develop their paper producers, *inter alia*, through priority in "the arrangement of construction land." Alternatively, Petitioner claims the Department should find the provision of land regionally specific because GG is located in the ZETDZ and ZG's factory is in the Mazhang District. In its rebuttal brief, Petitioner restates its general support for the Department's positions on these issues in the Post-Preliminary Determination.

However, Petitioner disagrees with the Department's analysis in the Post-Preliminary Determination in certain respects. First, Petitioner contends that the Department wrongly found that certain transactions preceded the cut-off date. Because of the proprietary nature of the details of these transactions, they are addressed in the BPI Memorandum.

Second, Petitioner disagrees that the rationale of the cut-off date applies to land transactions. Specifically, Petitioner sees no valuation problems because the Department measures land-use rights benefits during the POI using a "contemporary current benchmark deflated to the year of acquisition." Importantly, according to Petitioner, land-use rights are treated by GG and ZG as intangible assets whose cost is amortized and the Department's methodology recognizes an annual cost of land-use. Moreover, Petitioner contends that the land-use rights resemble a long-term lease because the ultimate ownership of the land remains with the government, the land-use rights all have definite terms and, therefore, must be renegotiated at the conclusion of those terms, and the government retains ultimate control over the transfer of industrial land-use rights. Citing Live Cattle from Canada, Petitioner argues that the Department has previously found that such leases provide a recurring benefit. Petitioner additionally argues that ignoring recurring land-use rights benefits legitimizes current illegal subsidy benefits well into the future and that the Department's failure to recognize these subsidies gives China preferential treatment as compared to other WTO members.

In its rebuttal brief, the GOC argues that land use rights are not a recurring benefit. Rather, the GOC contends that the purchase of land use rights is a one-time transaction. According to the GOC, Live Cattle from Canada, involved annual rental fees on grazing land, not long-term land use rights and is not analogous to the instant case. Therefore, the GOC argues that the Department should continue with its treatment of the provision of land as an allocated, non-recurring benefit, as it is consistent with 19 CFR 351.524(c)(2), and past practice in prior China CVD cases. Moreover, the GOC argues that the Department should measure the allocated benefit from the date of the provision of the alleged subsidy, consistent with 19 CFR 351.524(d). Finally, the GOC points out that the Department has not established basis for measuring subsidies before cut-off date.

Department's Position:

The Department continues to take the position that the provision of land is the provision of a good or service and, consequently, a financial contribution under section 771(5)(D)(iii) of the Act. As the GOC has acknowledged, the Department has treated land as a good or service in several past cases.²²¹

Moreover, we note that the statutory definition of a financial contribution is written broadly in recognition that governments have a variety of mechanisms at their disposal to confer a financial advantage on specific domestic enterprises or industries. The SAA confirms that the sweep of the statute is intended to be broad to ensure that such mechanisms are subject to the countervailing duty law:

Section 771(5)(D) lists the four broad generic categories of government practice that constitute a “financial contribution.” The examples of particular types of practices falling under each category are not intended to be exhaustive. The Administration believes that these generic categories are sufficiently broad so as to encompass the types of subsidy programs generally countervailed by Commerce in the past, although determinations with respect to particular programs will have to be made on a case-by-case basis.

SAA at 927.

Land leases were countervailed by the Department in the past, a fact well known to Congress when it enacted the current CVD law. The SAA is “an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application.” 19 U.S.C. § 3512; see also Tcherepnin at 336 (“remedial legislation should be construed broadly to effectuate its purposes”). Courts have frequently explained that “a statute should be ‘construed’ not technically and restrictively, but flexibly to effectuate its remedial purpose.” See Zandford (citation omitted).

Therefore, our practice of treating land as a good or service is fully consistent with the Act.

With respect to the benchmark, we have determined that Chinese land prices are distorted by the significant government role in the market and, hence, cannot be used as a benchmark.²²² Also because of this government involvement and because property rights remain poorly defined and weakly enforced, we further determine that land prices in China are not in accordance with market principles (see 19 CFR 351.511(a)(2)(iii)).²²³ Therefore, consistent with LWS from the PRC and OTR Tires from the PRC, we determine that land values in Thailand provide an accurate benchmark. As we stated there, the Department has analyzed a number of variables in finding that Thailand is comparable to China in terms of its prevailing market conditions and, thus, appropriate as our benchmark for land values, including the economic similarity of

²²¹ LWS from the PRC IDM at 52, citing Steel Wire Rod from Germany, 62 FR at 54994 and Steel Wire Rod from Italy, 63 FR at 40481.

²²² See Analysis of Programs – Provision of Land to GG and LWS from the PRC IDM at 15 and Comment 10.

²²³ LWS from the PRC IDM at 16.

