spherical plain bearings from Japan during the review period at the assessment rates the Department calculated for the final results of reviews as amended. We intend to issue the assessment instructions to CBP 15 days after the date of publication of these amended final results of review.

We are issuing and publishing these amended final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: November 27, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–23402 Filed 11–30–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–917]

Laminated Woven Sacks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping 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 laminated woven sacks (LWS) from the People's Republic of China (PRC). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice. The Department further determines preliminarily that critical circumstances exist, in part, with respect to imports of the subject merchandise. This notice also serves to align the final countervailing duty determination in this investigation with the final determination in the companion antidumping duty investigation of LWS from the PRC.

DATES: *Effective Date:* December 3, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, Toni Page or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3148, (202) 482–1398 and (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the publication of the Department's notice of initiation in the **Federal Register**. *See Laminated Woven Sacks from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 72 FR 40839 (July 25, 2007) (*Initiation Notice*).

On July 31, 2007, the Department selected, as mandatory respondents, the four largest Chinese producers/exporters of LWS that could reasonably be examined, Han Shing Chemical Co., Ltd. (Han Shing Chemical), Ningbo Yong Feng Packaging Co., Ltd. (Ningbo), Shangdong Qilu Plastic Fabric Group, Ltd. (Qilu), and Shangdong Shouguang Jianyuan Chun Co., Ltd. (SSJ). *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, ''Respondent Selection'' (July 31, 2007). This memorandum is on file in the Department's Central Records Unit in Room B–099 of the main Department building (CRU).[1] On August 3, 2007, we issued the countervailing duty (CVD) questionnaire to the Government of the People's Republic of China (GOC), requesting the GOC forward the company sections of the questionnaire to the mandatory respondent companies.

On August 14, 2007, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of LWS from China. *See Laminated Woven Sacks from China,* Investigation Nos. 701–TA–450 and 731–TA–1122 (Preliminary), 72 FR 46246 (August 17, 2007).

On September 10, 2007, we published a postponement of the preliminary determination of this investigation until November 26, 2007. *See Laminated Woven Sacks from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 72 FR 51641 (September 10, 2007). We received responses from the GOC on September 24, 2007, and SSJ and its affiliate Shandong Longxing Plastic Products Company Ltd. (SLP) on October 1, 2007. Han Shing Chemical, Ningbo, and Qilu did not submit responses to the Department's August 3, 2007 CVD questionnaire. However, the GOC provided a certification from Han Shing Bulk Bag Co. Ltd. (Han Shing Bag) stating that neither Han Shing Bag nor any company with which it is cross-owned, as defined in 19 CFR 351.525(6)(vi), produced or exported LWS to the United States during the period of investigation. In addition, the certification stated that Han Shing Bag was not ''cross-owned'' or ''affiliated'' with Han Shing Chemical.

On September 10, 2007, Zibo Aifudi Plastic Packaging Company Limited (Aifudi) submitted a voluntary response to the Department, pursuant to section 782(a) of the Tariff Act of 1930, as amended (the Act). On October 24, 2007, the Department selected Aifudi as a voluntary respondent for the investigation pursuant to 19 CFR 351.204(d)(2). *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, ''Voluntary Respondent Selection'' (October 24, 2007). This memorandum is on file in the Department's CRU.

On October 2, 2007, October 10, 2007, and November 5, 2007, the Laminated Woven Sacks Committee and its individual members, Bancroft Bag, Inc., Coating Excellence International, LLC, Hood Packaging Corporation, Mid-America Packaging, LLC, and Polytex Fibers Corporation (collectively, the petitioners), submitted comments regarding these questionnaire responses. We issued supplemental questionnaires to SSJ, Aifudi, and to the GOC on October 23, 2007. We received responses to these supplemental questionnaires from all parties on October 26, 2007 and November 5, 2007.

On October 17, 2007, the petitioners submitted new subsidy allegations regarding twelve programs. On November 2, 2007, the Department determined to investigate all of these newly alleged subsidy programs pursuant to section 775 of the Act. *See* Memorandum to Barbara E. Tillman, Office Director, ''New Subsidy Allegation'' (November 2, 2007). Questions regarding these newly alleged subsidies were sent to the GOC and the respondent companies on November 2, 2007. The GOC submitted comments responding to the Department's initiation of new subsidy allegations on November 5, 2007. The GOC, SSJ, and

[1] At the time of respondent selection, the Department had public information indicating that Han Shing Chemical's internet address was the same as that of a Han Shing Co. and a Han Shing Bulk Bag Co., Ltd. Moreover, the Department also had public information indicating that Han Shing Chemical's street address was similar to that of Han Shing Co. and Han Shing Bulk Bag Co., Ltd. *See* attachment 2 of our Respondent Selection Memo. Thus, in our questionnaire to the GOC, we instructed the GOC to forward the questionnaire to certain producers/exporters, including ''Han Shing Chemical, Ltd., aka Han Shing Bulk Bag Co., Ltd. and Han Shing Co.''

Aifudi submitted responses to the new subsidy allegations questionnaires on November 19, 2007. The Department does not have enough time to review and analyze these recently filed facts and arguments regarding the newly alleged subsidy allegations for purposes of this preliminary determination. We will therefore analyze the responses to these allegations and address all of the parties' arguments fully in a post-preliminary analysis memorandum.

On November 5, 2007, the petitioners alleged that critical circumstances exist with respect to imports of LWS from the PRC. *See* section 703(e)(1) of the Act and 19 CFR 351.206(c)(2)(i). The Department issued questionnaires to all of the respondent companies regarding the critical circumstances allegation on November 9, 2007. Responses to these questionnaires were received from Han Shing Chemical on November 13, 2007 and from SSJ and Qilu on November 19, 2007. Commercial Packaging submitted comments regarding critical circumstances on November 20, 2007. We address the allegation of critical circumstances in the ''Critical Circumstances'' section of this notice.

On November 13, 2007, the petitioners submitted pre-preliminary comments on the preliminary determination. On November 19, 2007, the GOC submitted comments in response to the petitioners' pre-preliminary comments.

On November 20, 2007, the petitioners requested that the final determination of this countervailing duty investigation be aligned with the final determination in the companion antidumping duty investigation in accordance with section 705(a)(1) of the Act. We address this request below.

Scope of the Investigation

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (''BOPP'') or to an exterior ply of paper that is suitable for high quality print graphics; [2] printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form; with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven bags are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polyethylene strip and/or woven polypropylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form, laminated woven sacks may be classifiable under HTSUS subheading 5903.90.2500 and 3921.19.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to the Department's regulations, in our *Initiation Notice* 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. See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*) and *Initiation Notice,* 72 FR at 40839. The petitioners submitted scope comments on August 7, 2007 on the record of both this proceeding and on the record of the companion antidumping duty investigation. The scope of the products covered by both investigations is identical. The Department will address the issues raised by the petitioners with regard to both investigations in the preliminary determination of the companion antidumping duty investigation.

Use of Facts Otherwise Available

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

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 Act requires the Department to use the information if it can do so without undue difficulties.

Use of Adverse Inferences

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 information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See Statement of Administrative Action* (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d

[2] ''Paper suitable for high quality print graphics,'' as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

Cong., 2d Session (1994) at 870. The Department considers information to be corroborated if it has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See* SAA at 869.

In deciding which facts to use as adverse facts available, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. It is the Department's practice to select, as adverse facts available, the highest calculated rate in any segment of the proceeding. See, *e.g., Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review,* 71 FR 66165 (November 13, 2006), and accompanying *Issues and Decision Memorandum* at 2.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior experience, selecting the highest prior rate ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *See Rhone Poulenc, Inc.* v. *United States,* 899 F. 2d 1185, 1190 (Fed. Cir. 1990).

