

Danyang Brilliant Furniture Co., Ltd. ("Brilliant Furniture") all of the wooden bedroom furniture it exported which is the basis for its request for a new shipper review.

#### Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214 ( ) (2), Shanghai Fangjia certified that it did not export wooden bedroom furniture to the United States during the period of investigation ("POI"). Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Shanghai Fangjia certified that, since the initiation of the investigation, it has not been affiliated with any exporter or producer who exported wooden bedroom furniture to the United States during the POT, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Shanghai Fangjia also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, the exporter submitted documentation establishing the following: (1) The date on which it first shipped wooden bedroom furniture for export to the United States and the date on which the wooden bedroom furniture was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) The date of its first sale to an unaffiliated customer in the United States.

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we are initiating this new shipper review for shipments of wooden bedroom furniture from the PRC produced and exported by Shanghai Fangjia.

The POR is January 1, 2008, through June 30, 2008. 19 CFR 351.214(g)(1)(i)(B). We intend to issue preliminary results of these reviews no later than 180 days from the date of initiation, and final results of these reviews no later than 90 days from the date of the preliminary results, unless extended. See section 751(a)(2)(B)(iv) of the Act.

On August 17, 2006, the Pension Protection Act of 2006 ("H.R. 4") was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct U.S. Customs and Border Protection to collect a bond or other security in lieu of a cash deposit in new shipper reviews during the period April 1, 2006, through June 30, 2009. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act in lieu of a

cash deposit is not available in this case. Importers of wooden bedroom furniture manufactured by Brilliant Furniture and exported by Shanghai Fangjia must continue to post a cash deposit of estimated antidumping duties on each entry of subject merchandise at the current PRC-wide rate of 216.01 percent.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: August 26, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before September 29, 2008. Address written comments to Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 2104.

*Docket Number:* 08-043. Applicant: Harvard University, 7 Divinity Ave., SF 267C, Cambridge, MA 02138. Instrument: Electron Microscope, Model Tecnai G2 F20 TWIN. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument is intended to be used to study macromolecular complexes involved in a variety of cellular functions. The high-resolution information obtained with the instrument will be used to elucidate the chemical structure of these biological molecules and connect the structures to their function. Application accepted by

Commissioner of Customs: August 15, 2008.

*Docket Number:* 08-044. Applicant: Pennsylvania University, College of Medicine; 500 University Drive, Hershey, PA 17033. Instrument: Electron Microscope, Model JEM-1400. Manufacturer: JEOL, Ltd., Japan. Intended Use: This instrument will be used to study a wide range of biological materials, including biological samples of tissues from a variety of vertebrate species and from various organs. Specifically, the instrument will be used to identify detailed tissue structures in order to understand both normal physiology and pathophysiology. Application accepted by Commissioner of Customs: August 15, 2008.

*Docket Number:* 08-045. Applicant: University of Texas at Austin, 1 University Station, A4800, Austin, TX 78712. Instrument: Electron Microscope, Tecnai G2 Spirit BioTWIN. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used to examine biological specimens using transmission electron microscopy. The instrument will be used for a wide variety of samples applications. Application accepted by Commissioner of Customs: August 21, 2008.

Dated: August 28, 2008.

**Faye Robinson,**

*Director, Statutory Import Programs Staff.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-936]

#### Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of circular welded carbon quality steel line pipe (line pipe) from the People's Republic of China (the PRC). For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** September 9, 2008.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson or John Conniff, AD/CVD Operations, Office 3, Operations,

Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4793 and (202) 482-1009, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Case History

On April 3, 2008, the Department received the petition filed in proper form by the petitioners.<sup>1</sup> This investigation was initiated on April 23, 2008. See *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Initiation of Countervailing Duty Investigation*, 73 FR 23184 (April 29, 2008) (*Initiation Notice*), and accompanying Initiation Checklist.<sup>2</sup> On June 6, 2008, the Department postponed the deadline for the preliminary determination by 65 days to no later than September 2, 2008. See *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 73 FR 32290 (June 6, 2008).

Due to the large number of producers and exporters of line pipe in the PRC, we determined that it was not possible to investigate individually each producer or exporter and, therefore, selected two producers/exporters of line pipe to be mandatory respondents: Huludao Steel Pipe Industrial Co., Ltd./Huludao City Steel Pipe Industrial Co., Ltd. and Liaoning Northern Steel Pipe Co., Ltd. (Northern Steel) (collectively, respondents). See Memorandum from the Team through Melissa Skinner, Director, Office 3, Operations, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, regarding "Respondent Selection" (May 16, 2008).<sup>3</sup>

On May 19, 2008, we issued the initial countervailing duty (CVD) questionnaire to the Government of the People's Republic of China (the GOC) and the mandatory respondents. On July 9, 2008, the Huludao Seven-Star Steel Pipe Group Co., Ltd. (Huludao Seven Star Group), Huludao Steel Pipe Industrial Co. Ltd. (Huludao Steel Pipe), and Huludao Bohai Oil Pipe Industrial

Co. Ltd. (Huludao Bohai Oil Pipe) (collectively, the Huludao Companies) submitted their respective responses to the initial CVD questionnaire. On July 10, 2008, the GOC submitted its initial questionnaire response. On July 14, 2008, Northern Steel submitted its response to the initial CVD questionnaire.

Regarding the GOC, we issued it supplemental questionnaires on August 5 and August 6, 2008, to which the GOC submitted a response on August 21, 2008.

Regarding the Huludao Companies, on July 17, 2008, we issued a supplemental questionnaire, to which they responded on July 28, 2008. On July 23, 2008, we issued a supplemental questionnaire to the Huludao Seven Star Group, which submitted its response on August 11, 2008. On July 24, 2008, we issued a supplemental questionnaire to Huludao Bohai Oil Pipe, which submitted its questionnaire response on August 12, 2008. On July 30, 2008, we issued a supplemental questionnaire to Huludao Steel Pipe, which submitted a response on August 18, 2008. On July 31 and August 7, 2008, we issued supplemental questionnaires to the Huludao Companies, which submitted their responses on August 15, 18, and 28, 2008, respectively.

On July 21, 2008, we issued a supplemental questionnaire to Northern Steel, to which it responded on August 6, 2008. On August 6 and 12, 2008, we issued additional supplemental questionnaires to Northern Steel; the company submitted its responses on August 14 and 26, 2008, respectively.

On June 24, 2008, petitioners submitted new subsidy allegations regarding four programs. On August 5, 2008, the Department initiated investigations of the four newly alleged subsidy programs pursuant to section 775 of the Tariff Act of 1930, as amended (the Act). See Memorandum to Melissa G. Skinner, Director, Office 3 Operations, regarding "New Subsidy Allegations" (August 5, 2008). Questionnaires regarding these newly alleged subsidies were sent to the GOC, Northern Steel, and the Huludao Companies on August 6, 2008. The Huludao Companies submitted their response to the questionnaire on the new subsidy allegations on August 22, 2008. Northern Steel submitted its response to the questionnaire on the new subsidy allegations on August 25, 2008. The GOC submitted its response on August 29, 2008.

On August 1, 2008, petitioners alleged that the Huludao Companies are uncreditworthy and requested that the Department initiate an uncreditworthy

inquiry as described under 19 CFR 351.505(a)(4)(i). Due to the timing of petitioners' submission, we are unable to address their uncreditworthy allegation in the context of this preliminary determination. Therefore, we will address the allegation after the issuance of the preliminary determination.

##### Scope of the Investigation

The merchandise covered by this investigation is circular welded carbon quality steel pipe of a kind used for oil and gas pipelines (line pipe), not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, length, surface finish, end finish or stenciling.

The term "carbon quality steel" includes both carbon steel and carbon steel mixed with small amounts of alloying elements that may exceed the individual weight limits for nonalloy steels imposed in the Harmonized Tariff Schedule of the United States (HTSUS). Specifically, the term "carbon quality" includes products in which (1) iron predominates by weight over each of the other contained elements, (2) the carbon content is 2 percent or less by weight and (3) none of the elements listed below exceeds the quantity by weight respectively indicated:

- (i) 2.00 percent of manganese,
- (ii) 2.25 percent of silicon,
- (iii) 1.00 percent of copper,
- (iv) 0.50 percent of aluminum,
- (v) 1.25 percent of chromium,
- (vi) 0.30 percent of cobalt,
- (vii) 0.40 percent of lead,
- (viii) 1.25 percent of nickel,
- (ix) 0.30 percent of tungsten,
- (x) 0.012 percent of boron,
- (xi) 0.50 percent of molybdenum,
- (xii) 0.15 percent of niobium,
- (xiii) 0.41 percent of titanium,
- (xiv) 0.15 percent of vanadium, or
- (xv) 0.15 percent of zirconium.

Line pipe is normally produced to specifications published by the American Petroleum Institute (API) (or comparable foreign specifications) including API A-25, 5LA, 5LB, and X grades from 42 and above, and/or any other proprietary grades or non-graded material. Nevertheless, all pipes meeting the physical description set forth above that is of a kind used in oil and gas pipelines, including all multiple-stenciled pipe with an API line pipe stencil is covered by the scope of this investigation.

Excluded from this scope are pipes that are multiple-stenciled to a standard and/or structural specification and to any other specification, such as the API-5L specification, when it also has one or more of the following

<sup>1</sup> Petitioners are United States Steel Corporation, Maverick Tube Corporation, Tex-Tube Company, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC.

<sup>2</sup> A public version of this and all public Departmental memoranda is on file in the Central Records Unit (CRU), room 1117 in the main building of the Commerce Department.

<sup>3</sup> A public version of this memorandum is available in the CRU.

characteristics: is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish. (The term “painted” does not include coatings to inhibit rust in transit, such as varnish, but includes coatings such as polyester.)

The line pipe products that are the subject of this investigation are currently classifiable in the HTSUS under subheadings 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### Scope Comments

In the *Initiation Notice*, we acknowledged that the scope of the antidumping (AD) and CVD investigations of line pipe may include certain merchandise potentially subject to the AD and CVD investigations on circular welded carbon quality steel pipe (CWP) from the PRC.<sup>4</sup> See *Initiation Notice*, 73 FR 23184. In accordance with the Department’s regulations (see *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*.

On May 13, 2008, Wheatland Tube Company (Wheatland), an interested party in this proceeding, submitted comments on the scope of the AD and CVD investigations on line pipe. Wheatland requested that the Department modify the line pipe scope to reflect the scope definition ultimately set out in the CWP investigations.<sup>5</sup> Based on the comments received and resolution of the CWP scope issue, we have modified the scope of the line pipe investigations to eliminate the overlap

that existed between the scope of CWP and line pipe. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Abdelali Elouradia, Director, Office 4 Operations, regarding “Antidumping and Countervailing Duty Investigations of Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China: Scope Modification” (August 29, 2008).

### Injury Test

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On June 3, 2008, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the PRC of the subject merchandise. See *Certain Circular Welded Carbon Quality Steel Line Pipe from China and Korea*, Investigation Nos. 701-TA-455 and 731-TA-1149-1150 (Preliminary), 73 FR 31712 (June 3, 2008).

### Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2007, through December 31, 2007, which corresponds to the PRC’s most recently completed fiscal year. See 19 CFR 351.204(b)(2).

### Application of the Countervailing Duty Law to Imports from the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS Final*), and accompanying decision memorandum (*CFS Decision Memorandum*). In *CFS Final*, the Department found that . . . given the substantial differences between the Soviet-style economies and the PRC’s economy in recent years, the Department’s previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from the PRC.

See *CFS Decision Memorandum* at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in subsequent final determinations. See, e.g., *Circular Welded Carbon Quality Steel Pipe from*

*the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP Final*), and accompanying decision memorandum (*CWP Decision Memorandum*).