Thailand and China in terms of GNI per capita²²⁴ and comparable population density, the perception that producers consider a number of markets, including Thailand, as an option for diversifying production bases in Asia beyond China, and certain economic and demographic factors.²²⁵

With respect to the NAFTA Panel decision cited by the GOC, it is important to note that in the remand, the Department continued to find that the out-of-country benchmark was the proper choice. Moreover, we note that NAFTA panel decisions are not precedential. See NAFTA Article 1904.9. Specifically, the Department explained that:

We disagree with the Panel's conclusion that there was not substantial evidence to support the Department's determination that market conditions in Canada and the United States are comparable, and that the adjustments the Department made adequately account for differences. We continue to believe that the resulting benchmarks constitute world market prices for timber that are commercially available to purchasers in Canada, within the meaning of 19 CFR 351.511(a)(2)(ii).

Remand Redetermination, Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination, USA-CDA-2002-1904-03 (January 12, 2003) (available at www.ia.ita.doc.gov). The Department specifically indicated that it was not altering its practice in this respect.

Finally, with respect to the SCM Agreement, the GOC has argued that Article 14 requires us to first seek to adjust prices in China before adopting an out-of-country benchmark. While the GOC relies on the SCM Agreement, we note the Department is bound by U.S. law and precedent. After agreeing to the SCM Agreement, the United States revised its related trade laws and regulations to be in accordance with the agreement, as reflected in its administrative practice. While in practice the Department does look to prices within the exporting country to serve as a benchmark, we have already described above that the use of prices within China would cause undue difficulties. Moreover, the GOC has provided no bases for making adjustments to such prices and given the lack of any market-determined prices for land-use fees in China, deriving such an adjustment would be a highly complex, speculative and impracticable exercise.

Petitioner has argued that we should use land prices in Taiwan as the benchmark. Consistent with OTR Tires from the PRC, however, we continue to find that Taiwan cannot serve as an appropriate benchmark for land values because Taiwan is not economically similar to China.²²⁶

With respect to specificity, we continue to determine that the provision of land-use rights in ZETDZ is regionally specific because ZETDZ is a region within the seller's (the municipality's) jurisdiction.

²²⁴ China and Thailand have similar per capita GNI income at \$2,010 and \$2,990, respectively.

²²⁵ LWS from the PRC IDM at Comment 11, page 190 of the OTR Tires from the PRC IDM at 190. See also GG/ZG Post-Preliminary Calculation Memorandum at Attachment 6.

²²⁶ See OTR Tires from the PRC IDM page 190.

Turning to Petitioner's arguments regarding the countervailability of land-use rights provided prior to the cut-off date, we disagree. Regardless of how the transactions are booked by the purchasers of the land-use rights, the purchases occurred prior to the cut-off date and, hence, do not give rise to a countervailable subsidy for the reasons explained in CWP from the PRC.²²⁷ Moreover, Petitioner has mischaracterized our methodology for determining the benefit from this type of subsidy. The subsidy is determined at the time of the transaction and the benefit is allocated over the life of the land-use rights contract. Contrary to Petitioner's claim, this is not equivalent to recognizing an annual cost of land-use. We further find no basis to characterize this as a recurring subsidy. The methodology we have used to calculate the subsidy does not give preferential treatment to China because it is the same methodology we would use if faced with similar circumstances in a case against any other country.

Comment 13: Stamp Tax Waiver and Income Tax Exemptions under the NSTR

Petitioner agrees with the Department's finding that the stamp tax waiver under the NSTR program is countervailable and further argues that the Department should find the income tax waiver to be countervailable as well.

Petitioner cites to GG Verification Exhibit 2C in making certain additional arguments which are described in our BPI Memorandum. Petitioner argues that because the shares were transferred during the POI, they represent income earned during the POI, and there was no prohibition on the resale of these shares at any time. Petitioner concludes that waiver of income tax constitutes a financial contribution in the form of revenue foregone, within the meaning of section 771(5)(D)(iii) of the Act, with the benefit equaling tax savings. According to Petitioner, the Department should use neutral facts available and apply the 15 percent income tax rate applicable to GG to the value of the transferred shares. Petitioner further asserts that like the stamp tax waiver, the income tax exemption is limited to only those companies that participated in the NTSR program.

GG argues that the NTSR did not confer a countervailable benefit. As explained to the Department at verification, GG asserts that the shareholders were exempted from paying income tax on the share transfer, and that the tax effects were borne by the shareholders involved, not by the company itself. GG asserts that the same is true of the stamp tax. GG claims that there is no information or evidence on the record that suggests that the stamp tax waived would have otherwise been borne by GG. Therefore, GG argues, it is inappropriate to attribute a subsidy for the stamp tax waiver to GG. GG further points out that the shareholders do not fall within any of the categories described in 19 CFR 351.521(b)(6)(ii)-(iv). GG disagrees with the Department's decision in OTR Tires not to distinguish between the company and its shareholders.

Finally, GG argues that the issue of the NTSR was not raised prior to verification. GG asserts that if an issue is going to be examined and ruled upon by the Department, fairness dictates that that it should have been raised prior to verification so that the GG could respond accordingly.