Policy Loans to LWS Producers From Government-Owned Banks

We preliminarily determine that the application of facts available is warranted with respect to policy loans to LWS producers from government-owned banks.[3] We have identified certain instances in the GOC's responses in which the GOC has failed to provide information requested by the Department. For example, in our August 3, 2007 questionnaire and October 23, 2007 supplemental questionnaire, we asked the GOC to provide the government's five-year plans for the textile industry. The GOC did not submit the requested five-year plans for the textile industry in its October 26, 2007 questionnaire response. Instead, the GOC stated that LWS is not part of the textile industry but is part of the plastics industry. In its November 5, 2007 submission, the GOC again did not submit the requested five-year plans for the textile industry and stated that since ''LWS is not part of the textile industry, the five-year plans for the textile industry can have no relevance to this investigation.'' The failure to provide this information within the established deadlines has impeded our investigation. Since the GOC has withheld the information requested by the Department and the failure to provide this information within the established deadlines has impeded our investigation, we preliminarily find that the application of facts otherwise available is warranted under sections 776(a)(1)(A), (B), and (C) of the Act.

The GOC did not provide information that the Department requested in two separate questionnaires. Therefore, we preliminarily determine that the GOC has failed to act to the best of its ability with regard to this matter. As such, we are using an adverse inference in applying facts otherwise available pursuant to section 776(b) of the Act. As an adverse inference, to address these omissions, we have preliminarily determined that the LWS industry is part of the textile industry for policy planning purposes and that the five-year plans for textiles direct preferential lending initiatives to the textiles industry. *See* Government Policy Lending program under the ''Programs Preliminarily Determined to be Countervailable'' section of this notice. The finding that certain five-year plans direct preferential loans to targeted industries is consistent with previous findings in other cases. *See, e.g.*, the discussion of policy loans, the 10th Five Year Plan for the Paper Making Industry and the Integration Plan as discussed in *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) and accompanying *Issues and Decision Memorandum* at 9 (*Final CFS Paper from the PRC*).

Finally, as an adverse inference with respect to policy lending, we are preliminarily determining that certain loans reported by LWS producers were received pursuant to the GOC's textile industry policy. *See* Government Policy Lending program under the ''Programs Preliminarily Determined to be Countervailable'' section of this notice for further discussion.

Ningbo and Qilu

We preliminarily determine that the application of facts available is warranted with respect to Ningbo and Qilu. We find that neither company provided information we requested that is necessary to determine a countervailing duty rate for this preliminary determination. Specifically, Ningbo and Qilu did not respond to the Department's questionnaires.[4] Since Ningbo and Qilu have failed to provide information requested by the Department and the failure to provide this information within the established deadlines has impeded our investigation, we find that the application of facts otherwise available is warranted under sections 776(a)(1)(A), (B), and (C) of the Act. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2)(A), (B), and (C) of the Act, we have based Ningbo's and Qilu's countervailing duty rates on facts otherwise available.

We note that, in its initial questionnaire response, the GOC claimed that, to the best of its knowledge, none of the respondent companies,[5] including Ningbo and Qilu, used or received benefits from the programs under investigation. The GOC provided no documentary information on the record with regard to this statement.[6] Thus, on October 23, 2007,

[3] In the initiation checklist and the *Initiation Notice,* we referred to this program as ''Policy Loans to LWS Producers from Government-Owned Banks.''

[4] Qilu did provide its monthly shipment data on November 19, 2007, to the Department's critical circumstance questionnaire. It did not provide any responses on the record, however, to all other requests for information. Therefore, pursuant to section 782(e) of the Act, we have determined that this shipment data can be used without undue difficulty and otherwise meets the remaining criteria of that provision with regard to solely our critical circumstance analysis.

[5] At the time of its September 24, 2007 questionnaire response, no mandatory respondent had submitted a questionnaire response. Aifudi submitted its voluntary questionnaire response on September 10, 2007. Aifudi was selected as a voluntary respondent on October 24, 2007.

[6] The GOC did provide information supporting some of its claims that a few of the alleged programs

Continued

we sent supplemental questionnaires to Qilu and Ningbo explaining the possibility that the Department may use adverse facts available if the GOC's claims of non-use were determined to be insufficient.[7] At the same time, we issued a supplemental questionnaire to the GOC stating that it needed to make more definite statements regarding non-use (instead of stating to the ''best of our knowledge'') and that it needed to contact local authorities when necessary in determining whether programs had been used. The GOC responded on November 5, 2007, stating that ''{t}he PRC has searched the relevant government records, including where applicable the records of the county offices of the State Tax Administration in each of the localities in which the respondents, including {SLP and Aifudi}, are located, and has found no record of any benefits to any of those companies other than those reported in the PRC's response to the initial questionnaire, and that {SLP} received tax credits during the POI from the 'Two Free Three Half' program.'' For other programs, the GOC referred us to the responses of respondent enterprises. Ningbo and Qilu did not respond to our October 23, 2007 questionnaires.

We have determined that, for this preliminary determination, the GOC's statements regarding the possible non-use of these programs by the respondent companies, including Ningbo and Qilu, are not sufficient for the Department to determine that these companies did not receive countervailable subsidies, absent information provided by the respondents themselves. As discussed below, in the ''Programs Preliminarily Determined to be Countervailable'' section, SSJ/SLP and Aifudi/Golden Moon, the only two companies that submitted responses to the Department, have reported that they each received possible benefits from certain programs under investigation, partially contradicting the statements of the GOC. For example, the GOC apparently did not discover during its search of local records that SLP had received VAT benefits in 2005. Moreover, it appears the GOC did not attempt such searches for possible benefits under programs it considers non-existent; thus respondents received several loans from government-owned banks, but these were not identified in the GOC response, for example. The GOC also did not indicate whether it had performed searches for benefits received by possibly cross-owned affiliates of the respondents (other than SLP), and did not provide support for its statements regarding the eligibility of companies for benefits (*e.g.,* no documentation demonstrating that Qilu and Ningbo were not SOEs, or that Qilu was not a foreign invested enterprise (FIE)). Thus, not only are the GOC's assertions unsupported by substantive evidence on the record, but there is affirmative evidence with respect to SSJ/SLP's and Aifudi/Golden Moon's responses that the GOC's claims of non-use are incorrect as a matter of fact. Accordingly, for this preliminary determination, we have determined that the GOC's statements regarding the non-use of programs by the selected respondents, including Ningbo and Qilu, are unreliable and are contradicted by other facts on the record.

In selecting from among the facts available, the Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act, because Ningbo and Qilu did not respond to our requests for information. Thus, Ningbo and Qilu failed to cooperate by not acting to the best of their abilities, and our preliminary determination for these companies is based on the application of adverse facts available.

Because Ningbo and Qilu failed to act to the best of their abilities, for each program examined, we made the adverse inference that Ningbo and Qilu benefitted from the program unless the record evidence made it clear that the companies could not have received benefits from the program because, for example, we have preliminarily found the program to be not countervailable. *See, e.g., Certain Cold-Rolled Carbon Steel Flat Products From Korea: Final Affirmative CVD Determination,* 67 FR 62102 (October 3, 2002) and accompanying *Issues and Decision Memorandum* at 3. As such, we have not used adverse inferences with respect to the ''Provision of Electricity for Less than Adequate Remuneration'' program and the ''Exemption from Payment of Staff and Worker Benefit Taxes for Export-Oriented Enterprises'' program. To calculate the program rates, we have generally relied upon the highest program rate calculated for any responding company in this investigation as adverse facts available. *See Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review,* 71 FR 66165 (November 13, 2006) and accompanying *Issues and Decision Memorandum* at 3.