Additionally, for the reasons stated in the *CWP Decision Memorandum*, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this preliminary determination. See *CWP Decision Memorandum* at Comment 2.

### Subsidies Valuation Information

The Department is investigating loans received by respondents from Chinese banks, including state-owned commercial banks (SOCBs), which are alleged to have been granted on a preferential, non-commercial basis. 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 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). As explained below, we have preliminarily determined that short-term and long-term loans of the Huludao Companies were received under the GOC’s preferential lending program or constitute export-contingent loans and, thus, constitute loans received under an export subsidy program. Similarly, as explained below, we have preliminarily determined that Northern Steel’s short-term loans were issued contingent on export performance and, thus, constitute loans received under an export subsidy program. Therefore, because we have preliminarily determined that respondents’ outstanding loans were issued pursuant to GOC programs, the loans are the very loans for which we require a suitable benchmark.

Under 19 CFR 351.505(a)(3)(ii), if the respondent firm did not have any comparable commercial loans during the period, the Department may use a national interest rate for comparable commercial loans. However, we

<sup>4</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China*, 73 FR 31970 (June 5, 2008), see also *Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008).

<sup>5</sup> See Wheatland’s submission to the Department entitled “Scope of the Antidumping Duty Investigations of Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea and the People’s Republic of China and Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China - Comments on Scope of Investigations” (May 13, 2008).

preliminarily determine that the Chinese national interest rates are not reliable as benchmarks for these loans because of the pervasiveness of the GOC's intervention in the banking sector. Loans provided by Chinese banks reflect significant government intervention and do not reflect the rates that would be found in a functioning market. See CFS Decision Memorandum at Comment 10.

In our analysis of the PRC as a non-market economy in the AD investigation of certain lined paper products from the PRC, 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. See "The People's Republic of China (PRC) Status as a Non-Market Economy," (May 15, 2006) (May 15 Memorandum); and "China's Status as a Non-Market Economy," (August 30, 2006) (August 30 Memorandum), both of which are referenced in the *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*, 71 FR 53079 (September 8, 2006). This finding was further elaborated in CFS Final. See CFS Decision Memorandum at Comment 10. In that case, the Department found that the GOC still dominates the domestic Chinese banking sector and prevents banks from operating on a fully commercial basis. See also *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 72 FR, 71365 (December 17, 2007) (*Tires Prelim*) and upheld in *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*Tires Final*) and accompanying decision memorandum (*Tires Decision Memorandum*) at "Subsidies Valuation" section. We continue to find that these distortions are present in the PRC banking sector and, therefore, preliminarily 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 the SOCBs. Therefore, as discussed in greater detail in *CFS Final*, because of

the marketdistorting effects of the GOC in the PRC banking sector, foreign bank lending does not provide a suitable benchmark. See CFS Decision Memorandum at Comment 10.

The statute directs that the benefit is normally measured by comparison to a "loan that the recipient could actually obtain on the market." See Section 771(5)(E)(ii) of the Act. Thus, the benchmark should be a market-based benchmark, yet, we preliminarily determine that there is not a functioning market for loans within the PRC. 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 Gross National Income (GNI) to the PRC, using the same regression-based methodology that we employed in recent CVD proceedings involving the PRC. See e.g., CFS Decision Memorandum at Comment 10 and *Tires Decision Memorandum* at Comment E.3 "Role of the GOC in the PRC Banking System and Whether to Use an Internal or External Benchmark."

We note that the use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber First Review*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. See *Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada*, 69 FR 75917 (December 20, 2004) (*Softwood Lumber First Review*) and accompanying decision memorandum at "U.S. Log Prices are a More Appropriate Benchmark" section. In the current proceeding, the Department preliminarily finds that the GOC's predominant role in the banking sector results in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks. Therefore, as in *Softwood Lumber First Review*, where domestic prices are not reliable, we have resorted to prices outside the PRC.

We now turn to the issue of choosing an external benchmark. Selecting an appropriate external interest rate benchmark is particularly important in this case because, unlike prices for certain commodities and traded goods, lending rates vary significantly across the world. Nevertheless, as discussed in *CFS Final*, there is a broad inverse relationship between income levels and lending rates. In other words, countries with lower per capita GNI tend to have higher interest rates than countries with

higher per capita GNI, a fact demonstrated by the lending rates across countries reported in International Financial Statistics (IFS). See *Tires Prelim* at "Subsidies Valuation" (upheld in *Tires Final*). The Department has therefore preliminarily determined that it is appropriate to compute a benchmark interest rate based on the inflation-adjusted interest rates of countries with similar per capita GNI to the PRC, using the same regression-based methodology that we employed in *CFS Final* and *Tires Final*. As explained in the CFS Decision Memorandum at Comment 10, this pool of countries captures the broad inverse relationship between income and interest rates. We determined which countries are similar to the PRC in terms of per capita GNI based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries as of July 2007, i.e., during the POI. See *Tires Prelim* at "Subsidies Valuation" (upheld in *Tires Final*).

Many of these countries reported short-term lending and inflation rates to IFS. With the exceptions noted below, we used this data set to develop an inflation-adjusted market benchmark lending rate for short-term renminbi (RMB) loans. We did not include those economies that the Department considered to be non-market economies for AD purposes. The benchmark necessarily also excludes any economy that did not report lending and inflation rates to IFS.

Because these are inflation-adjusted benchmarks, it is also necessary to adjust the interest paid by respondents on its RMB loans for inflation. This was done using the PRC inflation figure as reported to IFS. The Department then compared its benchmarks with respondents' inflation-adjusted interest rate to determine whether a benefit existed for the loans received by respondents on which principal was outstanding or interest was paid during the POI. The lending rates reported in IFS represent short-term lending, and there is not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. Therefore, the Department has derived long-term benchmark rates for a given year using a formula that is a function of the Department's derived short-term benchmark interest rate for the year in question, the inflation rate for the year in question, long-term U.S. corporate B-rated bond rates, and one-year U.S. corporate B-rated bond rates. To calculate long-term loan

benchmarks, the Department first developed a ratio of short-term and long-term lending. The Department then applied this ratio to the benchmark short-term lending figure (discussed above) to impute a long-term lending rate. Specifically, the Department computed a ratio of long-term U.S. corporate BB-rated bond rates and one-year U.S. corporate BB-rated bond rates reported by the Federal Reserve for 2005. This ratio serves to reflect the mark-up that typically exists on long-term loans, as compared to short-term benchmarks and discount rates, the Department has adjusted the long-term U.S. corporate BB-rated bond rates to approximate as closely as possible the terms of the long-term loans at issue. Thus, to calculate the long-term loan benchmarks, we adjusted the short-term benchmark lending rate for the year in question to reflect inflation in the PRC and then applied the appropriate mark-up ratio. In our derivation of long-term benchmark interest rates, we have not made any inflation adjustment to interest paid by respondents on their long-term RMB-denominated loans. This methodology is consistent with the Department's practice. See *Tires Decision Memorandum* at "Loan Benchmarks and Discount Rates" section and at Comment E.3 "Role of the GOC in the PRC Banking System and Whether to Use an Internal or External Benchmark."

In addition, the Department requires a U.S. dollar denominated short-term interest rate. Consistent with past practice, for U.S. dollar denominated loans, the Department used as the 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, as provided by Bloomberg. See *Tires Prelim*, 72 FR 71365 (upheld in *Tires Final*). For this preliminary 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 basis for calculating the spread over LIBOR. Furthermore, consistent with past practice, the Department 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. *Id.*

The Department also requires an RMB-denominated long-term interest rate to use as a discount rate for purposes of allocating benefits received through the provision of certain landuse rights for less than adequate

remuneration (LTAR) over the relevant length of each land-use agreement. The Department also requires an RMB-denominated interest rate to use as a discount rate for certain countervailable long-term loans. In calculating the appropriate long-term markup for the provision of land-use rights for LTAR, we have used the 30-year Bloomberg U.S. corporate BB-rated bond rate because this time period most closely matches the 50-year terms of the leases at issue in this investigation. We used the same approach when deriving our long-term interest rate except that in calculating the long-term mark-up, we used the Bloomberg U.S. corporate BB-rated bond rate that corresponded to the duration of the countervailable loan. Our approach regarding the derivation of discount rates is consistent with the Department's practice. See *Tires Decision Memorandum* at "Loan Benchmarks and Discount Rates" section.

#### Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 15 years. No interested party has claimed that the AUL of 15 years is unreasonable.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

#### Company History

Northern Steel is a foreign invested enterprise that produces electronic resistance welded pipes for the petroleum and natural gas industry, including line pipe, casing pipe and tubing. The company is located at the Economic Development Zone in Haicheng, Liaoning. Northern Steel reports that it was formed on November 7, 2005, and that in 2006, it purchased the assets of a defunct Chinese pipe

company. Northern Steel also reports that the sale of the assets took place in an open auction held by a government-owned asset management company. We are seeking additional information on this purchase.

As stated above, the Huludao Companies consist of the Huludao Seven Star Group, Huludao Steel Pipe, and Huludao Bohai Oil Pipe. According to its response, the Huludao Star Group was established in June 1999. It is headquartered in the Longgang District of Huludao City in Liaoning Province. The Huludao Seven Star Group is a domestically owned enterprise that produces standard welded pipes. The Huludao Seven Star Group states that it does not produce subject merchandise. The Huludao Seven Star Group is owned by a group of individual shareholders.

The manufacturing facilities and headquarters of Huludao Steel Pipe are also located in the Longgang District of Huludao City in Liaoning Province. According to its response, Huludao Steel Pipe was established in 1993. During the POI, the shareholders of the Huludao Seven Star Group along with the Huludao Seven Star Group itself owned a majority share of Huludao Steel Pipe. Huludao Steel Pipe is a domestically-owned enterprise that produces standard welded pipe, line pipe (a.k.a., subject merchandise), casing, and rectangular pipe.

The manufacturing facilities and headquarters of Huludao Bohai Oil Pipe are located in the Beigang Industrial Zone and Huludao Development Zone of Huludao City in Liaoning Province. According to its response, Huludao Bohai Oil Pipe was established in 2006. During the POI, Huludao Bohai Oil Pipe was wholly owned by Huludao Steel Pipe. Huludao Bohai Oil Pipe is a domestically owned enterprise that produces hot-rolled steel strips, welded standard pipe, and line pipe.

#### Cross-Ownership

Under 19 CFR 351.525(b)(6)(vi) cross-ownership exists between corporations if one corporation can use or direct the individual assets of the other corporation(s) in essentially the same way it uses its own. 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) corporations. Based on the information supplied by the Huludao Companies indicating that common ownership exists between the three companies, we preliminarily determine that the Huludao Seven Star Group, Huludao

Steel Pipe, and Huludao Bohai Oil Pipe are cross-owned under 351.525(b)(6)(vi).

As discussed in further detail below, the Huludao Seven Star Group acquired two parcels of land from the Bureau of Land Resources of Longgang District, Huludao City in Liaoning Province in 2004 and 2006. The 2004 purchase was on behalf of Huludao Steel Pipe. The 2006 purchase was on behalf of Huludao Bohai Oil Pipe. Under 19 CFR 351.525(b)(6)(v), if a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership, the Department will attribute the subsidy to products sold by the recipient of the transferred subsidy. Thus, we preliminarily determine that the land purchased by the Huludao Seven Star Group on behalf of Huludao Steel Pipe and Huludao Bohai Oil Pipe constitutes a transfer of subsidies by a corporation producing non-subject merchandise to cross-owned corporations that produce subject merchandise. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed such subsidies received by Huludao Steel Pipe and Huludao Bohai Oil Pipe under the Provision of Land For LTAR program to the combined total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe (net of their respective sales to affiliates).