²²⁷ CWP from the PRC IDM at Comment 2.

In rebuttal to GG's arguments, Petitioner notes that the Department appropriately found in this investigation (as in OTR Tires), that the tax savings received by the shareholders should be treated as received by GG itself. Petitioner asserts that GG's citation to 19 CFR 351.521(b)(6)(ii)-(iv) is inapposite as that regulation relates to attribution of subsidies in cases of cross-owned companies. Finally, Petitioner notes that where the Department discovers a practice which appears to be a countervailable subsidy, but was not included in the petition, the statute requires the Department to investigate the practice if it appears to relate to subject merchandise.²²⁸ Petitioner notes that the Department did that with respect to the stamp tax exemption under the NTSR in this case, and that GG should have identified the NTSR subsidy in its response.

The GOC argues that the Department correctly declined to countervail the shareholder income tax exemption under the NTSR program. According to the GOC, the Department was correct in finding it lacked sufficient evidence to conclude that the exemption confers a countervailable subsidy since it did not have any basis to conclude that an exemption on shareholder personal income taxes constituted a financial contribution to the producer of the subject merchandise or any benefit that flowed to the producer of the subject merchandise.

Department Position:

The Department continues to find that making no distinction between the company and its shareholders in this case is consistent with the approach articulated by the Department in situations involving the sale of a company's shares,²²⁹ and as earlier cited to in OTR Tires, in which the Department conducted an extensive analysis of the same program.²³⁰ Respondents' citation to 19 CFR 351.525(b)(6)(ii)-(iv) with regard to attribution of subsidies is misplaced, as this issue goes to the question of what constitutes the respondent for the purposes of this analysis, rather than to the categories of affiliation between a company and other companies.

We disagree with respondents' implicit contention that the Department's investigation of this program is unfair since the issue was not included in the original petition and was not raised until late in the proceeding at the start of verification. Where the Department discovers an apparent subsidy in the course of the CVD investigation, the Department's regulations require that we examine the subsidy if the Department concludes that sufficient time remains before the final determination. See 19 CFR 351.311(b). Given that the Department had recently examined the same subsidy program in OTR Tires and was, therefore, already familiar with the elements of the program, the Department concluded that the time remaining before the final determination was sufficient to make certain findings regarding the program in this proceeding and allow adequate comment from parties as to those findings.

²²⁸ See section 775 of the Act. See also CWP from the PRC at 31968.

²²⁹ See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125, 37137 (June 23, 2003).

²³⁰ See OTR Tires from the PRC, "Post-Preliminary Analysis of Non-Tradable Share Reform; Provision of Water to FIEs for Less than Adequate Remuneration; Grants to the Tire Industry for Electricity; and Various Provincial/Municipal Programs," dated May 2, 2008, at 12 ("the Department's methodology in the context of a sale of a company or shares in a company is not to distinguish between a company and its shareholders").

In terms of Petitioner's comments regarding the income tax waiver, the Department disagrees with Petitioner's formulation of the subsidy and continues to find that there is insufficient record information on which to base a finding on this issue. Specifically, we lack the necessary information to make a determination as to specificity and to measure the benefit. Consequently, we do not agree that applying the 15 percent tax rate applicable to GG would be appropriate. Instead, we continue to find that it is more appropriate to investigate this aspect of the NTSR in any subsequent review.

Comment 14: Whether ZG is Creditworthy

GG argues that ZG was creditworthy in 2003 and 2004. The company asserts ZG obtained loans in those years from a non-state owned commercial bank.²³¹ Although GG notes the loans were short-term, it argues that they are an indicator of the firm's financial health, its ability to meet its costs, and evidence of how the commercial market viewed ZG's future financial position pursuant to 19 CFR 351.505(a)(4)(i)(A)-(D). GG also asserts that while the Department addressed ZG's liquidity and debt-to-equity ratios during the applicable years in its preliminary uncreditworthiness finding,²³² ZG's net profit margin and sales were on a general increasing trend over the period. GG points out that even the Department noted ZG's sales continued to increase in 2003. Finally, GG points to a positive statement made by a lending official about the risks associated with lending to ZG during the relevant period as further support of the company's creditworthiness.²³³

The GOC disagrees with the preliminary uncreditworthiness determination for ZG in 2003 and 2004, particularly as it relates to inferences drawn from a bank document relied upon by the Department. First, the GOC contends that ZG was not the recipient of policy loans so an examination of uncreditworthiness is unfounded. The GOC further argues that loans obtained by ZG were in fact commercial, and long-term loans from commercial sources are normally dispositive of creditworthiness pursuant to 19 CFR 351.505(a)(4)(ii). Moreover, the GOC asserts that it is evident from the record that whatever short-term difficulties ZG was facing, those difficulties were remedied. The GOC cites, as support, to an official's explanation at verification of the bank's decision to continue lending to ZG was based on standard commercial practice. Thus, the GOC notes that banks do not lend in a vacuum with no consideration of prior history or projected improvement and cites to additional proprietary information in support of its argument. See the BPI Memorandum. The GOC concludes that ZG's lenders were acting on a commercial basis providing commercial loans based on the merits of the company and business relationship contingent on security measures. Therefore, according to the GOC, the above facts lead to the conclusion that ZG was creditworthy.