Thus, for the three value added tax (VAT) programs,[8] and the Provision of Land for Less than Adequate Remuneration, we are using SSJ's rate for Provision of Land for Less than Adequate Remuneration. For the loan program,[9] we are using SSJ's rate for Government Policy Loans. For the nine income tax programs,[10] we have applied an adverse inference that Ningbo and Qilu paid no income tax during the period of investigation (POI) (*i.e.,* calendar year 2006). The standard income tax rate for corporations in the PRC is 30 percent, plus a 3 percent provincial income tax rate. Therefore, the highest possible benefit for the income tax rate programs is 33 percent. We are applying the 33 percent adverse facts available rate on a combined basis (*i.e.,* the nine listed programs combined provided a 33 percent benefit). *See Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 72 FR 63875, 63879 (November 13, 2007) (*CWP from the PRC*).

We are unable to utilize company-specific rates from this proceeding for the grant programs since the

did not exist or had been terminated (in some cases, after the POI). It did not support its non-use claims, however.

[7] In our October 23, 2007 questionnaires to Ningbo and Qilu, we stated the following: ''While the Department received some information from the GOC regarding possible non-use of these programs by your company, this information may not be sufficient for the Department to determine that your company did not receive countervailable subsidies. If the Department finds the information provided by the GOC to be insufficient for such a determination, we may use the facts otherwise available on the administrative record in determining a countervailing duty rate to apply to exports from your company to the United States, in accordance with section 776(a)(2) of the Act. Moreover, in applying facts otherwise available, the Department may use an inference adverse to the interests of your company if we determine your company has failed to cooperate by not complying with the Department's requests for information, in accordance with section 776(b) of the Act.''

[8] VAT Rebate for FIE Purchases of Domestically Produced Equipment, VAT and Tariff Exemptions for FIEs Using Imported Technology and Equipment in Encouraged Industries, and VAT and Tariff Exemptions on Imported Equipment (Domestic Enterprises).

[9] Policy Loans to LWS Producers from Government-Owned Banks.

[10] Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program), Preferential Tax Policies for Export-Oriented FIEs, Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises, Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Origin Machinery, Tax Program for FIEs Recognized as High or New Technology Enterprises, Preferential Tax Policies for Research and Development, Tax Subsidies to FIEs in Specially Designated Geographic Areas, Preferential Tax Policies for Township Enterprises by FIEs and Local Income Tax Exemption and Reduction Programs for ''Productive'' FIEs.

participating mandatory respondent did not receive any countervailable subsidies from these programs. Therefore, for the seven grant programs,[11] we are applying the highest subsidy rate for any program otherwise listed, which in this instance is SSJ's Provision of Land for Less than Adequate Remuneration rate of 2.17 percent. *See* Memorandum to the File, titled ''Selection of the Adverse Facts Available Rate for Ningbo, Qilu, and Han Shing Chemical, Ltd. (*i.e.,* Hanshing Bulk Bag Co., Ltd. and Hanshing Co.)'' (November 26, 2007) for further discussion of the Department's calculated adverse facts available rates for the preliminary determination on file in the Department's CRU.

With regard to the requirements of section 776(c) of the Act, the calculated subsidy rates we are using as adverse facts available are not considered secondary information as they are based on information obtained in the course of this investigation. *See* section 776(c) of the Act; *see, also,* the SAA at 870. Accordingly, no corroborative excercise is necessary for purposes of the application of adverse facts available to Ningbo and Qilu. Further, Ningbo did not respond to the Department's critical circumstances questionnaire. Accordingly, we are applying adverse facts available with regard to Ningbo for critical circumstances purposes as well. *See* the ''Critical Circumstances'' section below for more detail.

Han Shing Chemical

We preliminarily determine that the application of facts available is also warranted with respect to Han Shing Chemical. We find that Han Shing Chemical withheld information we requested that is necessary to determine a countervailing duty rate for this preliminary determination. Specifically, Han Shing Chemical did not respond to the Department's questionnaires.[12] Since Han Shing Chemical withheld information requested by the Department and since the failure to provide this information within the established deadlines has impeded our investigation, we find that the application of facts otherwise available is warranted under sections 776(a)(1)(A), (B), and (C) of the Act. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2)(A), (B), and (C) of the Act, we have based Han Shing Chemical's countervailing duty rates on facts otherwise available.

As noted above, Han Shing Bag provided a certification stating that neither it nor any company with which it is cross-owned or affiliated, as defined by 19 CFR 351.525(b)(6)(vi), produced LWS or exported LWS to the United States during the POI. In addition, Han Shing Bag stated that it is not associated with Han Shing Chemical. *See* certification attached to the GOC's September 24, 2007 questionnaire response. In our October 23, 2007 supplemental questionnaire to the GOC, we asked the GOC to confirm the accuracy of Han Shing Bag's statement that it does not produce or export LWS to the United States and its statement that it was not affiliated with Han Shing Chemical. In its November 5, 2007 response, the GOC stated that Han Shing Bag had confirmed that it does not produce or export LWS and that it was not affiliated with Han Shing Chemical. However, evidence filed on the record by the petitioners on November 13, 2007, demonstrates that Han Shing Bag is cross-owned by Han Shing Chemical. *See* Exhibit 1 of the petitioners' November 13, 2007 submission. Moreover, information on the record indicates that Han Shing Chemical exported LWS to the United States during the POI. Based on this information, we determine that Han Shing Chemical and Han Shing Bag are cross-owned as defined by 19 CFR 351.525(b)(6)(vi) and that Han Shing Chemical/Han Shing Bag exported LWS to the United States during the POI. Some of the details of this evidence are business proprietary. As such, those details are discussed in a separate memorandum to Barbara E. Tillman, Director, Office 6 from Toni Page, Analyst, Regarding Shangdong Shouguang Jianyuan Chun Company Limited, Han Shing Chemical Limited, and Zibo Aifudi Plastic Packaging Company Limited: Cross-Ownership (*Cross-Ownership Memo*).

We preliminarily find the information contained in the petitioners' November 13, 2007 submission to be reliable. This information, which was placed on the record 13 days prior to the issuance of this preliminary determination, directly contradicts Han Shing Bag's certification provided in the GOC's September 24, 2007 questionnaire response. While the Department preliminarily determines that there is cross-ownership between Han Shing Chemical and Han Shing Bag, the Department will consider further arguments with regard to this information from all interested parties for the purposes of the final determination.

In selecting from among the facts available, the Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act, because Han Shing Chemical/Han Shing Bag did not respond to our requests for information. Thus, Han Shing Chemical/Han Shing Bag failed to cooperate by not acting to the best of its ability. We are calculating Han Shing Chemical/Han Shing Bag's rate by applying the same adverse facts available methodology as for Ningbo and Qilu. *See Ningbo and Qilu* section above; *see, also,* Memorandum to the File, titled ''Selection of the Adverse Facts Available Rate for Ningbo, Qilu, and Han Shing Chemical, Ltd. (*i.e.,* Hanshing Bulk Bag Co., Ltd. and Hanshing Co.)'' (November 26, 2007) for further discussion of the Department's calculated adverse facts available rates for the preliminary determination on file in the Department's CRU.

Critical Circumstances

On November 5, 2007, the petitioners requested that the Department make a finding that critical circumstances exist with respect to imports of LWS from the PRC. Section 703(e)(1) of the Act states that if the petitioner alleges critical circumstances, the Department will determine, on the basis of information available to it at the time, if there is a reason to believe or suspect the alleged countervailable subsidies are inconsistent with the WTO Agreement on Subsidies and Countervailing Measures (the SCM Agreement) and whether there have been massive imports of the subject merchandise over a relatively short period.

In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted a critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination. *See, e.g., Policy Bulletin 98/4 Regarding Timing of Issuance of Critical Circumstances Determinations,* 63 FR 55364 (October 15, 1998). As

[11] The State Key Technologies Renovation Project Refund, Grants and Other Funding for High Technology Equipment for the Textile Industry, Grants to Loss-Making State-Owned Enterprises, Export Interest Subsidy Funds for Enterprises Located in Zhejiang and Gaungdong Provinces, Technology Innovation Funds Provided by Zhejiang Province, Programs to Rebate Antidumping Legal Fees, and Loan Forgiveness for LWS Producers by the GOC.