We preliminarily determine that the Huludao Seven Star Group did not transfer any other subsidies to Huludao Steel Pipe and Huludao Bohai Oil Pipe during the POI. Therefore, given this preliminary finding and based on the statements of the Huludao Seven Star Group that it does not produce subject merchandise or provide any inputs to Huludao Steel Pipe and Huludao Bohai Oil Pipe that are primarily dedicated to the production of line pipe, we are not including any other programs used by the Huludao Seven Star Group in our subsidy analysis.

#### Adverse Facts Available

##### *The GOC*

As discussed below, the Department is investigating whether GOC authorities provided hot-rolled steel (HRS), a major input in the production of line pipe to respondents for LTAR. In our May 19, 2008 initial questionnaire, we asked the GOC to provide information pertaining to the Department's *de facto* specificity analysis. Specifically, we asked the GOC to:

Please provide a list by industry and by region of the number of companies which have received benefits under this program in the

year the provision of benefits was approved and each of the preceding three years. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the preceding three years.

Concerning the GOC's alleged provision of HRS for LTAR, the GOC stated that:

No such list exists, nor does any data exist from which to derive such a list absent inquiring with every hot-rolled steel producer in China. Such records would only reflect amounts sold and prices charged, as opposed to any "benefit" conferred by the transaction.

See GOC's July 10, 2008 questionnaire response at 110.

On August 5, 2008, the Department issued a supplemental questionnaire to the GOC in which it requested that the GOC respond to Department's *de facto* specificity questions to the best of the GOC's ability. In its response the GOC stated that its initial response reflected its best effort. It added that:

The sale of hot-rolled steel in the Chinese market neither constitutes a "program" nor does it confer any "benefit" within the meaning of the U.S. CVD Law or the WTO SCM Agreement. The GOC reiterates that the data sought by the Department simply do not exist, nor would it be feasible to even assemble given the multitude of companies that produce and consume hot-rolled steel in the Chinese market.

As discussed below, the Department is also investigating whether the GOC sold land for LTAR. In its May 19, 2008 initial questionnaire the Department requested that the GOC respond to the Standard Questions and Provision of Goods/Services Appendices as they pertained to the GOC's alleged provision of land for LTAR. In its July 10, 2008 response, the GOC stated:

Based on the information presently available to the GOC, it does not consider that land use rights provided to the producer respondents and their reporting cross-owned affiliates was provided at "no cost or nominal cost." For this reason, the GOC does not respond to the Standard Questions of Appendix 1 or the Provision of Goods/Services questions at Appendix 5.

See GOC's July 10, 2008 questionnaire response at 101.

In its August 5, 2008 questionnaire, the Department requested that the GOC respond to the information requested in the Standard Questions and Provision of Goods/Services appendices. In its

August 21, 2008 supplemental questionnaire response, the GOC responded to sections of the appendices. However, the GOC did not provide the requested information pertaining to the Department's *de facto* specificity analysis. For example, in its August 5, 2008 supplemental questionnaire, the Department asked the GOC to provide the following as it pertained to the GOC's alleged provision of land for LTAR:

Please provide a list by industry and by region of the number of companies which have received benefits under this program in the year the provision of benefits was approved and each of the preceding three years. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the preceding three years.

In its August 21, 2008 response, the GOC stated that:

No such list exists regarding the receipt of "benefits" through the administration of land use rights. At page 6 of Exhibit 54 of the GOC's initial questionnaire response, data is reported on land use rights – including allocated, granted, and secondary market transfers – that moved over the 2000 – 2005 period. Additional data are publically available and will be provided if requested.

See GOC's August 21, 2008 supplemental questionnaire response at 69.

We note that the data provided in Exhibit 54 of the GOC's initial questionnaire response does not provide the information the Department requested for purposes of its *de facto* specificity analysis.

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

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the

response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Because the GOC failed to provide the requested information by the established deadlines, the Department does not have the necessary information on the record to determine whether the GOC provided HRS and/or land to producers of line pipe in a manner that was *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act. Therefore, the Department must base its determination on the facts otherwise available in accordance with sections 776(a)(2)(A) and (B) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. For the reasons discussed below, we determine that, in accordance with sections 776(a)(2)(A) and (B) and 776(b) of the Act, the use of AFA is appropriate for the preliminary determination with respect to the GOC’s alleged provision of HRS and land to producers of line pipe for LTAR.

As noted, regarding the GOC’s alleged provision of HRS and land for LTAR, the GOC did not provide the information the Department requested relating to its *de facto* specificity analysis. The Department issued supplemental questionnaires in which it instructed the GOC to provide the information relating to the Department’s *de facto* specificity analysis. However,

in its response, the GOC continued to provide insufficient information regarding the Department’s questions pertaining to *de facto* specificity. Therefore, consistent with sections 776(a)(2)(A) and (B) of the Act, we find that the GOC did not act to the best of its ability and, therefore, we are employing adverse inferences in selecting from among the facts otherwise available. Accordingly, pursuant to section 776(b) of the Act, we find that the provision of HRS and land to producers of line pipe by GOC authorities is *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act.<sup>6</sup> Thus, we preliminarily determine that the provision of HRS and land by GOC authorities to producers of line pipe is countervailable to the extent that the provision of the goods constituted a financial contribution in accordance with 771(5)(D)(iii) of the Act and conferred a benefit upon producers of line pipe within the meaning of 771(E)(iv) of the Act. The Department’s decision to rely on adverse inferences when lacking a response from a foreign government is in accordance with its practice. *See, e.g., Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 11397, 11399 (March 7, 2006) (unchanged in the *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006) (relying on adverse inferences in determining that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of the sections 771(5)(D)(i) and 771(5A)(D)(iii) of the Act, respectively).

## Analysis of Programs

### I. Programs Preliminarily Determined To Be Countervailable

#### A. The “Two Free, Three Half” Program

The “Foreign Invested Enterprise and Foreign Enterprise Income Tax Law” (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for foreign invested enterprises (FIEs) in the PRC. The intent of this law is to attract foreign businesses to the PRC.

According to Article 8 of the FIE Tax Law, FIEs that are “productive” and scheduled to operate not less than 10

years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed “productive” if they qualify under Article 72 of the “Detailed Implementation Rules of the Income Tax Law of the People’s Republic of China of Foreign Investment Enterprises and Foreign Enterprises.” This provision specifies a list of industries in which FIEs must operate in order to qualify for benefits under this program. The activities listed in the law are: (1) machine manufacturing and electronics industries; (2) energy resource industries (not including exploitation of oil and natural gas); (3) metallurgical, chemical and building material industries; (4) light industries, and textiles and packaging industries; (5) medical equipment and pharmaceutical industries; (6) agriculture, forestry, animal husbandry, fisheries and water conservation; (7) construction industries; (8) communications and transportation industries (not including passenger transport); (9) development of science and technology, geological survey and industrial information consultancy directly for services in respect of production and services in respect of repair and maintenance of production equipment and precision instruments; and (10) other industries as specified by the tax authorities under the State Council. If an FIE meets the above conditions, eligibility is automatic and the amount exempted appears on the enterprise’s tax return.

Northern Steel reported that it is a “productive” FIE and filed a tax return for a “free” tax year under this program during the POI.

Consistent with *CFS Final*, we preliminarily determine that the exemption or reduction in the income tax paid by “productive” FIEs under this program confers a countervailable subsidy. *See CFS Decision Memorandum at “Two Free/Three Half” Program*. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See Section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1)*. We further preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, “productive” FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program, we treated the income tax exemption enjoyed by Northern Steel as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and attributed the tax

<sup>6</sup> We note that it is not necessary to rely on this AFA finding in instances in which respondents’ land purchases are found to be *de jure* specific.

savings received to the company's total sales. On this basis, we preliminarily determine that Northern Steel received a net countervailable subsidy of 4.18 percent ad valorem under this program.

#### B. Provision of Land for Less Than Adequate Remuneration

The Department is investigating whether Chinese government authorities provided land use-rights to the respondents for LTAR. Northern Steel is located in the Economic Development Zone in Haicheng. The Economic Development Zone was established by the Anshan Municipal Government in 1992, and upgraded to a province-level development zone in 2002. In September 2006, Northern Steel purchased long-term land-use rights for land in the coastal economic zone from the Haicheng State-owned Land and Resources Bureau, which is a government agency. The Haicheng State-owned Land and Resources Bureau controls the granting and approval of land-use rights and sets the price for industrial land within the Economic Development Zone.

Regarding the Huludao Companies, the Huludao Seven Star Group reported making several land purchases. However, as discussed in the "Cross-Ownership" section, we are limiting our subsidy analysis to those land purchases that we preliminarily determine constitute a transfer of subsidies by the Huludao Seven Star Group, a corporation producing non-subject merchandise, to Huludao Steel Pipe and Huludao Bohai Oil Pipe, cross-owned corporations that produce subject merchandise, as described under 19 CFR 351.525(b)(6)(v). Therefore, for purposes of the preliminary determination, we limited our subsidy analysis to the two parcels of land the Huludao Seven Star Group purchased from the Bureau of Land Resources of Longgang District, Huludao City in Liaoning Province in 2004 and 2006 on behalf of Huludao Steel Pipe and Huludao Bohai Oil Pipe. Regarding the 2004 purchase, the Huludao Seven Star Group acquired land-use rights from the local government for land that Huludao Steel Pipe had been using since 1993. Regarding the 2006 purchase, the Huludao Seven Star Group acquired land use rights from the local government and subsequently leased the land to Huludao Bohai Oil Pipe. This parcel of land was located in the Beigang Industrial Zone. In addition, in 2004, Huludao Steel Pipe acquired

land-use rights from the local government.<sup>7</sup>

For the reasons described below, the Department preliminarily determines that the provision of land-use rights to Northern Steel and the Huludao Companies constitutes a countervailable subsidy in the form of land-use rights provided for LTAR. Northern Steel received its land-use rights from the Haicheng State-owned Land and Resources Bureau, a government authority. According to the respondents, local governments set the prices and were the party to the land-use rights agreements. Thus, the sale of the land-use rights constitutes a financial contribution from a government authority in the form of providing goods or services pursuant to section 771(5)(D)(iii) of the Act. In addition, in the case of Northern Steel and with regard to the land that the Huludao Seven Star Group purchased in 2006, the Department preliminarily determines that the sales of the land-use rights are specific because they are limited to enterprises or an industry located within a designated geographical region pursuant to section 771(5A)(D)(iv) of the Act. As discussed above, Northern Steel and the land purchased in 2006 by the Huludao Seven Star Group are located within an economic development zone that is within the jurisdiction of the authorities that provided to the company its land-use rights and set the terms of those rights.<sup>8</sup> Regarding the Huludao Companies' 2004 land purchases, as discussed above in the "Adverse Facts Available" section, the GOC did not provide the information the Department requested relating to its *de facto* specificity analysis. Therefore, in

<sup>7</sup> In its August 18, 2008 supplemental questionnaire response, the Huludao Steel Pipe indicates that the Seven Star Group made an additional land purchase in 2006. However, at this time, information on the record does not indicate that the land was purchased on behalf of Huludao Steel Pipe or Huludao Bohai Oil Pipe. Therefore, we have not conducted a benefit analysis with respect to this transaction. In addition, information from the August 18, 2008 supplemental questionnaire response indicates that an additional affiliate of the Huludao Companies (whose identity is business proprietary) acquired land in 2004. However, information in the questionnaire responses of the Huludao Companies indicates that the affiliate does not produce subject merchandise or provide any member of the Huludao Companies with inputs that are primarily dedicated to the production of subject merchandise. Therefore, we have not performed a benefit analysis regarding this affiliate's 2004 land purchase.