In response to GG's and the GOC's arguments, Petitioner argues the Department should continue to find ZG uncreditworthy for 2003 and 2004. Petitioner asserts that GG's argument on its short-term commercial bank loans should be rejected. Citing 19 CFR 351.505(a)(4)(ii) and the CVD Preamble at 65366, Petitioner states that only long-term loans may be considered as dispositive evidence of creditworthiness. Petitioner also makes further proprietary arguments in regard to

²³¹ See GG 2nd SQR at 5.

²³² See Preliminary Uncreditworthiness Memo.

²³³ Id. at 4.

these loans and GG's characterization of the bank as commercial, which are addressed in the BPI Memorandum.

In regard to the GOC's arguments, Petitioner cites to proprietary information on the record to counter the GOC's claims that ZG was creditworthy. Petitioner also contends that additional information shows ZG remained in a precarious financial position beyond the POI.

Department's Position:

19 CFR 351.505(a)(4)(ii) states the receipt of comparable long-term commercial loans, unaccompanied by a government-provided guarantee, will normally constitute dispositive evidence that a firm is not uncreditworthy. As the Department has found in this investigation that loans provided by policy banks and SOCBs in the PRC constitute government-provided loans (see "Analysis of Programs" section and Comment 6), we do not consider such loans by ZG to be dispositive evidence of the company's creditworthiness. Furthermore, our finding in CFS refutes the GOC's argument that ZG's lenders were acting on a commercial basis in providing commercial loans. See "Analysis of Programs" section and Comment 6.

With regard to GG's assertion that it has received loans from a non-SOCB, albeit short-term, we note that the Department has determined that this bank is a SOCB for purposes of this investigation based on the information provided by GG. See BPI Memorandum at Comment 14. Moreover, the Department also considers short-term loans to be associated with specific transactions which provide security to the lender and, hence, as having little risk. See CVD Preamble at 65366. Therefore, short-term loans would not be considered comparable to a government long-term loan nor provide a reasonable basis to conclude whether a company would be able to procure commercial long-term lending or be indicative of the company's past, present or future financial health or obligations.

Finally, GG's references to its sales and net profit margin are misplaced. The Department provided a lengthy analysis of GG's submitted financial statements and ratios from 2000 – 2003 which involved not only liquidity and debt-to-equity ratios, but also net profit, sales, return on equity, quick/current ratios, cash-flow-total liabilities, and times interest earned.²³⁴ GG's argument does not address specific issues or explain where the Department erred in its analysis of the financial data or how the net profit margin and sales general increasing sales trend over the period impacts the analysis provided in the Preliminary Uncreditworthiness Memo. The Department has provided further comment on this issue and other proprietary arguments in the accompanying BPI Memorandum.

Based on the above and our analysis in the BPI memo as well as our preliminary creditworthiness analysis of ZG, we continue to find that ZG is uncreditworthy in 2003 and 2004.

²³⁴ Id. at 3.

Comment 15: Double Counting/Overlapping Remedies

The GOC argues that the Department must take action to avoid double-counting of duties and it is important for the United States to end its unequal treatment of the Chinese light weight thermal paper industry. The GOC also argues that the Department must use consistent policies when dealing with Chinese industries in AD and CVD cases instead of treating China as a market-based economy for CVD cases and an NME for AD cases. The GOC warns that the use of inconsistent U.S. trade policies against China violates WTO agreements.

Petitioner states that the GOC does not provide any convincing arguments to adjust for double counting. Petitioner disputes the GOC's argument that the combined application of countervailing duties and antidumping duties based on the NME methodology results in the double-counting of duties. Petitioner also argues that Congress intended that no adjustment be made in AD calculations to account for domestic subsidies in NME cases. Finally, Petitioner states that the final determination should not include an adjustment to the export price because the statute only calls for changes to CVD duties that are already in place when the AD final determination is issued.

Department's Position:

The Department has previously addressed the double counting arguments raised by the GOC in the antidumping investigations of Coated Free Sheet Paper from the PRC and Circular Welded Carbon Quality Steel Pipe from the PRC. The GOC has not cited any statutory authority that would allow us to terminate this countervailing duty investigation to avoid double counting, and the CVD law provides no authority to make an adjustment to the CVD calculations to prevent double counting. If any adjustment to avoid a double remedy is possible, it would only be in the context of an antidumping investigation, and no party raised this claim in the companion antidumping investigation of LWTP.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these recommendations are accepted, we will publish the final determination in the Federal Register.