[12] Han Shing Chemical did provide its monthly shipment data on November 19, 2007, in response to the Department's critical circumstances questionnaire. It did not provide any responses on the record, however, to all other requests for information. Therefore, pursuant to section 782(e) of the Act, we have determined that this information can be used without undue difficulty and otherwise meets the remaining criteria of that provision solely with regard to our critical circumstance analysis.

discussed in the ''Analysis of Programs'' section below, the Department has preliminarily determined that SSJ has received a countervailable import substitution subsidy.[13] This import substitution subsidy is inconsistent with the SCM Agreement. Although the countervailable subsidy rate for this import substitution subsidy is *de minimis*, use of an import substitution subsidy program is sufficient to make an affirmative preliminary determination of critical circumstances under section 703(e)(1)(A) of the Act. *See Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada,* 66 FR 43186, 43189–90 (August 17, 2001); and *Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada,* 67 FR 36070 (May 22, 2002) (the unchanged final determination).

Regarding Qilu, Ningbo, and Han Shing Chemical, we have made an adverse inference that these companies benefitted from countervailable export and import substitution subsidies pursuant to our determination to apply facts available to these companies. For all other exporters, we are basing our finding on the experience of SSJ, and, therefore, find that all others have benefitted from countervailable import substitution subsidies.

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 703(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for three months immediately preceding the filing of the petition (*i.e.*, the base period) with the three months following the filing of the petition (*i.e.*, the comparison period). Section 351.206(h)(1) of our regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.'' Finally, 19 CFR 351.206(i) defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. For our analyses, we are using a three-month base and comparison period.

In response to the Department's critical circumstances questionnaire, Han Shing Chemical, Qilu [14] and SSJ filed their monthly shipment data for subject merchandise exported to the United States for calendar years 2005 and 2006, and for January through September 2007. Based upon our analysis of these data, we preliminarily find that SSJ's and Qilu's shipments did not increase by more than 15 percent during the ''relatively short period'' (*i.e.*, between April through June 2007 and July through September 2007). *See* Memorandum to the File ''Critical Circumstances Analysis for Han Shing Chemical's and SSJ's Import Shipments and All-Others'' (November 26, 2007) (*Import Analysis Memorandum*) on file in the Department's CRU. Therefore, we preliminarily determine that the requirements of section 703(e)(1)(B) of the Act have not been satisfied, and that critical circumstances do not exist for SSJ and Qilu.

Based upon our analysis of Han Shing Chemical's data, however, we preliminarily find that Han Shing Chemical's shipments did increase by more than 15 percent during the ''relatively short period'' (*i.e.*, between April through June 2007 and July through September 2007). *See* the *Import Analysis Memorandum* on file in the Department's CRU. Therefore, we preliminarily determine that the requirements of section 703(e)(1)(B) of the Act have been satisfied, and that critical circumstances exist for Han Shing Chemical.

Regarding Ningbo, as part of our adverse facts available determination we have made an adverse inference that there were massive imports from these companies over a relatively short period.[15] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan,* 68 FR 71072, 71076–77 (December 22, 2003) (unchanged in the final determination). Therefore, we preliminarily determine that the requirements of section 703(e)(1)(B) of the Act have been satisfied, and that critical circumstances exist for Ningbo.

For all-others, we preliminarily determine that there were not massive imports over a relatively short period based on Han Shing Chemical's, Qilu's, and SSJ's shipment data. *See Import Analysis Memorandum.* Therefore, we preliminarily determine that the requirements of section 703(e)(1)(B) of the Act have not been satisfied, and that critical circumstances do not exist for ''all-others.''

Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

On July 18, 2007, the Department initiated the countervailing duty and antidumping duty investigations on LWS from the PRC. *See Initiation Notice* and *Laminated Woven Sacks from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 72 FR 40833 (July 25, 2007). The countervailing duty investigation and the antidumping duty investigation scope use identical language with regard to the merchandise covered.

On November 20, 2007, the petitioners submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final countervailing duty determination with the final determination in the companion antidumping duty investigation of LWS from the PRC. Therefore, in accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4), we are aligning the final countervailing duty determination with the final determination in the companion antidumping duty investigation of LWS from the PRC. The final countervailing duty determination will be issued on the same date as the final antidumping duty determination, which is currently scheduled to be issued on or about April 8, 2008.

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published the final determination of *CFS Paper from the PRC.* In that determination, the Department found, ''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

[13] *See* ''Value Added Tax (VAT) Rebate for FIE Purchases of Domestically Produced Equipment'' section below. We also note that, on November 2, 2007, the Department determined to investigate twelve newly alleged subsidy programs which include export subsidies. Since the responses for the Department's questionnaires on these programs were not received until November 16, 2007, there was not sufficient time before the statutory due date of this preliminary determination to address these programs.

[14] We have used Han Shing Chemical's and Qilu's shipment data solely for our critical circumstances analysis, pursuant to section 782(e) as noted above.

[15] Ningbo declined to answer our request for monthly shipment data. *See* the Memorandum to the file from Thomas Gilgunn, Program Manager, (November 21, 2007) at attachment 2.

economies does not act as a bar to proceeding with a CVD investigation involving products from China.'' *See Final CFS Paper from the PRC,* 72 FR 60645 at Comment 6; *see, also,* the November 26, 2007 Memorandum from Toni Page, Analyst, to the File ''Placing the *Georgetown Steel Memorandum* on the File of the Countervailing Duty Investigation of Laminated Woven Sacks from the People's Republic of China (*Georgetown Steel Memorandum*) attachment 1 at 2 on file in the Department's CRU. This decision was also affirmed in the preliminary determination of *CWP from the PRC. See CWP from the PRC,* 72 FR 63875 at 63880.

Based on the preliminary determination in *CWP from the PRC,* 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. *Id.* Prior to this date, there were many changes in the PRC's economy. Many of the obligations undertaken by the PRC pursuant to its accession to the WTO were in line with the PRC's objective of economic reform. *See* Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001), for example, at paragraph 4 (found at *www.wto.org*). Taken together, these changes permit the Department to determine whether the GOC has bestowed a countervailable subsidy on Chinese producers. *See* attachment 1 of the *Georgetown Steel Memo* at 7 and *Final CFS Paper from the PRC,* 72 FR 60645 at Comments 1 and 6. Finally, the GOC acknowledged the changing nature of its economy in so far as its Accession Protocol contemplates the application of the CVD law to the PRC, even while it remains a non-market economy (NME). *See* an excerpt from the Protocol of Accession of the People's Republic of China, WT/L/432 (November 23, 2001) at section 15(b), from the June 28, 2007 Petition at Exhibit 83; *see, also, Final CFS Paper from the PRC,* 72 FR 60645 at Comment 1. Therefore, for this preliminary determination, we have selected the date of December 11, 2001, as the date from which we will measure countervailable subsidies in the PRC.

Period of Investigation

The period for which we are measuring subsidies, or the POI, is calendar year 2006.

Subsidies Valuation Information

Allocation Period

The average useful life (AUL) period in this proceeding as described in 19 CFR 351.524(d)(2) is 10 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture LWS. No party in this proceeding has disputed this allocation period.

For subsidies provided under the granting of land-use rights, described below, the land transactions for each of the respondents specify the period of time for which the land-use rights have been granted. Therefore, in order to calculate the benefit for the ''Provision of Land for Less than Adequate Remuneration'' program, the Department is allocating the benefit for this program over the terms of the lease for each transaction.