<sup>8</sup> The land Northern Steel purchased is within the authority of Haicheng City of Liaoning Province. The land that the Huludao Seven Star Group purchased in 2006 is located in the Beigang Industrial Zone that is under the authority of the Bureau of Land Resources of Longgang District, Huludao City in Liaoning Province.

accordance with section 776(b) of the Act, as AFA, we preliminarily determine that the provision of land to the Huludao Companies in 2004 by the Bureau of Land Resources of Longgang District is *de facto* specific pursuant to section 771(5A)(D)(iii) of the Act.

We further preliminarily determine that the sale of land-use rights provides a benefit pursuant to 19 CFR 351.511(a). Pursuant to section 771(5)(E)(iv) of the Act, a benefit is conferred when the government provides a good or service for LTAR. Section 771(5)(E) of the Act further states that the

... adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of sale.

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. This hierarchy reflects a logical preference for achieving the objectives of the statute.

Consistent with the *Sacks Final* and *Tires Final*, we preliminarily determine that a first tier benchmark cannot be applied. See *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) (*Sacks Final*), and accompanying decision memorandum (Sacks Decision Memorandum) at "Government Provision of Land for Less Than Adequate Remuneration" and Comment 10 "Whether the Department Should Select Either a First-Tier or Third-Tier Benchmark for the Provision of Land-Use Rights for Less Than Adequate Remuneration;" see also *Tires Final* and *Tires Decision Memorandum* at Comment H.7 "Land Benchmark."

As an initial matter, we note that private land ownership is prohibited in the PRC and that all land is owned by some level of government, the distinction being between land owned by the local government or "collective"



at the township or village level and land owned by the national government (also referred to as state-owned or “owned by the whole people”).<sup>9</sup> Noting that the GOC, either at the national or local level, is the ultimate owner of all land in the PRC, the Department has examined whether the GOC exercises control over the supply side of the land market in the PRC as a whole so as to distort prices in the primary and secondary markets.

Consistent with the Department’s determinations in *Sacks Final* and *Tires Final*, we preliminarily determine that a first tier benchmark is not appropriate to measure the benefit from the sale of land-use rights during the POI because Chinese land prices are distorted by the significant government role in the market. The *Preamble* states that “where it is reasonable to conclude the actual transaction prices are significantly distorted as a result of the government’s involvement in the market, we will resort to the next alternative in the hierarchy.” See *Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*Preamble*).

The second tier benchmark relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving that particular producer. See 19 CFR 351.511(a)(2)(ii). In selecting a world market price under this second approach, the Department examines the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in-country purchaser. As discussed in the *Preamble* (63 FR at 65377), the Department will consider whether the market conditions in the country are such that it is reasonable to conclude that a purchaser in the country could obtain the good or service on the world market. We preliminarily determine that land-use rights cannot be evaluated using a second tier benchmark because they cannot be simultaneously “available to an in-country” purchaser” while located and sold out-of-country on the world market.

Since we are not able to conduct our analysis using a benchmark identified under the second tier of the regulations, consistent with the hierarchy, we next considered whether the GOC’s pricing of land-use rights is consistent with market principles. This approach is also set forth under 19 CFR 351.511(a)(2)(iii) and is explained further in the *Preamble* (63 FR at 65378):

(W)here the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government’s price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination . . . In our experience, these types of analysis may be necessary for such goods or services as electricity, land leases or water, and the circumstances of each may vary widely.

The regulations do not specify how the Department is to conduct such a market principle analysis. By its very nature, this analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case-by-case basis. In the instant case, we preliminarily determine that due to the overwhelming presence of government involvement in the land-use rights market, as well as the widespread and documented deviation from the authorized methods of pricing and allocating land, the purchase of land-use rights in the PRC is not conducted in accordance with market principles.

Consistent with the Department’s decision in *Sacks Final* and *Tires Final*, we preliminarily find that there is a wide divergence between the *de jure* reforms of the market for land-use rights and the *de facto* implementation of such reforms. See Memorandum to the File regarding Land Benchmark Memorandum (Land Benchmark Memorandum) (dated September 2, 2008) at Attachment 2 (stating that the PRC’s land laws, regulations, and statements, although often vague and contradictory, seem to support the provision of secure land-use rights to farmers and an open, transparent system for transferring commercial land-use rights).<sup>10</sup> In practice, however, farmers’ land-use rights are still not secure and fair compensation for farmers is an ongoing, market-distorting issue in PRC. In addition, laws and regulations are routinely violated by individuals and local governments. While the private market for land-use rights has grown, state-owned enterprises (SOEs) received a significant portion of their land-use rights free of charge. Also, commercial land sales are often conducted illegally. In short, property rights remain poorly defined and weakly enforced. See Sacks Decision

Memorandum at “Government Provision of Land for Less Than Adequate Remuneration.”

Also, consistent with the Department’s determination in *Sacks Final* and *Tires Final*, we preliminarily find that another *de facto* problem with land supply in the PRC which causes market distortions is that of local government corruption. Local governments most often transfer land through non-transparent negotiations with investors despite guidance that land should be transferred through a transparent bidding or auction process. This has led to widespread corruption where much of the compensation is retained by the local government officials. See Land Benchmark Memorandum at Attachment 4 for article on “Law to Expose Illegal Land Deal,” *China Daily* (dated August 1, 2006).

Given this preliminarily finding, we have looked for an appropriate basis to determine the extent to which land-use rights are provided for LTAR. We preliminarily find that a comparison of prices for land-use rights in the PRC 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, is appropriate. Consistent with *Sacks Final* and *Tires Final*, we preliminarily determine that the most appropriate analysis in this case would be to compare the respondents’ purchase of land-use rights to the sales of certain industrial land in industrial estates, parks, and zones in Thailand.

As a general matter, we note that the PRC and Thailand have similar levels of per capita GNI, and that producers consider a number of markets, including Thailand, as an option for diversifying production bases in Asia beyond the PRC. Therefore, we preliminarily determine that the “indicative land values” for land in Thai industrial zones, estates, and parks provided in the Asian industrial Property Reports present a reasonable and comparable benchmark to the land-use rights in the economic zones at issue in this investigation.

Based on the methodology set out in *Sacks Final* and *Tires Final*, we preliminarily determine that the land-use rights acquired by Northern Steel and the Huludao Companies are granted land-use rights and, thus, have employed the benefit calculation methodology described below.

In order to calculate the benefit, we first multiplied the Thai benchmark land rate (deflated from 2007 to the year the transaction was officially approved

<sup>9</sup> See GOC’s July 9, 2008 questionnaire response at 100.

<sup>10</sup> This public document is on file in the CRU.

by the government) by the total area of the respective parcels purchased by Northern Steel and the Huludao Companies. We then subtracted the price actually paid for these respective tracts by Northern Steel and the Huludao Companies to derive the total unallocated benefit. We next conducted the “0.5 percent test” pursuant to 19 CFR 351.524(b)(2) for the years in which the transaction was approved by dividing the total unallocated benefit by the appropriate sales denominator.<sup>11</sup> As a result, we found that the benefits were greater than 0.5 percent of relevant sales and that allocation was appropriate. We allocated the total unallocated benefit across the term of the land agreement using the standard allocation formula in 19 CFR 351.524(d) and the discount rates discussed above in the “Subsidies Valuation Information” section under “Loan Benchmarks and Discount Rates,” to determine the amount attributable to the POI.

For Northern Steel, we then divided the POI benefit by the total sales of Northern Steel to calculate a net countervailable subsidy of 2.44 percent *ad valorem*. In the case of the Huludao Companies, as discussed in the “Cross-Ownership” section, we preliminarily determine that the land purchased by the Huludao Seven Star Group on behalf of Huludao Steel Pipe and Huludao Bohai Oil Pipe constitutes a transfer of subsidies by a corporation producing non-subject merchandise to cross-owned corporations that produce subject merchandise as described under 19 CFR 351.525(b)(6)(v). Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we have attributed such subsidies received by Huludao Steel Pipe and Huludao Bohai Oil Pipe under the Provision of Land For Less Than Adequate Remuneration program to the combined total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe (net of their respective sales to affiliates). On this basis, we calculated a net subsidy rate of 0.68 percent *ad valorem* for the Huludao Companies.

#### C. Provision of Hot-Rolled Steel for Less Than Adequate Remuneration

The Department is investigating whether GOC authorities provided HRS to producers of line pipe for LTAR. As instructed in the Department’s questionnaires, the Huludao Companies and Northern Steel identified the suppliers from whom they purchased HRS during the POI. In addition to the

supplier names, the Huludao Companies and Northern Steel indicated the date of payment, quantity, unit of measure, and purchase price for the HRS purchased during the POI. Having obtained permission from the Huludao Companies and Northern Steel to disclose the proprietary names of their respective suppliers to the GOC, we asked the GOC to provide certain information regarding the respondents’ domestic suppliers of hot-rolled steel (HRS) (e.g., percentage of government ownership). See for Northern Steel, Memorandum to the File from Kristen Johnson, Trade Analyst, Office 3, Operations, “Consent to Release Company-Specific Proprietary Information to the Government of China” (July 18, 2008), a public document on file in the CRU; See for the Huludao Companies, Memorandum to the File from John Conniff, Trade Analyst, Office 3, Operations, “Consent to Release Company-Specific Proprietary Information to the Government of China” (August 1, 2008), a public document on file in the CRU.

In order to assess whether an entity should be considered to be the government for the purposes of a CVD investigation, the Department has in previous cases considered the following factors to be relevant: 1) the government’s ownership; 2) the government’s presence on the entity’s board of directors; 3) the government’s control over the entity’s activities; 4) the entity’s pursuit of governmental policies or interests; and 5) whether the entity is created by statute. However, the Department has found that conducting such a test is not necessary absent information that calls into question whether government ownership does not mean government control. See *Tires Decision Memorandum* at 10. Further, not all of these criteria must be satisfied for an entity to be considered a government entity, but taken together, these five criteria can inform our decision. See e.g., *Coated Free Sheet Paper from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) (*CFS from Korea*), and accompanying decision memorandum (CFS from Korea Decision Memorandum) at Comment 11. In addition, we instructed the GOC to indicate whether the domestic suppliers of HRS to the Huludao Companies and Northern Steel were trading companies, and if so, to provide information related to the five factors listed above as it pertains to the entities from whom the trading companies purchased the HRS.

Based on our review of the information submitted by the GOC, we

preliminarily determine that certain domestic suppliers of HRS were majority-owned by the GOC during the POI and, therefore, constitute government authorities.

In addition, in its response the GOC identified which domestic HRS suppliers of the Huludao Companies were trading companies.<sup>12</sup> Regarding these domestic trading companies, the GOC was unable to provide the requested information concerning the entities from which the trading companies acquired the input, even in instances involving government-owned trading companies. Further, the GOC was unable to provide the requested information concerning the “Five Factor Test” as it pertains to the suppliers from whom the domestic trading companies purchased the HRS. Thus, we preliminarily determine that the necessary information is not on the record, and we are resorting to the use of facts available (FA) within the meaning of sections 776(a)(1) and (2) of the Act.

In its initial questionnaire response, the GOC provided information on the amount of HRS produced by SOEs, collectives, and private producers in the PRC. See GOC’s July 9, 2008 questionnaire response at page 102. Using these data, we derived the ratio of HRS produced by government entities (SOEs and collectives) during the POI (60.77 percent). Thus, pursuant to sections 776(a)(1) and (2) of the Act, for purposes of this preliminary determination we are resorting to the use of FA with regard to the HRS sold to the Huludao Companies by domestic trading companies. Specifically, we are assuming that the percentage produced by government authorities is equal to the ratio of HRS produced by SOEs and collectives during the POI.<sup>13</sup> This approach is consistent with the Department’s practice. See CWP Decision Memorandum at “Hot-rolled Steel for Less Than Adequate Remuneration;” see also *Light-Walled Rectangular Pipe and Tube From People’s Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*LWP Final*), and accompanying decision memorandum (LWP Decision Memorandum) at “Hot-rolled Steel for Less Than Adequate Remuneration.” For further discussion, see our description of the benefit

<sup>12</sup> Northern Steel reported that it did not purchase HRS from trading companies during the POI. See Northern Steel’s August 14, 2008 questionnaire response at 2.