AGREE _____ DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Full Name or Term
The Act	Tariff Act of 1930, as amended
AD	Antidumping Duty
AFA	Adverse Facts Available
<u>APA</u>	The Administrative Procedure Act
AUL	Average useful life
BPI	Business proprietary information
CAFC	Court of Appeals for the Federal Circuit
CBRC	China Bank Regulatory Commission
CFR	Code of Federal Regulations
CIT	Court of International Trade
CPI	Consumer Price Index
CRU	The Department's Central Records Unit (Room 1117 in the HCHB Building)
CVD	Countervailing Duty
Department	Department of Commerce
FIE	Foreign-Invested Enterprise
GG	Guangdong Guanhao High-Tech Co., Ltd.
GNI	Gross National Income
GOC	Government of The People's Republic of China
Hanhong	Shanghai Hanhong Paper Co., Ltd.
IDM	<u>Issues and Decision Memorandum</u>
LMI	Lower-Middle Income
LTAR	Less Than Adequate Remuneration
LWTP	Lightweight Thermal Paper
NDRC	National Development and Reform Commission
NME	Non-market economy
NTS	Non-Tradable Shares
NTSR	Non-Tradable Share Reform
OTR Tires	New pneumatic off-the-road tires
Petitioner	Appleton Papers Inc.
PNTR	Permanent Normal Trade Relations
POI	Period of Investigation
PRC	People's Republic of China
RMB	Renminbi
SETC	State Economic and Trade Commission
SOCB	State-Owned Commercial Bank
SOE	State-Owned Enterprise
VAT	Value Added Tax
WTO	World Trade Organization
ZG	Zhanjiang Guanlong Paper Industrial Co., Ltd.

II. LITIGATION TABLE

Short Cite	Cases
<u>Budd Co.</u>	<u>Budd Co., Wheel & Brake Div. v. United States</u> , 746 F. Supp. 1093 (CIT 1990)
<u>Ceramica Regiomontana</u>	<u>Ceramica Regiomontana, S.A. v. United States</u> , 10 CIT 399, <u>aff'd</u> , 810 F.2d 1137 (Fed. Cir. 1987)
<u>Chenery Corp.</u>	<u>SEC v. Chenery Corp.</u> , 332 U.S. 194 (1947)
<u>Chevron</u>	<u>Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.</u> , 467 U.S. 837 (1984)
<u>Fabrique</u>	<u>Fabrique de Fer de Charleroi, S.A. v. United States</u> , 166 F. Supp. 2d. 593 (CIT 2001)
<u>Georgetown Steel</u>	<u>Georgetown Steel Corp. v. United States</u> , 801 F.2d 1308 (Fed. Cir. 1986)
<u>GOC v. United States</u>	<u>Gov't of the People's Republic of China v. United States</u> , 483 F. Supp. 2d 1274 (CIT 2007)
<u>GSA</u>	<u>GSA, S.r.l. v. United States</u> , 77 F. Supp.2d 1349 (CIT 1999)
<u>Hynix</u>	<u>Hynix Semiconductor Inc. v. United States</u> , 391 F. Supp. 2d 1337 (CIT 2005)
<u>Inland</u>	<u>Inland Steel Industries, Inc. v United States</u> , 967 F. Supp. 1338 (CIT 1997)
<u>Rust v. Sullivan</u>	<u>Rust v. Sullivan</u> , 500 U.S. 173 (1991)
<u>Sonco Steel</u>	<u>Sonco Steel Tube Div. v. United States</u> , 694 F. Supp. 959 (CIT 1988)
<u>Tcherepnin</u>	<u>Tcherepnin v. Knight</u> , 389 U.S. 332 (1967)
<u>Usinor</u>	<u>Usinor Sacilor v. United States</u> , 893 F. Supp. 1112, 1135 (CIT 1995)
<u>Zandford</u>	<u>SEC v. Zandford</u> , 535 U.S. 813 (2002)

III. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

Note: if “certain” is in the title of the case, it has been excluded from the title listing.

Short Cite	Administrative Case Determinations
	<i>Carbon Steel Wire Rod – Czechoslovakia</i>
<u>Wire Rod from Czechoslovakia</u>	<u>Carbon Steel Wire Rod from Czechoslovakia: Final Negative Countervailing Duty Determination</u> , 49 FR 19370 (May 7, 1984)
	<i>Carbon Steel Wire Rod – Poland</i>
<u>Wire Rod from Poland</u>	<u>Carbon Steel Wire Rod from Poland: Final Negative Countervailing Duty Determination</u> , 49 FR 19374 (May 7, 1984)
	<i>Chrome-Plated Lug Nuts and Wheel Locks – PRC</i>
<u>Lug Nuts from the PRC – Initiation</u>	<u>Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks from the People’s Republic of China</u> , 57 FR 877 (January 9, 1992)
<u>Lug Nuts from the PRC – Rescission</u>	<u>Rescission of Initiation of Countervailing Duty Investigation and Dismissal of Petition: Chrome-Plated Lug Nuts and Wheel Locks From the People’s Republic of China</u> , 57 FR 10459 (March 26, 1992)
	<i>Circular Welded Carbon Quality Steel Pipe – PRC</i>
<u>CWP from the PRC</u>	<u>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</u> , 73 FR 31966 (June 5, 2008) and accompanying <u>Issues and Decision Memorandum</u>
	<i>Circular Welded Austenitic Stainless Pressure Pipe -PRC</i>
<u>CWASPP from the PRC</u>	<u>Circular Welded Austenitic Stainless Pressure Pipe From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination</u> , 73 FR 39657, 39661 (July 10, 2008)
	<i>Citric Acid and Certain Citrate Salts - PRC</i>
<u>Citric Acid from the PRC</u>	<u>Citric Acid and Certain Citrate Salts from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination</u> 73 FR 54367