Denominator and Attribution of Subsidies

When selecting an appropriate denominator for use in calculating the *ad valorem* countervailable subsidy rate, the Department considered the basis for SSJ's and Aifudi's approval of benefits under each program at issue. The bases for SSJ's and Aifudi's approval for benefits for the programs found countervailable was not tied to export performance or to the production of a particular product. As such, we are using total sales of all products of SSJ or Aifudi as the denominator in our calculations. *See* 19 CFR 351.525(a)(3). As discussed below, both SSJ and Aifudi have cross-owned suppliers that received benefits that were not tied to export performance or to the production of a particular product. For these programs, we are using total sales of all products of SSJ or Aifudi and their respective cross-owned suppliers (less any internal sales between these companies and their cross-owned suppliers) as the denominator in our calculations.[16] The cross-ownership of the respondent companies is further discussed in the *Cross-Ownership Memo.*

The Department's regulations at section 351.525(b)(6)(vi) state that cross-ownership exists between companies if one company can use or direct the company's assets 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. In addition, 19 CFR 351.525(b)(iv) states that ''if there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).'' The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi* v. *United States,* 166 F. Supp. 2d. 593, 604 (CIT 2001). According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets.

Aifudi: Aifudi reported that it is an FIE owned by a U.S. company named FDD Associates Inc. and a private Chinese company named Zibo Golden Moon Plastic Packaging Co., Ltd. (Golden Moon). Golden Moon owns a significant portion of Aifudi and owns the land Aifudi uses. Also, Aifudi owns the buildings Golden Moon uses. In its November 6, 2007 supplemental questionnaire response, Golden Moon stated that it contributed start-up capital to Aifudi and that it owns a significant portion of Aifudi. Therefore, pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that Aifudi and Golden Moon are cross-owned and, pursuant to 19 CFR 351.525(b)(6)(iv), we are attributing the subsidies received by Golden Moon to the combined sales of Aifudi and Golden Moon.

Han Shing Chemical: As noted above, Han Shing Bag provided a certificate stating that neither it nor any company with which it is cross-owned, as defined by 19 CFR 351.525(6)(vi), produced LWS nor exported LWS to the United States during the period of investigation. In addition, Han Shing Bag stated that it is not associated with Han Shing Chemical. *See* the certification attached to the GOC's September 24, 2007 questionnaire response. Moreover, Han Shing Bag confirmed, through the GOC, that it does not produce or export LWS and that it was not affiliated with Han Shing Chemical. However, information on the record filed by the petitioners on

[16] We will ask both SSJ and Aifudi for additional information regarding their respective internal sales.

November 13, 2007, demonstrates that Han Shing Bag is cross-owned with Han Shing Chemical. Moreover, information on the record also indicates that Han Shing Chemical exported LWS to the United States during the POI. Based on this information, we determine that Han Shing Chemical and Han Shing Bag are cross-owned as defined by 19 CFR 351.525(6)(vi). The details of this evidence are business proprietary; as such, it is discussed in the *Cross-Ownership Memo.*

SSJ: SSJ reported that it is affiliated with two companies, SLP, an FIE, and Shandong Xinglong Plastic Product Company Limited (Xinglong). SSJ owns a majority of Xinglong. Xinglong does not produce or export LWS nor does it supply inputs to SSJ used in the production of subject merchandise. SSJ and SLP responded to the Department's original and supplemental questionnaires. SLP is co-owned by Han Shing Chemical and SSJ. SLP produces inputs primarily dedicated to the production of subject merchandise and sells it to SSJ. SLP also appears to produce subject merchandise and sells it to external customers. SSJ also owns part of SLP and both companies share board members as well as management. Although there is limited information on the record regarding Han Shing Chemical Ltd., and its relationship with SLP and SSJ, for the purposes of this preliminary determination, we find that SSJ controls the operations of its supplier SLP. As such, pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that SSJ and SLP are cross-owned and, pursuant to 19 CFR 351.525(b)(6)(iv), we are attributing the subsidies received by SLP to the combined sales of SLP and SSJ. The details of this evidence are business proprietary; as such, it is discussed in the *Cross-Ownership Memo.*

We have asked SSJ and SLP to fully explain their relationship with SLP's other co-owner, Han Shing Chemical Ltd. In particular, we have asked SSJ and SLP to fully explain how Han Shing Chemical Ltd. is involved in the production and/or sales of LWS as well as to provide copies of Han Shing Chemical Ltd.'s financial statements and the names of its affiliates. *See* the Department's October 23, 2007 questionnaire. In their responses, SSJ and SLP stated that Han Shing Chemical Ltd. is a trading company based in Hong Kong and it refused to provide any information concerning its ownership and other affiliates, its financial statements, or the scope of its involvement in the LWS business upon request by SLP. *See* SSJ's November 5, 2005 supplemental questionnaire response. If Han Shing Chemical Ltd. is the same company which the Department selected as a mandatory respondent in this case, and to which we have applied adverse facts available, this information would be relevant to our determination. In any case, the Department needs more information regarding this co-owner of SLP. As such, the Department intends, following this preliminary determination, to issue another questionnaire to provide SSJ and SLP an additional opportunity to provide that information.

Loan Benchmarks

Summary: 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). Because the loans provided to the respondents by SOCBs were made under the ''Government Policy Lending Program,'' as explained below, these loans are the very loans for which we require a suitable benchmark. Additionally, if respondents received any loans from foreign banks, these would be unsuitable for use as benchmarks because, as explained in detail in the final determination of *CFS Paper from the PRC,* the GOC's intervention in the banking sector creates significant distortions, restricting and influencing even foreign banks within the PRC. *See Final CFS Paper from the PRC,* 72 FR 60645 and accompanying Issues and Decision Memorandum at Comments 8 and 10.

If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we ''may use a national interest rate for comparable commercial loans.'' *See* 19 CFR 351.505(a)(3)(ii). However, 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 Final CFS Paper from the PRC,* 72 FR 60645 and accompanying Issues and 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, 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 income (GNI) to the PRC, using the same regression-based methodology that we employed in *CFS Paper from the PRC. See Final CFS Paper from the PRC,* 72 FR 60645 and accompanying Issues and Decision Memorandum at Comment 10.

The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber,* the Department used U.S. timber prices to measure the benefit for government provided timber in Canada. *See Final Results of the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada,* 67 FR 15545 (April 2, 2002), and accompanying *Issues and Decision Memorandum,* at 34 (*Softwood Lumber*). 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,* where domestic prices are not reliable, we have resorted to prices (*i.e.*, benchmarks) outside the PRC.

Discussion: In our analysis of the PRC as a non-market economy in the antidumping duty 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), and as placed on the file of this investigation in a memorandum from Toni Page to the File titled ''Loan Benchmark Information'' (November 26, 2007) (*Loan Benchmark Memo*) on file in the Department's CRU. This finding was further elaborated in *CFS Paper from the PRC. See Final CFS Paper from the PRC,* 72 FR 60645 and accompanying Issues and 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. 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 *Final CFS Paper from the PRC,* because of the market-distorting effects of the GOC in the PRC banking sector, foreign bank lending does not provide a suitable benchmark. *See Final CFS Paper from the PRC,* 72 FR 60645 and accompanying Issues and Decision Memorandum at Comment 10.