<sup>13</sup> In other words, as FA, we are assuming that 60.77 of the HRS purchased by domestic trading companies during the POI was produced by SOEs.

<sup>11</sup> Where the approval date and approved amount of the unallocated benefit was not available, we used the date in which the transaction was conducted for purposes of the 0.5 percent test.

calculations below. For purposes of the final determination, the Department will seek additional information regarding the amount of HRS purchased by domestic trading companies that was produced by SOEs and collectives.

Having identified the extent to which the Huludao Companies and Northern Steel obtained HRS from GOC authorities, we preliminarily determine that the GOC authorities' provision of HRS constitutes a financial contribution under section 771(5)(D)(iii) of the Act.<sup>14</sup> Furthermore, as discussed above in the "Adverse Facts Available" section, pursuant to section 776(b) of the Act, we find that the provision of HRS to producers of line pipe by GOC authorities is *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act.

The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation,<sup>15</sup> because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions involving Chinese buyers and sellers that can be used to determine whether the GOC authorities sold HRS to the respondents for LTAR.

<sup>14</sup> For purposes of this preliminary determination, we find that private producers that provided HRS to the respondents during the POI do not constitute government authorities and, thus, their provision of HRS does not constitute a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.

<sup>15</sup> See also *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber Investigation*), and accompanying decision memorandum at 36 (*Softwood Lumber Investigation Memorandum*).

Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.<sup>16</sup>

As explained above, for purposes of this preliminary determination, we find that SOEs and collectives account for approximately 60.77 percent of the HRS production in the PRC during the POI. Consequently, because of the government's overwhelming involvement in the HRS market, the use of private producer prices in the PRC would be akin to comparing the benchmark to itself (i.e., such a benchmark would reflect the distortions of the government presence).<sup>17</sup> As we explained in *Softwood Lumber Investigation*:

Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.<sup>18</sup>

For these reasons, prices stemming from private transactions within the PRC cannot give rise to a price that is sufficiently free from the effects of the GOC's actions and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

The GOC also placed on the record aggregate import price data for HRS from various countries for the POI. Information from the GOC indicates that imports of HRS accounted for 0.63 percent of the volume HRS available in the Chinese market during the POI. Because the volume of imports of HRS into the PRC is small relative to Chinese domestic production of HRS, we are not using the aggregate import price data in our benchmark calculations. We note

<sup>16</sup> See *Preamble*, 63 FR at 65377.

<sup>17</sup> See *Softwood Lumber Investigation Memorandum* at "There are no market-based internal Canadian benchmarks" section.

<sup>18</sup> See *Canadian Lumber Memorandum* at 38-39.

that this approach is similar to the Department's approach in *LWP Final*, in which the Department declined to use aggregate import price data supplied by the GOC for benchmark purposes because of the small size of the import quantities relative to Chinese domestic production. See *LWP Decision Memorandum* at Comment 7.

Given that we have preliminarily determined that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price available to producers of subject merchandise in the PRC. We note that petitioners provided data from the Steel Benchmark Report which contains monthly "world" prices for hot-rolled band. See Exhibit 4-A of petitioners' April 21, 2008 amendment to the April 3, 2008, petition. We preliminarily determine that data in the Steel Benchmark Report may serve as a world market benchmark price for HRS that would be available to purchasers of HRS in the PRC. We note that the Department has relied on pricing data from the Steel Benchmark Report in recent CVD proceedings involving the PRC. See *CWP Final* and *LWP Final*.

The prices for HRS in the Steel Benchmark Report are expressed in U.S. dollars (USD) per metric ton (MT). Therefore, to calculate the benefit, we first converted the benchmark prices from U.S. dollars to renminbi (RMB) using USD to RMB exchange rates, as reported by the Federal Reserve Statistical Release.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Therefore, when deriving the benchmark prices, we adjusted the data from the Steel Benchmark Report to include the value added tax (VAT) and import duties that would have been levied on imports of HRS during the POI. The GOC provided the applicable tax rates in its questionnaire response. Regarding delivery charges, we note that the data in the Steel Benchmark Report do not include a freight cost component. However, because no data regarding freight costs are available on the record, we have not adjusted the benchmark prices of HRS for freight. We invite interested parties to submit comments on whether and, if so, how freight should be included in the derivation of the HRS benchmark price. We then compared the benchmark unit prices to the unit prices the

respondents paid to domestic suppliers of HRS during the POI that the Department has preliminarily determined constitute government authorities. In instances in which the benchmark unit price was greater than the price paid to GOC authorities, we multiplied the difference by the quantity of HRS purchased from the GOC authorities to arrive at the benefit. As explained above, in instances in which the Huludao Companies purchased HRS from government trading companies and/or private trading companies, we multiplied the product of the price difference per unit and the quantity of HRS purchased by 60.77 percent to arrive at the benefit.

To calculate the net subsidy rate, we divided the total benefit by each respondent's total sales during the POI. In the case of the Huludao Companies, the total sales denominator consisted solely of sales by Huludao Steel Pipe and Huludao Bohai Oil Pipe. On this basis, we preliminarily calculated a net countervailable subsidy rate of 23.01 percent *ad valorem* for Northern Steel and 17.18 percent *ad valorem* for the Huludao Companies.

#### D. Foreign Trade Development Fund Program<sup>19</sup>

The GOC reports that Northern Steel and Huludao Steel Pipe received grants during the POI under the "Provisional Administration Measures on Northeast Old Industrial Base Foreign Trade Development Fund of Liaoning Province" (No. 559), established on November 18, 2004. The provisional measure states that the Foreign Trade Development Fund supports projects undertaken by exporting enterprises to improve the competitiveness of their exported products, to develop an export processing base, to support the registration of trademarks in foreign countries, to support the training of foreign trade professionals, and to explore international markets.<sup>20</sup> The provisional measure states that monies distributed by the fund are to be used only for the approved project and that the funding proportion of the applied project shall not exceed 50 percent of the total expense of the project.<sup>21</sup> The fund is administered by the Liaoning Provincial Bureau of Foreign Trade and Economic Cooperation and Liaoning Department of Finance. Companies eligible for assistance are export

enterprises with legal person status and export performance in Liaoning Province,<sup>22</sup> and are required to submit a separate application to the authorities each time assistance is requested.

We preliminarily determine that the export interest subsidies that Huludao Steel Pipe and Northern Steel received from the Liaoning provincial government constitute a financial contribution in the form of a direct transfer of funds from the government bestowing a benefit in the amount of the grants within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also find that, because the receipt of the export interest subsidies is contingent upon export performance, the program is specific within the meaning of section 771(5A)(A) of the Act.

In the case of Huludao Steel Pipe, it received grants under the program in 2005, 2006, and 2007. The "0.5 percent expense test" calculation for Northern Steel and Huludao Steel Pipe, respectively, demonstrate that the amounts of the subsidies were less than 0.5 percent of the relevant export sales denominator. Because the amounts of the subsidies are less than 0.5 percent of the relevant sales, we are expensing the benefit from the grant in the year of receipt. In conducting the "0.5 percent expense test" for grants received by Huludao Steel Pipe in 2005 and 2006, we used the exports sales of Huludao Steel Pipe because Huludao Bohai Oil Pipe had no export sales in those years. For grants received by Huludao Steel Pipe in 2007, we used the combined exports sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe.

On this basis, we preliminarily determine that Northern Steel received a net countervailable subsidy of 0.05 percent *ad valorem* under this program and that the Huludao Companies received a net countervailable subsidy of 0.08 percent *ad valorem* under the program.

Huludao Steel Pipe also reported that during the POI it received VAT refunds on its purchases of fixed assets under Foreign Trade Development Fund program. According to the GOC, the VAT program was established on September 14, 2004 by the "Circular of the Ministry of Finance and State Tax Administration on Printing and Distributing the Regulations on Relevant Issues with Respect to Expansion of VAT Deduction Scope in the Northeast Areas." It is administered by the Huludao State Tax Administration. Under the program, VAT tax payers that are members of the equipment

manufacturing, petrochemical, metallurgical, ship building, automobile, and agricultural products industries may deduct VAT for purchases of fixed assets from the VAT for sales of finished goods. The cap for such VAT deductions is the incremental increase in VAT liability from the previous year. According to Article 2 of the "Circular of the Ministry of Finance and State Tax Administration on Printing and Distributing the Regulations on Relevant Issues with Respect to Expansion of VAT Deduction Scope in the Northeast Areas," the VAT exemption is limited to firms located in the northeast region of the PRC. See GOC's July 9, 2008 questionnaire response at Exhibit 67. The GOC states that the VAT program is not contingent upon exports.

We preliminarily determine that this program constitutes a financial contribution in the form of revenue forgone and a benefit in the amount equal to the VAT refunds under sections 771(5)(D)(ii) and 771(5)(E) of the Act. We also preliminarily determine that this program is specific under section 771(5A)(D)(iv) of the Act because the VAT refunds provided under the program are limited to companies located in a certain geographical region. Huludao Bohai Oil Pipe and the Huludao Seven Star group did not use this program.

In accordance with 19 CFR 351.524(c), we find that VAT refunds provided under the program constitute recurring benefits. Therefore, to calculate the benefit, we divided the total amount of VAT refunds Huludao Steel Pipe received under the program by the combined total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe. On this basis, we preliminarily determine that the Huludao Companies received a net countervailable subsidy of 0.10 percent *ad valorem*.

#### E. Export Interest Subsidies

Huludao Steel Pipe and Northern Steel received export interest subsidies from the Liaoning provincial government during the POI. The GOC reports that the export interest subsidies are provided for under the "Provisional Administrative Measures on High-Tech Products and Equipment Manufacturing Products Export Financial Interest Assistance of Liaoning Province" (No. 671), established on December 16, 2004. This provisional measure provides assistance to companies to expand the exportation of high-tech products and equipment manufacturing products, and supports the development of enterprises

<sup>19</sup> This program was referred to as the Northeast Revitalization Program in the *Initiation Notice*.

<sup>20</sup> See GOC's August 21, 2008 supplemental questionnaire response at Exhibit 22, Chapter III "Major Directions of Support," Article 6.

<sup>21</sup> *Id.* at Chapter VI "Supervision and Administration," Article 11 and 12.

<sup>22</sup> *Id.* at Chapter IV "Application Criteria," Article 7.

located in Liaoning Province.<sup>23</sup> This program is administered by the Liaoning Provincial Bureau of Foreign Trade and Economic Cooperation, Liaoning Department of Finance, and the Economic Commission of Liaoning Province.

The interest assistance provided to exporting enterprises is to be used to pay interest on bank loans.<sup>24</sup> The provisional measure states that the Liaoning Department of Finance determines the interest assistance amount in accordance with the short-term loan benchmark interest rate of commercial banks, the term of the enterprise's short-term loans, and the short-term loan amounts.<sup>25</sup> Specifically, Article 5 of the provisional measure refers to "export loans," which means "short-term loans obtained by enterprises that produce high-tech products and equipment manufacturing products in {the} province from banks and non-bank financial institutions due to the shortage of necessary funds for production and operation between products export declaration and receipt of payment."<sup>26</sup>

The GOC states that to be eligible for interest assistance a legally registered enterprise must have an annual exportation value above \$1,000,000, have exported products that fall in the scope of the "China High-Tech Product Export Catalog" or the scope of equipment manufacturing products, and have short-term loans provided during the period from the products' export declaration to receipt of payment.<sup>27</sup>

To receive interest assistance, eligible companies must submit a separate application each year assistance is requested accompanied with export contracts, export declaration forms, a description of the exported product, and bank loan contracts.<sup>28</sup> Northern Steel reported that it was eligible for the export interest subsidies because the company's total export sales in 2006 was greater than \$15,000,000,<sup>29</sup> the company's loan interest rate was higher than the basic loan interest rate of the People's Bank of China,<sup>30</sup> and the company exported high-technology products.<sup>31</sup> Huludao Steel Pipe reported

that it was eligible for export interest subsidies because it belonged to the equipment manufacturing industry and made export sales from Liaoning Province.