	<i>Coated Free Sheet Paper - Indonesia</i>
<u>CFS from Indonesia</u>	Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination, 72 FR 60642 (October 25, 2007)
	<i>Coated Free Sheet Paper – PRC</i>
<u>CFS from the PRC Amended Preliminary</u>	Coated Free Sheet Paper from the People’s Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination, 72 FR 17484 (April 9, 2007) (unchanged in <u>CFS from the PRC</u> final determination)
<u>CFS from the PRC</u>	Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) and accompanying <u>Issues and Decision Memorandum</u> .
	<i>Dynamic Random Access Memory Semiconductors – Korea</i>
<u>DRAMS from Korea</u>	Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003), and accompanying <u>Issues and Decision Memorandum</u>
	<i>Flexible Magnets - PRC</i>
<u>Magnets from the PRC</u>	Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and the accompanying <u>Issues and Decision Memorandum</u> , 73 FR 39667 (July 10, 2008)
	<i>Fresh Cut Flowers - Mexico</i>
<u>Flowers from Mexico</u>	Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996)
	<i>Hot-Rolled Carbon Steel Flat Products – India</i>
<u>Hot-Rolled Steel from India 04 AR – Preliminary</u>	Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Hot Rolled Carbon Steel Flat Products from India, 71 FR 1512 (January 10, 2006) (unchanged in final)
<u>Hot-Rolled Steel from India 04 AR</u>	Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India, 71 FR 28665 (May 17, 2006) and accompanying <u>Issues and Decision Memorandum</u>
	<i>Hot-Rolled Carbon Steel Flat Products – Thailand</i>
<u>Hot-Rolled Steel from Thailand</u>	Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 50410 (October 3, 2001)
	<i>Laminated Woven Sacks – PRC</i>
<u>LWS from the PRC</u>	Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008)
	<i>Light-walled Rectangular Pipe and Tube – PRC</i>
<u>LWRP from the PRC</u>	Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination, 73 FR 35642 (June 24, 2008)

	<i>Lightweight Thermal Paper – PRC</i>
<u>Preliminary Determination</u>	<u>Lightweight Thermal Paper from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination</u> , 73 FR 13850 (March 14, 2008)
	<i>Lined Paper – PRC</i>
<u>Lined Paper from the PRC – AD</u>	<u>Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China</u> , 71 FR 53079 (September 8, 2006) and accompanying <u>Issues and Decision Memorandum</u>
	<i>Live Cattle – Canada</i>
<u>Live Cattle from Canada</u>	<u>Final Negative Countervailing Duty Determination: Live Cattle from Canada</u> , 64 FR 57040 (October 22, 1999)
	<i>Magnets - PRC</i>
<u>Magnets from the PRC</u>	<u>Flexible Magnets from the People's Republic of China: Final Affirmative Countervailing Duty Determination</u> , 73 FR 39667, and the accompanying <u>Issues and Decision Memorandum</u> (July 10, 2008)
	<i>Off-Road Tires - PRC</i>
<u>OTR Tires from the PRC</u>	<u>Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances</u> , 73 FR 13850 (March 14, 2008)
	<i>Pure Magnesium and Alloy Magnesium – Canada</i>
<u>Magnesium from Canada</u>	<u>Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada</u> , 57 FR 30946 (July 13, 1992)
	<i>Softwood Lumber Products – Canada</i>
<u>Softwood Lumber from Canada</u>	<u>Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada</u> , 67 FR 15545 (April 2, 2002), and accompanying <u>Issues and Decision Memorandum</u>
<u>Softwood Lumber from Canada – Amended</u>	<u>Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada</u> , 67 FR 36070 (May 22, 2002)
	<i>Steel Products – Austria</i>
<u>Steel Products from Austria or General Issues Appendix</u>	<u>Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria</u> , 58 FR 37217 (July 9, 1993)
	<i>Steel Wire Rod – Germany</i>
<u>Steel Wire Rod from Germany</u>	<u>Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany</u> , 62 FR 54990 (October 22, 1997)
	<i>Steel Wire Rod – Italy</i>