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 *Final CFS Paper from the PRC,* there is a broad inverse relationship between income levels and lending rates. In other words, countries with lower per capita gross national income (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 http://www.imfstatistics.org,* at attachment 3 of the *Loan Benchmark Memo.* 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 GNIs to the PRC, using the same regression-based methodology that we employed in *Final CFS Paper from the PRC.* As explained in *Final CFS Paper from the PRC,* 72 FR 60645 and accompanying Issues and 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 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. *See* <*web.worldbank.org*>, search engine term: ''lower middle income'', at attachment 4 of the *Loan Benchmark Memo.*

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 a inflation-adjusted market benchmark lending rate for short-term RMB loans. *See* attachment 3 of the *Loan Benchmark Memo.* We did not include those economies that the Department considered to be non-market economies for AD purposes for any part of 2006: the PRC, Armenia, Azerbaijan, Belarus, Georgia, Moldova, Turkmenistan, and Ukraine. The benchmark necessarily also excludes any economy that did not report lending and inflation rates to IFS for 2005 or 2006. Finally, the Department also excluded three aberrational countries, Angola, with a inflation-adjusted 2005 rate of 44.718, Sri Lanka, with an inflation-adjusted negative 2005 rate of negative 3.6, and Dominican Republic, with an inflation-adjusted 2004 interest rate of negative 18.866. As also discussed in *Final CFS Paper from the PRC,* this regression provides the most suitable market-based benchmark to measure the benefit from the Government Policy Lending Program, because it takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to state-imposed distortions in the banking sector discussed above. Consistent with the regression model employed in *Final CFS Paper from the PRC,* the Department calculated an inflation-adjusted 2006 benchmark lending rate of 7.66 percent and 8.78 percent for 2005. 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. *See* attachment 3 of the *Loan Benchmark Memo.* The Department then compared its benchmarks with respondents' inflation-adjusted interest rated to determine whether a benefit existed for the loans received by SSJ and Aifudi' s affiliate Golden Moon on which principal was outstanding or interest was paid during the POI.

Discount Rate for Allocation

The Department requires a long term interest rate to use as a discount rate for purposes of allocating benefits received from the less than adequate remuneration of the provision of land-use rights over the relevant length of each land-use right in question. However, as discussed above, because of the market-distorting effect of the GOC in the PRC banking sector, there are no market-based interest rates, including long-term interest rates, in China. In *Final CFS Paper from the PRC,* the Department developed a ratio of short-term and long-term lending to identify and measure benefit from any long-term loans. *See Final CFS Paper from the PRC,* 72 FR 60645 and accompanying Issues and Decision Memorandum at Comment 10. The Department then applied this ratio to the benchmark short-term lending figure (discussed in the section on the lending benchmark) to compute a long-term lending rate. Specifically, the Department computed a ratio of the average one-year and five-year interest rates on interest rate swaps reported by the Federal Reserve for 2005. *See* attachment 3 of the *Loan Benchmark Memo.* That is, if the long-term swap rate were 25 percent higher than the short-term swap rate, the Department would inflate the average short-term lending rate by 25 percent to arrive at along-term interest rate benchmark. This methodology is appropriate because the ratio between short-term and long-term interest rate swap rates offers an estimate of the market consensus premium that borrowers would pay on a long-term loan over a short-term loan. In the present investigation, the Department relied on the same methodology to develop long-term interest rates for 2005 for purposes of allocating benefits to the POI.

Creditworthiness

As mentioned under the ''Case History'' section of this notice, the Department determined to investigate twelve newly alleged subsidy programs on November 2, 2007. One of the new allegations raised by the petitioners concerns the creditworthiness of SSJ. Given that the questionnaire responses were received on November 16, 2007 (extended in response to the GOC's comments), the Department does not have enough time to review and analyze these recently-filed facts and arguments

on the record with regard to the newly alleged subsidy allegations for purposes of this preliminary determination. We will therefore analyze the responses to these allegations and address all arguments fully in a post-preliminary analysis memorandum.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Government Policy Lending

The petitioners allege that the GOC has targeted the textile industry for policy loans and that LWS is part of the textile industry.[17] Thus, according to the petitioners, policy loans targeted towards the textile industry would be available to LWS producers. The petitioners argue that the GOC's five-year plans for the textile industry (including general goals at the national level and more specific targets at the provincial level) could not be accomplished without discounted loans from government-owned banks, such as policy banks and SOCBs. For example, the petitioners provided excerpts from the textile five-year plan of Shandong Province, which is home to two of the mandatory respondents and the voluntary respondent,[18] which calls for a 10 percent increase in sales revenue and exports for textiles. In addition to the Shandong textile five-year plan, the petitioners cite to other documents and proclamations of the GOC, such as the ''National Key Technology Renovation Project: Major Content,'' which refers to high-end textile fabrics. *See* Exhibit 80 of the Petition. The document states ''our country will become more competitive in the international market and we will reach the goal of replacing imported products with homemade products and expanding our exports.'' *Id.* at 3. According to the petitioners, these documents demonstrate that the GOC will accomplish its textile industry goals by directing its policy banks and SOCBs to provide low-cost policy loans.

Pursuant to our initiation of an investigation of this program, we sent questions to the GOC regarding possible policy loans to the textile industry, and regarding some general aspects of economic policy, such as questions about relevant five-year plans and the meaning of industry and company designations. *See* the August 3, 2007 questionnaire to the GOC, section A, pages 2–2 through 2–4. These questions were similar to questions the Department asked in the investigations of CFS, regarding policy loans to the forestry and paper industry, and of CWP, regarding policy loans to the steel industry. *See CWP from the PRC,* 72 FR at 63883. We asked that the GOC provide the five-year plans for the textile industry. We also asked the GOC to complete our standard ''Appendix 1,'' an appendix the Department attaches to all initial CVD questionnaires, which requests basic information regarding programs under investigation such as the names of government agencies involved, the date the program began, a description of the application process and eligibility requirements. As noted above in the ''Use of Facts Otherwise Available'' section, the GOC responded with a two-part reply: (1) LWS producers are not part of the textile industry and (2) all questions regarding a possible program of policy loans targeted to the textile industry are therefore irrelevant. In support of its contention that LWS producers are not part of the textile industry, the GOC provided a statement from the China National Textile and Apparel Council (CNTAC), dated after the POI, stating that LWS producers were not part of the textile industry. *See* September 24, 2007 GOC questionnaire response at Exhibit A–4.

We then issued a supplemental questionnaire to the GOC, asking, *inter alia,* for additional information regarding the CNTAC statement, and repeated our requests for basic information about policy loans to the textile industry. In particular, we asked how CNTAC and the GOC had made their determination regarding industry classification, and we repeated our request made in the initial questionnaire for five-year plans for the textile industry covering the AUL of this investigation (the Department was under the impression this would likely include only three textile-specific five-year plans). *See* the October 23, 2007 supplemental questionnaire to the GOC, question 8 under ''Programs'' (request for five-year plans for the textile industry). We also repeated our request that the GOC complete the standard ''Appendix 1,'' and asked additional questions regarding policy loans (for example, we asked for a list of five-year plans maintained by the provinces relevant to this investigation). *Id.* at question 11 (request that ''Appendix 1'' be completed) and question 10 (request for a list of five-year plans issued by Shandong and Ningbo).

In response to this supplemental questionnaire, the GOC stated the following basis for its conclusion that LWS producers are not part of the textile industry: ''The PRC considers a company to be a member of a particular industry when that company is a member of the association covering that industry.'' *See* October 26, 2007 GOC questionnaire response. In this regard, the GOC noted that one of the four mandatory respondents was part of the plastic packaging manufacturers' association, and that none of the four was part of CNTAC. It also noted that CNTAC was sometimes consulted during the economic planning process, and it provided a second statement from CNTAC claiming that LWS was not part of the textile industry during the POI.[19] *See* November 5, 2007 GOC supplemental questionnaire response, questions 1 and 2. In response to the Department's questions concerning policy lending to the textile industry, the GOC responded that these questions were irrelevant. Thus, for a second time, the GOC did not provide the requested five-year plans and did not answer our standard questions. *Id.* at questions 8 and 11. It also did not answer new questions, such as our request for a list of provincial five-year plans.

On November 8, 2007, the petitioners put further evidence on the record which supports this conclusion: (1) Evidence indicating the Zhejiang Province textiles association has mentioned LWS as a textile (one of the non-responding respondents is in Zhejiang Province); (2) an article from the China Economic Times mentioning the European Union's antidumping investigation of LWS in the context of a discussion of threats to the PRC textile industry; (3) an excerpt from a textiles report from a PRC statistics bureau, which includes LWS data; and, (4) an excerpt from a textiles report from the Web site 'China Textile News,' which also includes LWS data. In addition, the petitioners placed information on the record that indicates that China has negotiated tariff quota agreements for textiles, which included HTS number 6305.33.0020 (the HTS classification of

[17] Although the petitioners had also argued that LWS could be classified as part of the plastics industry and/or the packaging industry, pursuant to requests for additional information and clarification from the Department, the ultimate policy loan allegation in the Petition specified the textile industry, and the Department initiated on policy loans to the textile industry.