We preliminarily determine that the export interest subsidies that Huludao Steel Pipe and Northern Steel received from the Liaoning provincial government constitute a financial contribution in the form of a direct transfer of funds from the government bestowing a benefit in the amount of the grants within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also find that, because the receipt of the export interest subsidies is contingent upon export performance, the program is specific within the meaning of section 771(5A)(A) of the Act.

Because neither Huludao Steel Pipe nor Northern Steel receive export interest subsidies on an on-going basis and must submit a separate application for consideration of the assistance, we are treating the export interest subsidies as a non-recurring grant. In accordance with 19 CFR 351.524(b)(2), we applied the "0.5 percent expense test." The calculation demonstrates that the total amount of export interest subsidies approved during the POI is less than 0.5 percent of Northern Steel's 2007 total export sales. In the case of Huludao Steel Pipe, the calculation demonstrates that the total amount of export interest subsidies approved in 2006, the year of approval/receipt, was less than 0.5 percent. Because the amount of subsidies is less than 0.5 percent of the relevant sales, we are expensing the benefit from the export interest subsidies in the year of receipt rather than allocating the benefits over the AUL period.

On this basis, we preliminarily determine that Northern Steel received a net countervailable subsidy of 0.43 *ad valorem* under this program. Regarding the Huludao Companies, we preliminarily determine that the grant received under the program was fully expensed prior to the POI.

#### F. Export Loans

In its response to questions regarding this program and submission of its short-term loan data, Northern Steel reported conflicting information on the loans outstanding during the POI. Specifically, Northern Steel reported that none of its outstanding loans were export loans. However, as discussed above in the "Export Interest Subsidies" section, to be eligible to receive the export interest subsidies a company must have export loans outstanding, specifically postshipment export financing. Thus, we preliminarily

determine that the record lacks the necessary information needed to identify which loans, provided by a government bank, are the export loans against which the export interest subsidy was calculated. As a result, we are resorting to the use of AFA within the meaning of section 776(b) of the Act. Therefore, as AFA, we preliminarily find all of Northern Steel's short-term loans outstanding in the POI, against which the company paid interest, to be export loans. For the Huludao Companies, we have evidence on the record that they had outstanding during the POI two short-term export loans provided by a government bank. Therefore, as AFA, we preliminarily find that these two export loans were used by the Huludao Companies for the receipt of the export interest subsidies. We will continue to seek information from Northern Steel and the Huludao Companies regarding export-contingent loans the companies received from government banks.

Pursuant to section 771(5A)(A) of the Act, we preliminarily determine that the export loans received by the respondents are specific because receipt of the financing is contingent upon exporting. We also preliminarily determine that the export financing constitutes a financial contribution in the form of a loan within the meaning of section 771(5)(D)(i) of the Act and confers a benefit within the meaning of section 771(5)(E)(ii) of the Act. We note that the Department's finding in this regard is consistent with the Department's current practice. *See e.g.*, CFS from Korea Decision Memorandum at "Export and Import Credit Financing from KEXIM," where the Department found that export loans issued by government-owned banks like the Korea Export Import Bank (KEXIM) constituted countervailable export subsidies.

To calculate the benefit under this program, we compared the amount of interest paid against the export loans to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the "Subsidies Valuation Information" section. To calculate the net countervailable subsidy rate, we divided the benefit received by each company's respective export sales value for 2007. On this basis, we preliminarily determine the net countervailable subsidy rate for the Huludao Companies to be 0.02 percent *ad valorem* and for Northern Steel to be 1.54 percent *ad valorem*.

<sup>23</sup> *Id.* at 48 and Exhibit D-25.

<sup>24</sup> *Id.* at Exhibit D-25, Article 20.

<sup>25</sup> *Id.* at Exhibit D-25, Article 18.

<sup>26</sup> *Id.* at Exhibit D-25, Article 5.

<sup>27</sup> *Id.* at 51 and Exhibit D-25, Article 12.

<sup>28</sup> *Id.* at 50-51 and Exhibit D-25, Article 13.

<sup>29</sup> *See* Northern Steel's July 14, 2008 questionnaire response at 11.

<sup>30</sup> *See* Northern Steel's July 14, 2008 questionnaire response at Attachment 8 and August 6, 2008 questionnaire response at 36.

<sup>31</sup> *See* Northern Steel's August 26, 2008 questionnaire response at 5.

### G. Liaoning Province Grants - Five Points One Line Program

The Huludao Companies report that Huludao Steel Pipe and Huludao Bohai Oil Pipe received grants in the form of loan interest subsidies in 2006 and 2007 under the Five Points One Line Program. The Huludao Companies also report that Huludao Bohai Oil Pipe received certain fee exemptions during the POI under the program. The program was introduced on January 21, 2006 by the Liaoning Provincial Government pursuant to the "Opinion of Liaoning Province Encouraging the Expansion of Opening-Up in Coastal Key Developing Areas." Interest subsidies provided under the program are administered by the Liaoning Development and Reform Commission and the Liaoning Finance Bureau. Fee exemptions provided under the program are administered by the Huludao Beigang Industrial Park, Industry, and Commerce Authority.

The GOC states that the goal of the Five Points One Line Program is to accelerate the development of the coastal economic belt of Liaoning Province. Eligibility under the program is limited to enterprises located within designated industrial zones and other areas within Liaoning Province, as specified under the program.

We preliminarily determine that the grants and fees received by Huludao Steel Pipe and Huludao Bohai Oil Pipe under the program constitute a financial contribution, in the form of a direct transfer of funds from the government, which bestow a benefit equal to the amount of the grants within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also find that, because the receipt of grants under the program are limited to enterprises located in certain geographical regions within the Liaoning Province, the program is specific within the meaning of section 771(5A)(D)(iv) of the Act.

Because Huludao Steel Pipe and Huludao Bohai Oil Pipe did not receive grants on an ongoing basis and must submit a separate application to receive additional assistance under this program, we are treating the assistance received under the program as a non-recurring grant. In accordance with 19 CFR 351.524(b)(2), we applied the "0.5 percent expense test." The calculation demonstrates that the grant amounts received by Huludao Steel Pipe and Huludao Bohai Oil Pipe in 2006 and 2007 are less than 0.5 percent of the total sales denominator.<sup>32</sup> Because the

amount of the subsidies is less than 0.5 percent of the relevant sales (total sales), we are expensing the benefit from the grants in 2006 and 2007, the years of receipt, rather than allocating the benefits over the AUL period. On this basis, we preliminarily determine that the grants Huludao Steel Pipe and Huludao Bohai Oil Pipe received in 2006 did not benefit the Huludao Companies during the POI. Regarding the grant amount received by Huludao Steel Pipe in 2007, we preliminarily determine the countervailable net subsidy rate to be 0.30 percent *ad valorem*.

In addition, we preliminarily determine that the fee exemptions that Huludao Bohai Oil Pipe received during the POI constitute a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act and a benefit under section 771(5)(E) of the Act in an amount equal to the fee exemption. We further preliminarily determine that the fee exemptions are specific under section 771(5A)(D)(iv) of the Act because they are limited to enterprises located in certain geographical regions. In accordance with 19 CFR 351.524(c), we find that the fee exemptions are recurring subsidies and, thus, have expensed them to the POI. Specifically, we divided the fee exemptions received during the POI by the combined total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe. On this basis, we preliminarily determine that the net subsidy rate from the fee exemptions is less than 0.005 percent *ad valorem*.

### H. Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies

Huludao Steel Pipe reported receiving an income tax deduction on the tax return it filed during the POI under the Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies program. According to the GOC, this program was established on July 1, 1999 by the "Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation Projects." The GOC states that under the program a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. Tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability

from the previous year. The GOC further states that pursuant to the "Circular on Relevant Issues with Respect to Ceasing Implementing of Income Tax Credit to Purchase of Domestically Produced Equipment by Enterprises," the program was terminated effective January 1, 2008.

We preliminarily determine that the income tax deductions provided under the program constitute a financial contribution, in the form of revenue forgone, and a benefit, in an amount equal to the tax savings, under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We further find that this program is specific under section 771(5A)(A) of the Act because the receipt of the tax savings is contingent upon the use of domestic over imported goods.

To calculate the benefit, we summed the amount of tax savings the Huludao Steel Pipe received on the tax return it filed during the POI in accordance with 19 CFR 351.509(a)(2)(b). In accordance with 19 CFR 351.509(c), we have allocated benefits received under the program to the POI.

To calculate the net subsidy rate, we divided the benefit by the combined 2007 sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe. On this basis, we calculated a net countervailable subsidy rate of 0.38 percent *ad valorem* for the Huludao Companies.

We will continue to examine whether the purported termination of this program constitutes a program-wide change under 19 CFR 351.526.

### I. Preferential Lending of Policy Loans to State-Owned Enterprises and the Steel Industry by State-Owned and Controlled Banks

In *CWP Final*, the Department discussed its findings regarding the GOC's policy lending. See *CWP Decision Memorandum* at Comment 8. The Department described the various industrial plans that the GOC had established in recent years in which policy goals pertaining to the steel industry are discussed. Regarding the National and Economic and Social Development 11<sup>th</sup> Five-Year Plan (11<sup>th</sup> Five-Year Plan), the Department found that while the plan lists specific policy goals relating to the steel industry, it did not provide for financing and credit. Therefore, the Department found that the plan did not provide a basis for finding that policy lending exists for the CWP industry. *Id.*

In the *CWP Final*, the Department also examined the "Interim Provisions on Promoting Industrial Structure Adjustment" (ISA). *Id.* Regarding this provision, the Department noted that

<sup>32</sup> We note that Huludao Bohai Oil Pipe did not have any sales in 2006. Therefore, in performing the

"0.5 percent expense test," we used the 2006 total sales of Huludao Steel Pipe.

Article 17 of the ISA stated that with regard to “encouraged projects,” all financial institutions shall provide credit in compliance with credit principals. *Id.* The Department explained that such “encouraged projects” covered under the ISA are listed in the “Directory Catalogue on Readjustment of Industrial Structure” (Directory Catalogue). *Id.* The Department further explained that though pipe products were listed under the Directory Catalogue, the ISA did not identify any specific financing tools that are provided to “encouraged industries” and, thus, the Department determined that no preferential lending was received pursuant to the ISA or the Directory Catalogue. *Id.*

Because the information on the record of the CWP investigation is similar to the information on the record of the instant investigation, we have, for purposes of the preliminary determination, reached the same conclusion as those made by the Department in *CWP Final* as it pertains to the industrial plans discussed above.

In addition, the Department examined the “Council Circular on Printing Circulating Certain Supporting Policies for Implementation of the Outline of Medium and Long-Term Plan for National Scientific and Technological Development” (Technology Development Plan). In *CWP Final*, the Department found that the Technology Development Plan explicitly provides for policy lending to high technology enterprises. *Id.* In particular, the Department found that Article 15 of the Technology Development Plan states that the China Development Bank and the Export-Import Bank of China may provide soft loans to high and new technology enterprises for taking part in project investment, and provide financial support to export and import key technologies. *Id.* Also, the Department found that Article 16: (1) instructs commercial banks to lend to high-tech projects “in accordance with national investment policy and credit policy;” and (2) further encourages the nominally “commercial banks” to “prioritize” loans to support the exportation of the products of high technology enterprises.