<u>Steel Wire Rod From Italy</u>	Final Affirmative Countervailing Duty Determination: Certain Steel Wire Rod From Italy, 63 FR 40474 (July 29, 1998)
	<i>Steel Wire Rod – Trinidad and Tobago</i>
<u>Steel Wire Rod from Trinidad and Tobago</u>	Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago, 62 FR 55003 (October 22, 1997)
	<i>Sulfanilic Acid – Hungary</i>
<u>Sulfanilic Acid from Hungary</u>	Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary, 67 FR 60223 (September 25, 2002) and accompanying Issues and Decision Memorandum
	<i>Tapered Roller Bearings - Japan</i>
<u>TRBs from Japan – AD</u>	Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996)
<u>TRBs from Japan - AD Preliminary</u>	Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997)
	<i>Textiles, Apparel and Related Products - PRC</i>
<u>Textiles, Apparel and Related Products from the PRC</u>	Initiation of Countervailing Duty Investigations; Textiles, Apparel, and Related Products From the People's Republic of China, 48 FR 46600 (October 13, 1983)
	<i>Tow-Behind Lawn Groomers and Certain Parts Thereof - PRC</i>
<u>Lawn Groomers from the PRC</u>	Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation, 73 FR 42324, and the accompanying Initiation Checklist (July 21, 2008)
	<i>Other</i>
<u>Practice Modification Notice</u>	Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125 (June 23, 2003)

IV. MISCELLANEOUS TABLE (REGULATORY, STATUTORY, ARTICLES, ETC.)

Short Cite	Full Name
the Act	the Tariff Act of 1930, as amended
<u>CVD Preamble</u>	<u>Countervailing Duties; Final Rule</u> , 63 FR 65348 (November 25, 1998)
<u>Accession Protocol</u>	Protocol on the Accession of the People’s Republic of China to the World Trade Organization, WT/L/432, art. 15(b) (November 23, 2001) (found at www.wto.org)
<u>SCM Agreement</u>	Agreement on Subsidies and Countervailing Measures, April, 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS: THE LEGAL TEXTS 264 (1994)
<u>WTO Working Party Report – 10/1/2001</u>	Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001), available at http://www.wto.org
<u>WTO China Trade Policy Review – Revision</u>	Trade Policy Review: Report by the Secretariat on the People’s Republic of China (Revision), WT/TPR/S/161/Rev. 1 (June 26, 2006)
<u>OTCA</u>	<u>Omnibus Trade and Competitiveness Act of 1988</u> , Pub. L. No. 100-418, 102 Stat. 1107 (1988)
<u>OTCA – House Report</u>	Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 100-40, part 1 (1987)
<u>URAA</u>	<u>Uruguay Round Agreements Act</u> , Pub L. No. 103-465, 108 Stat. 4809 (1994)
<u>URAA – Senate Report</u>	Uruguay Round Agreements Act, S. Rep. No. 103-412, at 90 (1994)
<u>SAA</u>	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)
<u>APA</u>	<u>Administrative Procedures Act</u> , 5 USC section 500 et seq.

V. **NON-IDM MEMORANDA AND OTHER SHORT-CITED EXHIBITS/DOCUMENTS**

Short Cite	Full Name
BPI Memorandum	Memorandum to Susan Kuhbach, Office Director, Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Lightweight Thermal Paper from the People's Republic of China: Business Proprietary Information Memorandum for the Final Determination
CWP Verification Memorandum	Memorandum to the File from Scott Holland, International Trade Compliance Analyst, Lightweight Thermal Paper from the People's Republic of China: Information from Circular Welded Carbon Quality Steel Pipe from the PRC (September 24, 2008)
Hanhong Final Calculation Memorandum	Memorandum to Susan Kuhbach, Office Director, Lightweight Thermal Paper from the People's Republic of China: Calculations for the Final Determination for Shanghai Hanhong Paper Co., Ltd (September 25, 2008)
Georgetown Steel Memorandum	Memorandum from Shana Lee-Alaia and Lawrence Norton to David M. Spooner, Assistant Secretary of Commerce, Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy (March 29, 2007)
GG QR	Lightweight Thermal Paper from the People's Republic of China; Countervailing Duty Investigation; Questionnaire Response of Guangdong Guanbao High Tech Co., Ltd. (February 19, 2008)
GG 2 nd SQR	Lightweight Thermal Paper from the People's Republic of China; Countervailing Duty Investigation; Second Supplemental Questionnaire Response of Guangdong Guanbao High Tech Co., Ltd. (April 22, 2008)
GG 3rd SQR	Lightweight Thermal Paper from the People's Republic of China; Countervailing Duty Investigation; Second Supplemental Questionnaire Response of Guangdong Guanbao High Tech Co., Ltd. (May 19, 2008)
GG/ZG SQR	Lightweight Thermal Paper from the People's Republic of China; Countervailing Duty Investigation; First Supplemental Questionnaire Response of Guangdong Guanbao High Tech Co., Ltd., and Zhanjiang Guanlong Paper Industrial Co., Ltd. (February 29, 2008)
GG/ZG Verification Report	Memorandum to Susan Kuhbach, Office Director, Countervailing Duty Investigation: Lightweight Thermal Paper from the People's Republic of China: GG/ZG Verification Report (August 20, 2008)
GG/ZG Final Calculation Memorandum	Memorandum to Susan Kuhbach, Office Director, Final Affirmative Countervailing Duty Determination: Lightweight Thermal Paper from the People's Republic of China: Calculations for the Final Determination for Guangdong Guanbao High-Tech Co., Ltd. (September 25, 2008)