[18] Qilu, SSJ, and Aifudi.

[19] As noted, the CNTAC statement was dated after the POI. In our supplemental, we had asked for a statement or other evidence dated before the end of the POI (*i.e.*, before the investigation had started). The GOC responded to this question by providing a second statement addressing the status of LWS producers before the end of the POI, but the statement is still dated after the POI.

LWS prior to July 1, 2007), until January 1, 2002, when such products were integrated into the GATT. The specific tariff sub-heading was part of Category 669–P (manmade fiber woven bags). Specific limits on 669-imports from China date back to 1985.[20]

As discussed above in the Use of Adverse inferences section, we have preliminarily concluded that LWS producers are considered part of the textile industry for policy planning purposes. Although the GOC stated in its supplemental response that CNTAC is consulted during the course of economic planning, given the lack of information provided by the GOC regarding economic planning,[21] policy loans, and the textile industry, we are unable to draw any meaningful conclusions about the significance of CNTAC in this process, or the involvement of other central agencies or organizations, local agencies or organizations, such as the Zhejiang textile association mentioned above, or the banks themselves.[22]

In addition to concluding that LWS is part of textiles policy planning purposes, the Department also preliminarily concludes that there is a program of policy lending to the textile industry. As noted above, the GOC did not provide requested information concerning this alleged program. It did not provide essential information, such as five-year plans for the textile industry, which were requested twice, or offer to provide this information at a later date. Rather, the GOC simply stated its belief, repeatedly, that this information was irrelevant. *See* the discussion on application of facts available, above. Because the GOC withheld this information and failed to act to the best of its ability in responding to the above questions, we are unable to analyze how the GOC intended to achieve its goals for the textile industry during the POI, or the extent to which policy loans might have been involved. Thus, we have preliminarily determined as adverse facts available, pursuant to sections 776(a) and (b) of the Act, this loan program is specific in law because the GOC has a policy in place to encourage and support the growth and development of the textile industry and the LWS producers within it. *See* section 771(5A)(D)(i) of the Act (with regards to the requirements for specificity). We have also determined, as adverse facts available, that the program provides direct financial contributions by the GOC (*i.e.*, government policy banks and SOCBs) pursuant to section 771(5)(D)(i) the Act, and a benefit to recipients, pursuant to section 771(5)(E)(ii). This program provides a benefit to the recipients equal to the difference between what the recipients paid on loans from government-owned banks and the amount they would have paid on comparable commercial loans. *See* section 771(5)(E)(ii) of the Act (with regards to the benefit from loans). See the ''Use of Adverse Inferences'' section above for more details on loans.

SSJ and its cross-owned supplier, SLP, and Golden Moon (cross-owned with Aifudi) had outstanding loans under this program during the POI. To calculate the benefit, we used the interest rates described in the ''Benchmark'' section above and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit by each company's total sales to calculate a subsidy of 0.27 percent *ad valorem* for SSJ and 0.07 percent *ad valorem* for Aifudi for this program.

B. Preferential Tax Policies for Enterprises With Foreign Investment (Two Free, Three Half Program)

The petitioners allege that, according to Article 8 of the Foreign Invested Enterprise (*i.e.*, a foreign joint venture) (FIE) Tax Law, an FIE that is ''productive'' and is scheduled to operate for not less than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years. This is known as the ''Two Free, Three Half'' program. FIEs are ''productive'' if they meet the conditions set forth in Article 72 of the Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises. This provision lists industries connected to manufacturing, which the petitioners state include plastic packaging and textiles industries. The GOC, in its response, has stated that the Foreign Invested Enterprise and Foreign Enterprise Income Tax Law provides a tax exemption to qualified FIEs for the first two years in which they make a profit and a fifty percent reduction from the statutory tax rates from year three to five.

SSJ's cross-owned supplier, SLP, is an FIE and claimed benefits under the Two Free, Three Half program. Aifudi stated that it is an FIE, but that its cross-owned parent, Golden Moon, is not an FIE. Aifudi stated that because it only began operations in late 2006 it did not file a tax return during the POI and thus did not benefit from this program. In addition, it had an operating loss during the POI. We preliminarily determine that the exemption or reduction in the income tax paid by ''productive'' FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the 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 also preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, ''productive'' FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. The GOC states that FIEs are a separate type of business organization under Chinese law, subject to different establishment laws, corporate governance structure, capital investment, accounting systems, and profit sharing systems, as distinguished from standard corporations, partnerships, or sole partnerships. The GOC further states that it adopted tax standards applicable to FIEs to reflect the different type of business organization. The GOC argues that the difference in tax status is no different than the distinction in the United States tax law between corporations and partnerships. However, we have preliminarily determined that limiting a program to ''productive'' FIEs is a sufficient basis to find specificity and, having found specificity as a matter of law, it is not necessary to reach the issue of whether the subsidy is specific in fact. *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, at 930 (1994) (SAA). The Department has also found this program to be countervailable in the CFS investigation. *See CFS Amended Preliminary,* 72 FR at 17494 (and

[20] In response to our question about the inclusion of LWS within its tariff schedule, the GOC responded that its tariff schedule follows the harmonized tariff schedule, and that therefore its inclusion of LWS within the textile chapter is, essentially, a matter of global conventions, not its own. However, as just noted, the GOC also considered LWS to be part of textiles over the long course of *bilateral* quota agreements.

[21] Regarding the opinion of CNTAC itself, the petitioners provided a CNTAC-issued list of ''primary professional machinery,'' which includes an entry for ''polyolefin woven sacks & bags loom.'' The list appears to be an inventory of its members' equipment, and stands in contradiction to CNTAC's statement regarding its own classification of LWS producers as outside textiles.

[22] We note here the importance of the petitioners' claim that the specific details of the goals and the implementation of central five-year plans are often found in provincial plans. We also note the GOC's unwillingness to help us determine what five-year plans of the relevant provinces involve the textile industry.

confirmed in the *Final CFS Paper from the PRC,* 72 FR 60645).

To calculate the benefit from this program to SSJ, we treated the income tax exemption claimed by SSJ's cross-owned input supplier, SLP, as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the tax rate paid to the rate that would have been paid by SLP otherwise (as discussed below, SLP's tax rate was reduced during the POI from the standard central government rate of 30 percent to 24 percent, pursuant to another FIE income tax program) and multiplied the difference by SLP's taxable income. In accordance with 19 CFR 351.525(b)(6)(ii), we attributed the benefit received to the combined sales of SSJ and SLP. Additional information on this calculation is provided in the Calculation Analysis memorandum for SSJ. *See* ''Preliminary Results Calculation Memorandum for Shangdong Shouguang Jianyuan Chun Co., Ltd. (SSJ),'' November 26, 2007 (*SSJ Calculation Memo*). On this basis, we preliminarily determine that a CVD subsidy of 0.10 percent *ad valorem* exists for SSJ.

C. Tax Subsidies to FIEs in Specially Designated Geographic Areas

The petitioners allege that tax benefits are available to FIEs located in areas designated by the GOC as ''free trade zones,'' ''high-technology zones,'' or other such zones. Under this program, such zones have reduced income tax rates for FIEs (*e.g.*, from 30 to 24 percent) pursuant to Article 7 of the FIE Tax Law. According to the GOC, for FIEs established in a coastal economic development zone, special economic zone, or economic technology development zone, or other zones designated by law or implementing regulations, regardless of the industry or enterprise, the applicable corporate income tax rate is fifteen percent or twenty-four percent, depending on the zone.