For purposes of this preliminary determination, we find that there is no information indicating that Northern Steel and the Huludao Companies received any loans outstanding during the POI that were issued pursuant to the Technology Development Plan. We will continue to examine whether respondents received any such loans under this GOC plan.

In *CWP Final*, the Department also examined the “Development Policies for the Iron and Steel Industry Plan” (Iron and Steel Policy). *Id.* The Department explained that as an initial matter, it was unable to definitively determine what was meant by the GOC’s use of the term “major iron and steel projects” as specified under the Iron and Steel Policy. *Id.* In an attempt to define the term, the GOC provided a copy of a page from a 2006 metal products industry publication to demonstrate that the term “metal products” relates exclusively to “steel wire products” and not steel products writ large. *Id.* However, the Department concluded that the metal industry publication did not provide sufficient proof to demonstrate that pipe products were not covered by the Iron and Steel Policy.

Notwithstanding the lack of definitive evidence that the Iron and Steel Policy was limited to steel wire products, the Department found in *CWP Final* that the policy includes only one reference to using loans to support particular producers or activities. Specifically, in *CWP Final*, the Department noted that Article 16 of the Iron and Steel Policy states:

For a major iron and steel product that is based on home-made equipment as newly developed, that state shall grant policy supports in such aspects as taxation, discounted interest rates, and scientific research funds.

*See CWP Decision Memorandum at Comment 8.*

In *CWP Final*, the Department found that none of the respondents received loans for “home-made” (*e.g.*, domestically produced equipment) that were outstanding during the POI. *Id.* Therefore, in *CWP Final*, the Department concluded that producers of CWP did not receive loans during the POI under the Iron and Steel Policy. *Id.*

In the instant investigation, the GOC has made similar claims regarding the scope of the Iron and Steel Policy. In particular, the GOC has placed the same page from the 2006 metal publication discussed above in support of its contention that the scope of the Iron and Steel Policy is limited to steel wire products. *See Exhibit D-8 of the GOC’s August 21, 2008 supplemental questionnaire response.* The GOC further claims in the response that the term “discounted interest rates,” cited by the Department in *CWP Final* as part of Article 16 of the Iron and Steel Policy, constitutes an inaccurate translation. In the instant investigation, the GOC claims that the phrase involving loans in Article 16 of the Iron and Steel Policy, in fact, refers to the

provision of lump sum interest subsidy payments by the GOC and not to the provision of loans with discounted interest rates. On this basis, the GOC claims that the Department cannot rely on Article 16 as the basis for finding that the Iron and Steel Policy provides preferential lending to steel producers, including producers of line pipe.

As in *CWP Final*, we continue to find that the information from the 2006 metal publication does not provide sufficient information to enable the Department to definitively conclude that line pipe products are not considered “major iron and steel products” covered by the Iron and Steel Policy. Regarding the GOC’s claims concerning the translation of Article 16 of the policy, we note that the English translation of Article 16 submitted by the GOC continues to make reference to “discounted loans.” *See GOC’s August 21, 2008 questionnaire response at Exhibit D-12.* Therefore, for purposes of the preliminary determination, we find that line pipe products are covered under the scope of the Iron and Steel Policy.

Given that Article 16 of the Iron and Steel Policy states that the GOC “shall grant policy supports in such aspects as . . . discounted loans,” we asked Northern Steel and the Huludao Companies to indicate whether any of their loans outstanding during the POI were issued for the purpose of acquiring or paying for domestically produced equipment. In its August 6, 2008 questionnaire response, Northern Steel indicates that none of its loans outstanding during the POI were received for the purpose of acquiring or purchasing domestic equipment. Concerning the Huludao Companies, in their August 28, 2008 questionnaire response, they indicated that none of the loans issued to the Huludao Seven Star Group and Huludao Steel Pipe that were outstanding during the POI were for the purpose of acquiring domestically produced equipment. However, in the case of Huludao Bohai Oil Pipe, information submitted by the Huludao Companies indicates that the nature of all of the loans the company had outstanding during the POI from GOC-owned banks could have involved the acquisition of domestically produced equipment. *See the Huludao Companies’ August 28, 2008 questionnaire response.*<sup>33</sup>

Based on the information supplied by respondents, we preliminarily determine that Northern Steel, the

<sup>33</sup> The exact nature of the loans Huludao Bohai Oil Pipe had outstanding during the POI are business proprietary.

Huludao Seven Star Group, and Huludao Steel Pipe did not have any loans received for the purpose of acquiring domestically produced equipment that were outstanding during the POI. However, based on the information supplied by the Huludao Companies, we preliminarily determine that there is a sufficient basis to determine that Huludao Bohai Oil Pipe had loans outstanding during the POI that would be covered under Article 16 of the Iron and Steel Policy.

Based on the information in Article 16 of the Iron and Steel Policy (*e.g.*, that the “state shall grant policy supports in such aspects as . . . discounted interest rates” for projects based on domestically produced equipment), we preliminarily determine that the loans Huludao Bohai Oil Pipe received from GOC-owned banks during the POI constitute a financial contribution under section 771(5)(D)(i) of the Act. We further preliminarily determine that the loans in question confer a benefit under section 771(5)(E)(ii) of the Act to the extent that the interest payments made on the government loans during the POI are less than what would have been paid on a comparable commercial loan. In addition, we preliminarily determine that the loans Huludao Bohai Oil Pipe had outstanding during the POI from GOC-owned banks are specific under the statute because financing provided under Article 16 of the Iron and Steel Policy is limited to major iron and steel products, which for purposes of this determination we find includes line pipe.

To calculate the benefit under this program, we compared the amount of interest paid against the loans provided under the program to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term and long-term benchmark interest rates discussed above in the “Subsidies Valuation Information” section.

To calculate the net countervailable subsidy rate, we divided the benefit received by Huludao Bohai Oil Pipe by the total sales of Huludao Steel Pipe and Huludao Bohai Oil Pipe during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate for the Huludao Companies to be 0.15 percent *ad valorem*.

## II. Programs Preliminarily Determined Not To Confer Benefits During the POI

### A. Additional Grants Received by the Huludao Companies

In the Department’s May 19, 2008 initial questionnaire response, the Department instructed respondents to

indicate whether the GOC or any other local or provincial government provided them with any other form of assistance. In its July 9, 2008 initial questionnaire response, Huludao Steel Pipe reported that it received no other forms of assistance apart from the assistance indicated in its initial response. However, in response to the Department’s request in its July 30, 2008 supplemental questionnaire for Huludao Steel Pipe to break out its capital account, the company indicated that it received three additional grants from certain provincial and municipal institutions.<sup>34</sup> Specifically, Huludao Steel Pipe reported that it received grants in 2005 and 2006. The GOC did not provide any information concerning these three grants in its August 21, 2008 supplemental questionnaire response.

Because the assistance reported by Huludao Steel Pipe was provided in the form of grants, we have applied the “0.5 percent expense test” described in 19 CFR 351.524(b)(2). If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period. However, Huludao Steel Pipe did not provide any information regarding the amount of subsidies approved or the dates on which the relevant government authority approved the subsidies. Lacking this information, we have performed the “0.5 percent expense test” using the amount of grants actually received and their corresponding dates of receipt. Further, because we lack information from the GOC concerning the eligibility requirements of the government programs under which the grants were provided, we are not able to discern the corresponding sales denominator that should be used in the denominator of the “0.5 percent expense test.” Therefore, in accordance with section 776(a) of the Act, because the necessary information is not available on the record, we have used the facts otherwise available in conducting the “0.5 percent expense test.” Specifically, we have used the smallest available sales denominators for the Huludao Companies for the years in which the grants were received. Specifically, we used the total export sales of Huludao Steel Pipe as the denominator of the “0.5 percent expense test” for years 2005 and 2006.<sup>35</sup> The calculation demonstrates that the grant amounts were less than 0.5

<sup>34</sup> The identity of the government institutions and the details concerning the grant amounts are business proprietary. See Huludao’s August 18, 2008 supplemental questionnaire response.

<sup>35</sup> Huludao Bohai Oil Pipe did not report any sales in 2005 or 2006.

percent of their relevant sales denominators. Because the amount of the grants is less than 0.5 percent of the relevant sales, we have expensed the benefits from the grants to the year of receipt. On this basis, we preliminarily determine that, regardless of whether the grants were received under a countervailable subsidy program, any such benefits are not attributable to the POI.

### B. No-Payment Loans

In 1996, Huludao Steel Pipe received two loans from government institutions located in Liaoning Province.<sup>36</sup> In its July 9, 2008 initial questionnaire response, Huludao Steel Pipe reported that had not paid any interest on either of the two loans since their receipt in 1996. In addition, Huludao reported it had not made any principal payments on one of the loans and only sporadic principal payments on the other loan. Huludao Steel Pipe further reported that no loan agreements or contracts were signed between the company and the government institutions at the time of receipt of the loans. Information supplied by Huludao Steel Pipe indicates that there have been no agreements or contracts signed between the company and government since receipt of the loans.

As explained above, we are using the date of December 11, 2001, the date on which the PRC became a member of the WTO, as the date from which the Department will identify and measure subsidies in the PRC for purposes of this preliminary determination. Because these loans were received prior to the December 11, 2001 “cut-off” date, we preliminarily determine that the loans did not confer benefits upon Huludao Steel Pipe during the POI.

## III. Programs For Which Additional Information Is Required

### Liaoning Province Grant: Liaoning Enterprise Technology Renovation Project Interest Assistance

Huludao Steel Pipe and Huludao Bohai Oil Pipe received grants from the Government of Liaoning Province under the Liaoning Enterprise Technology Renovation Project Interest Assistance program. The grant received by Huludao Steel Pipe was approved in 2005 and disbursed in 2006 and 2007. Huludao Bohai Oil Pipe’s grant was approved and received in 2006. The GOC reports that grants under the program are provided for under the “Liaoning Administrative Measures on Enterprise Technology Renovation Loan Interest

<sup>36</sup> The names of the government institutions are business proprietary.



Subsidy Fund,” which was enacted on December 22, 2005. The program is designed to assist in technology upgrades by providing grants to cover interest expenses companies incur in financing technology renovation projects. The program is administered by the Economic Commission and Financial Departments of the Government of Liaoning Province.

According to the GOC, in order to be eligible to receive assistance under the program, firms must be located in Liaoning Province and engage in technology renovation projects that pertain to the production of raw materials and equipment or involve the following industries: chemical, textiles, pharmaceutical, information technology, and agricultural processing industries. The GOC states that this program is not contingent upon export performance.

Huludao Steel Pipe and Huludao Bohai Oil Pipe did not receive grants on an ongoing basis and submitted separate applications for consideration of the assistance they received, thus we are treating the assistance received under the Liaoning Enterprise Technology Renovation Project Interest Assistance program as non-recurring grants.

We preliminarily determine that grants provided under the program constitute a financial contribution, in the form of a direct transfer of funds, and a benefit, in an amount equal to the grants received, under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, at this time, we lack sufficient information to determine whether this program is specific under section 771(5A)(A) of the Act.

However, for purposes of the preliminary determination, we find that regardless of whether the program is found to be countervailable, the grants received to Huludao Steel Pipe and Huludao Bohai Oil Pipe in 2006 are not attributable to the POI due to the fact that the approval amounts of the grants were less than 0.5 percent of their relevant sales denominator in the year of approval.<sup>37</sup> Therefore, in accordance with 19 CFR 351.525(b)(2), we have expensed the grants provided under the program to their respective years of receipt rather than allocating the benefits over the AUL period. As a result, we preliminarily determine that the grants received by Huludao Steel Pipe and Huludao Bohai Oil Pipe in

2006 were fully expensed prior to the POI.