GG/ZG Post-Preliminary Calculation Memorandum	Memorandum to Susan Kuhbach, Office Director, Preliminary Affirmative Countervailing Duty Determination: Lightweight Thermal Paper from the People's Republic of China: Calculations for the Post-Preliminary Analysis of Various Subsidy Programs for Guangdong Guanhao High-Tech Co., Ltd. (September 2, 2008)
GG/ZG Preliminary Calculation Memorandum	Memorandum to Susan Kuhbach, Office Director, Preliminary Affirmative Countervailing Duty Determination: Lightweight Thermal Paper from the People's Republic of China: Calculations for the Preliminary Determination for Guangdong Guanhao High-Tech Co., Ltd. (March 7, 2008)
GOC NAR	Government of China's New Allegations Questionnaire Response: Lightweight Thermal Paper from the People's Republic of China – CVD Investigation (April 16, 2008)
GOC National Verification Report	Memorandum to Susan Kuhbach, Office Director, Countervailing Duty Investigation: Lightweight Thermal Paper from the People's Republic of China: The People's Republic of China National Government Verification Report (August 20, 2008)
GOC QR	Government of China's Questionnaire Response: Lightweight Thermal Paper from the People's Republic of China – CVD Investigation (January 31, 2008)
GOC 1 st SQR	Government of China's First Supplemental Questionnaire Response: Lightweight Thermal Paper from the People's Republic of China – CVD Investigation (February 19, 2008)
GOC 2 nd SQR	Government of China's Second Supplemental Questionnaire Response: Lightweight Thermal Paper from the People's Republic of China – CVD Investigation (April 23, 2008)
GOC 3 rd SQR	Government of China's Fourth Supplemental Questionnaire Response: Lightweight Thermal Paper from the People's Republic of China – CVD Investigation (June 3, 2008)
GOC 4 th SQR	Government of China's Fourth Supplemental Questionnaire Response: Lightweight Thermal Paper from the People's Republic of China – CVD Investigation (June 5, 2008)
GOC 11 th Five-Year Plan	11 th Five-Year Plan of National Economic and Social Development of China
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Lined Paper Memorandum	Memorandum to David M. Spooner, Assistant Secretary for Import Administration, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China's Status as a Non-Market Economy (August 30, 2006)
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Petitioner's NSA	Lightweight Thermal Paper from the People's Republic of China – Petitioner's New Subsidy Allegations (February 9, 2008)

<u>Post-Preliminary Analysis</u>	Memorandum to David M. Spooner, Assistant Secretary for Import Administration, through Stephen J. Claeys, Deputy Assistant Secretary, for Import Administration; and Susan Kuhbach, Director, AD/CVD Operations, Office 1, Countervailing Duty Investigation: Lightweight Thermal Paper from the People's Republic of China: Post-Preliminary Findings for New Subsidy Allegations (September 2, 2008)
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Shanghai Verification Report	Memorandum to Susan Kuhbach, Office Director, Countervailing Duty Investigation: Lightweight Thermal Paper from the People's Republic of China: The People's Republic of China Shanghai Government Verification Report (August 27, 2008)
ZG QR	Lightweight Thermal Paper from the People's Republic of China; Countervailing Duty Investigation; Questionnaire Response of Zhanjiang Guanlong Paper Industrial Co., Ltd. (February 19, 2008)
ZG 2 nd SQR	Lightweight Thermal Paper from the People's Republic of China; Countervailing Duty Investigation; Second Supplemental Questionnaire Response of Zhanjiang Guanlong Paper Industrial Co., Ltd. (April 21, 2008)
ZG 3 rd SQR	Lightweight Thermal Paper from the People's Republic of China; Countervailing Duty Investigation; Third Supplemental Questionnaire Response of Zhanjiang Guanlong Paper Industrial Co., Ltd. (May 19, 2008)
ZG 4 th SQR	Lightweight Thermal Paper from the People's Republic of China; Countervailing Duty Investigation; Third Supplemental Questionnaire Response of Zhanjiang Guanlong Paper Industrial Co., Ltd. (June 9, 2008)
<u>Zhanjiang / Guangdong Verification Report</u>	Memorandum to Susan Kuhbach, Office Director, Countervailing Duty Investigation: Light Weight Thermal Paper from the People's Republic of China: Verification Report of the Zhanjiang Municipal Government and the Guangdong Provincial Government of the People's Republic of China (August 27, 2008)