Regarding the grant amounts disbursed to Huludao Steel Pipe, as explained above, we lack sufficient specificity information for this program at this time. Therefore, we will seek additional specificity information regarding this program in order to allow the Department to make a subsidy determination with respect to grant amounts disbursed to Huludao Steel Pipe during the POI.

#### IV. Programs Preliminarily Determined To Be Not Countervailable

##### A. Provision of Electricity for Less Than Adequate Remuneration

According to the GOC, electricity in the PRC is produced by numerous power plants and is transmitted for local distribution to virtually all end users by two state-owned transmission companies, the State Grid and China South Power Grid. The State Grid is responsible for transmitting electricity to Liaoning Province. Generally, prices for uploading electricity to the power grid and transmitting it are regulated by the GOC, as are the final sales prices. The following measures set forth the basic rules for determining electricity prices: “Circular on Implementation Measures Regarding Reform of Electricity Prices” (FAGAIJIAGE {2005} No. 514, National Development and Reform Commission), “Provisional Administrative Measures on Prices for Transmission of Electricity,” and “Provisional Administrative Measures on Prices for Sales of Electricity” (which states at Article 29 “Government departments in charge of pricing at various levels shall be responsible for the administration and supervision of electricity sales prices.”).<sup>38</sup> The GOC reports that all areas of Liaoning Province are subject to the same electricity price schedule.<sup>39</sup>

Electricity consumers are divided into broad categories including residential, commercial, large-scale industry, and agriculture. The rates charged by the utilities vary across customer categories and within customer categories based on the amount of electricity consumed. The Huludao Companies and Northern Steel are subject to the standard electricity price for largescale industries in Liaoning Province. Within the industrial categories, there are different rates set based on the level of kilowatt consumption. For certain industrial

users, the rates are specifically broken out and these industries receive special, discounted rates. Based on our review of the rate schedules submitted for Liaoning Province, specific discounted rates are not provided to line pipe producers.

Northern Steel provided to the Department a chart of its electricity rates and payments for the POI. The company explained that its electricity rate is equal to the basic rate and actual costs. Based on the information reported by Northern Steel, the electricity rates paid by the company during the POI were higher than the large-scale industries rate listed in the Liaoning Province electricity price schedule.

The Huludao Companies reported that their electricity rates are equal to three rates: offpeak, basic, and peak. Based on the information reported by the Huludao Companies, the electricity rates paid by Huludao Steel Pipe and Huludao Bohai Oil Pipe were equal to the rate schedule applicable to the rate charged to large-scale industries in the Liaoning Province.

Based on the record evidence, we preliminarily determine that the provision of electricity to large-scale industries in Liaoning Province is neither *de jure* nor *de facto* specific because all such industries pay the same rate for their electricity, including the line pipe producers we examined. However, we will continue to examine at verification the electricity rates paid by the respondents during the POI.

##### B. VAT Export Rebates

According to the GOC, the “exemption, deduction, and refund” of VAT applies if a manufacturer exports its self-produced goods by itself or via a trading company. See Article 1 of the “Circular on Further Promotion of Methodology of Exemption, Deduction, and Refund” of Tax for Exported Goods” (CAISHUI (2002) No. 7) at Exhibit 48 of the GOC’s July 9, 2008 questionnaire response. Under the VAT refund system, when a producer/exporter purchases inputs (*e.g.*, raw materials, components, fuel, and power), it pays a VAT based on the purchase price of the inputs. The GOC reported that VAT rates paid by line pipe producers/exporters for inputs are as follows: raw materials (*e.g.*, hot-rolled steel strip) and electricity at a rate of 17 percent; fuel at 13 percent; and water at 6 percent.<sup>40</sup> Once the producer/exporter exports subject merchandise, a VAT payment and tax exemption form is prepared and filed with the relevant tax

<sup>37</sup> Huludao Bohai Oil Pipe did not have any sales in 2006. Therefore, in conducting the “0.5 percent expense test” under 19 CFR 351.524(c), we used the 2005 total sales of Huludao Steel Pipe.

<sup>38</sup> See GOC’s July 9, 2008 questionnaire response at Exhibit 60.

<sup>39</sup> The electricity price schedule was submitted at exhibit D-17 of the GOC’s August 21, 2008 questionnaire response.

<sup>40</sup> See GOC’s July 9, 2008 questionnaire response at 89.

authority. Line pipe exporters receive a VAT refund of 13 percent of the export price.<sup>41</sup>

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." See 19 CFR 351.517(a) and 351.102 (for a definition of "indirect tax). Information in the respondents' responses show that the Huludao Companies and Northern Steel paid the VAT on their inputs and applied for and received a VAT refund on their export sales.

To determine whether a benefit was provided under this program, we 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 line pipe in the domestic market (*i.e.*, 17 percent) exceeded the amount of VAT exempted upon the export of line pipe (*i.e.*, 13 percent), we preliminarily determine that, for the purposes of this investigation, the VAT refund received upon export of line pipe by the respondents does not confer a countervailable benefit. We note our finding in this regard is consistent with the Department's practice. See *e.g.*, Tires Decision Memorandum at "VAT Export Rebates" section.

**V. Programs Preliminarily Determined To Be Not Used**

We preliminarily determine that the Huludao Companies and Northern Steel did not apply for or receive benefits during the POI under the programs listed below:

**A. Preferential Loans**

- 1. Preferential Loans for Key Projects and Technologies

**B. Debt-to-Equity Swaps for State-Owned Enterprises**

**C. Tax Benefit Programs**

- 1. Income Tax Reduction for Export-Oriented FIEs
- 2. Income Tax Reductions for FIEs Based on Location
- 3. Preferential Tax Programs for FIEs that Quality as Technology-Intensive or Knowledge Intensive
- 4. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises
- 5. Preferential Tax Programs for FIEs

- that are Engaged in Research and Development
- 6. Income Tax Reduction for FIEs that Reinvest Profits into Export-Oriented Enterprises
- 7. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs
- 8. Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs

**D. VAT Programs**

- 1. VAT Exemptions for Use of Imported Equipment

**E. Grant Programs**

- 1. Interest Subsidies for Key Projects and Technologies
- 2. State Key Technologies Renovation Project Fund
- 3. Central Government's Famous Brands Program
- 4. Government of Guangdong Province Provision of Grants to Companies for Outward Expansion and Export Performance
- 5. Grants to SOEs Operating at a Loss

**F. Provision of Water for Less Than Adequate Remuneration<sup>42</sup>**

**G. Provincial Programs**

- 1. Liaoning Province Framework
- 2. Sub-Central Government Programs to Promote Famous Brands

**H. New Subsidies Programs**

The Huludao Companies and Northern Steel reported non-use of the following programs. The GOC's response to the new subsidies questionnaire was submitted to the Department on August 29, 2008. We, therefore, will continue to examine these programs.

- 1. Preferential Income Tax Policy for Enterprises in the Northeast Region (Northeast Tax Preference Policy)
- 2. Provisions on Expanding the Qualifications of Fixed Asset Input VAT Deductions in the Northeast Region (Northeast Region VAT Deduction Program)
- 3. Haicheng City Government VAT and Business Tax Incentives
- 4. Debt Forgiveness Provided to Huludao Companies

**Verification**

In accordance with section 782(i)(1) of the Act, we intend to verify the

<sup>42</sup> The Huludao Companies and Northern Steel obtain water directly from their own ground wells. The GOC and Northern Steel reported that the company paid water resource fees to the Haicheng Water Resources Bureau during the POI. The GOC reported that the Huludao Companies did not pay any water fees. (See GOC's August 21, 2008 questionnaire response at 33.) We will further examine the payment of water fees at verification.

information submitted by the Huludao Companies, Northern Steel, and the GOC prior to making our final determination.

**Suspension of Liquidation**

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for each producer/exporter of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rate to be:

Producer/Exporter	Subsidy Rate
Liaoning Northern Steel Pipe Co., Ltd. ....	31.65 percent <i>ad valorem</i>
Huludao Seven-Star Steel Pipe Group Co., Ltd. (Huludao Seven Star Group), Huludao Steel Pipe Industrial Co. Ltd. (Huludao Steel Pipe), and Huludao Bohai Oil Pipe Industrial Co. Ltd. (Huludao Bohai Oil Pipe) (collectively, the Huludao Companies) .....	18.89 percent <i>ad valorem</i>
All Others .....	25.27 percent <i>ad valorem</i>

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States. However, the all-others rate may not include zero and *de minimis* net subsidy rates, or any rates based solely on the facts available.

Notwithstanding the language of section 705(c)(1)(B)(i)(I) of the Act, we have not calculated the all-others rate by weight averaging the rates of the Huludao Companies and Northern Steel because doing so risks disclosure of proprietary information. Therefore, for the all-others rate, we have calculated a simple average of the two responding firms' rates.

In accordance with sections 703(d) (1) (B) and (2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of the subject merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above.

<sup>41</sup> *Id.* at 88.

**ITC Notification**

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b) (2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

**Disclosure and Public Comment**

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. See 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. See 19 CFR 351.309(d). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an

identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: September 2, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-20922 Filed 9-8-08; 8:45 am]

**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE****International Trade Administration**

**[C-580-818]**

**Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on corrosion-resistant carbon steel flat products from the Republic of Korea (Korea) for the period of review (POR) January 1, 2006, through December 31, 2006. For information on the net subsidy for each of the reviewed companies, see the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. See the "Public Comment" section of this notice.

**DATES:** *Effective Date:* September 9, 2008.

**FOR FURTHER INFORMATION CONTACT:** Robert Copyak or Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14<sup>th</sup> Street and Constitution Ave., NW., Washington, D.C. 20230; *telephone:* (202) 482-2209 and (202) 482-3338, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On August 17, 1993, the Department published in the **Federal Register** the CVD order on corrosion-resistant carbon steel flat products (CORE) from Korea. See *Countervailing Duty Orders and Amendments of Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea*, 58 FR 43752 (August 17, 1993). On August 2, 2007, the Department published a notice of opportunity to request an

administrative review of this CVD order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 42383 (August 2, 2007). On August 31, 2007, we received a timely request for review from Pohang Iron and Steel Co. Ltd. (POSCO) and Dongbu Steel Co., Ltd. (Dongbu). On September 25, 2007, the Department published a notice of initiation of the administrative review of the CVD order on corrosion-resistant carbon steel flat products from Korea covering the POR January 1, 2006, through December 31, 2006. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 72 FR 54428 (September 25, 2007). On November 2, 2007, the Department sent its initial questionnaire to POSCO, Dongbu, and the Government of Korea (GOK). On December 20, 2007, the Department received questionnaire responses from POSCO, Pohang Steel Co., Ltd. (POCOS, a production affiliate of POSCO), POSCO Steel Service & Sales Co., Ltd. (POSTEEL, a trading company for POSCO),<sup>1</sup> and Dongbu. On January 7, 2008, the Department received questionnaire responses from the GOK. On March 4, 2008 and April 7, 2008, we issued supplemental questionnaires to POSCO and the GOK. On March 24, 2008 and April 14, 2008, we received responses to these supplemental questionnaires.

On April 28, 2008, the Department published in the **Federal Register** a notice of extension of the time period for issuing the preliminary results. See *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 73 FR 22920 (April 28, 2008).

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The companies subject to this review are POSCO (and its affiliates POCOS and POSTEEL) and Dongbu.

**Affiliated Companies**

In the present administrative review, record evidence indicates that POCOS is a majority-owned production affiliate of POSCO. Under 19 CFR 351.525(b)(6)(iii), if the firm that received a subsidy is a holding company, including a parent company with its own operations, the Department

<sup>1</sup> In these preliminary results, unless otherwise stated, we use POSCO to collectively refer to POSCO, POCOS, and POSTEEL.