SLP reported that because it is located in Chenming Industrial Zone its central government income tax rate is reduced from 30 percent to 24 percent. While SSJ is also located in the Chenming park, it is not a FIE and thus apparently is not entitled to this benefit. Aifudi and Golden Moon reported no benefits under this program. The income tax returns submitted by SSJ, Aifudi, and Golden Moon confirm that these companies did not benefit from this program.

We preliminarily determine that the exemption or reduction in the income tax paid by ''productive'' FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the 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 also preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, ''productive'' FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act, and that the exemption/reduction is limited to enterprises located in designated geographical regions and, hence, is also specific under section 771(5A)(D)(iv) of the Act. The Department has also found this program to be countervailable in the CFS investigation. *See CFS Amended Preliminary,* 72 FR at 17494 (and confirmed in the *Final CFS Paper from the PRC,* 72 FR 60645).

To calculate the benefit from this program to SSJ, we treated the income tax exemption claimed by SLP as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the tax rate paid to the rate that would have been paid by SLP otherwise (24 versus 30 percent) and multiplied the difference by SLP's taxable income. In accordance with 19 CFR 351.525(b)(6)(ii), we attributed the benefit received to the combined sales of SSJ and SLP. Additional information on this calculation is provided in the Calculation Analysis memorandum for SSJ. *See SSJ Calculation Memo.* On this basis, we preliminarily determine that a CVD subsidy of 0.02 percent *ad valorem* exists for SSJ.

D. Local Income Tax Exemption and Reduction Programs for ''Productive'' FIEs

The petitioners allege that the governments of China's provinces, autonomous regions, and certain municipalities have been delegated the authority to provide exemptions and reductions of local income taxes for ''productive'' FIEs. According to the GOC, Article 9 of the FIE Tax Law authorizes provincial governments to grant FIEs exemptions or reductions on income taxes that otherwise would be owed to those provincial governments. In particular, in Shandong Province, any ''productive FIEs established outside the coastal economic open area approved by the state, or any program invested in energy sources, transportation, or port construction with a total investment of more than US$30 million, could be exempted from local income tax.''

In its initial questionnaire response, SLP submitted the tax return it filed in 2007, instead of the return filed in the POI, as requested. It also stated it did not benefit from this program. However, in its supplemental questionnaire response, it submitted the proper tax return (filed in 2006), which clearly indicates it benefitted from this program. In addition, the GOC reports on page 37 of its November 5 supplemental questionnaire response that SLP benefitted under this program during the POI. SSJ itself, along with Aifudi and Golden Moon, reported no benefits under this program. As discussed above, the income tax status and returns of these three companies during the POI confirms they did not benefit from this program during the POI.

We preliminarily determine that the exemption or reduction in the income tax paid by ''productive'' FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the 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 also preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, ''productive'' FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. The Department has also found this program to be countervailable in the CFS investigation. *See CFS Amended Preliminary,* 72 FR at 17494 (and confirmed in the *Final CFS Paper from the PRC,* 72 FR 60645).

To calculate the benefit from this program to SSJ, we treated the income tax exemption claimed by SLP as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the tax rate paid to the rate that would have been paid by SLP otherwise (the standard local rate is 3 percent) and multiplied the difference by SLP's taxable income. In accordance with 19 CFR 351.525(b)(6)(ii), we attributed the benefit received to the combined sales of SSJ and SLP. Additional information on this calculation is provided in the Calculation Analysis memorandum for SSJ. *See SSJ Calculation Memo.* On this basis, we preliminarily determine that a CVD subsidy of 0.01 percent *ad valorem* exists for SSJ.

E. Value Added Tax (VAT) Rebate for FIE Purchases of Domestically Produced Equipment

The petitioners allege that the *Circular of the State Administration of Taxation Concerning Transmitting the Interim Measure for the Administration of Tax Refund to Enterprises with Foreign Investment for the Domestic Equipment Purchases* provides that the GOC will refund the VAT paid by FIEs on purchases of certain domestically produced equipment. *See* Guoshifa (1999) No. 171, at Art. 4 (September 20, 1999) from Volume III of the June 28, 2007 Petition at Exhibit 77. VAT refunds are available for equipment falling into either the 'encouraged' or 'restricted' categories for FIEs, or for projects listed in the *Catalogue of Key Industries, Products, and Technologies Encouraged for Development by the State.*

SSJ's cross-owned company SLP reported in its October 1, 2007 questionnaire response that it applied for, and the GOC refunded, the VAT paid by the company for purchases of domestically produced equipment in 2005, before the POI. SLP further reported that it was entitled to this VAT refund because of its status as an FIE.

We preliminarily determine that the rebate of the VAT paid on purchases of domestically produced equipment by FIEs confers a countervailable subsidy. We preliminarily determine that the rebates are a financial contribution in the form of revenue forgone by the GOC. We further preliminarily determine that since FIEs pay less VAT than they would in the absence of the program, it provides a benefit in the amount of the refund. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further preliminarily determine that the VAT rebates are contingent upon the use of domestic over imported goods and, hence, specific under section 771(5A)(C) of the Act.

Since these VAT exemptions were for the purchase of capital equipment, we are treating these exemptions as non-recurring benefits in accordance with 19 CFR 351.524(c)(2)(iii). To measure the benefit allocable to the POI, we first conducted the ''0.5 percent test'' for 2005, the year that SLP received the rebate payments. *See* 19 CFR 351.524(b)(2). We summed the value of SLP's VAT exemptions and divided that sum by SLP's and SSJ's total 2005 sales in accordance with the attribution rules described in 19 CFR 351.525(b)(6). As a result, we found that the benefits were less than 0.5 percent of relevant sales during that year. Thus, SLP's VAT exemptions should be expensed in the year of receipt. On this basis, we preliminarily determine that a countervailable subsidy rate of 0.00 percent *ad valorem* exists for SSJ.

F. Provision of Land for Less Than Adequate Remuneration

Both SSJ and Aifudi are located in industrial parks within Shandong Province. SSJ is located in Chenming Industrial Zone (also know as Chenming Industrial Park or Garden) in the Shouguang municipal division of the city of Weifang. Aifudi is located in Huantai New Century Industry Park in the neighboring city of Zibo. According to SSJ's supplemental response, only projects that exceed a certain amount of investment level are allowed to locate in the park. Moreover, payment for its use of land within the park is waived as long as it meets certain additional investment and fixed assets density (*i.e.*, RMB per Mu) requirements. If it fails to meet its obligations, it must pay for its land-use rights. In such case, it would pay a predetermined fee stipulated in its contract. The exact figure is business proprietary. According to an excerpt from Weifang's Web site provided by the petitioners, preference may be given to potential residents with ''new productive projects'' that ''focus on paper making, textile,'' and several other types of products. *See* the petitioners' November 13, 2007 pre-preliminary comments at Exhibit 28. Other information submitted by the petitioners also indicates that preference is given to ''three low, three high'' projects (low energy consumption, low pollution, low land usage, high profit, high technology, and high value-added) and that Chenming Industrial Park included 77 enterprises in 2007. *Id.* at Exhibit 31.

According to Aifudi's supplemental response, it also must exceed an investment level threshold in order to locate in the park.[23] Unlike SSJ, however, Aifudi does not receive a complete waiver of land-use fees after locating in the park. Instead, according to Aifudi, it received a price designed by the local and county governments ''to attract business and tax revenue to an undesirable location.'' *See* Aifudi's November 6, 2007 supplemental response at 13. Aifudi claims that this price applied to all sales of land in the park and that any business willing to invest in land in the industrial park at that time received the same price. *Id.* at 12. According to an article provided by the petitioners titled ''Preferential Policies of Huantai Industrial Park,'' Aifudi's park offers three rates for land-use rights depending on investment level. *See* the petitioners' November 13, 2007 pre-preliminary comments at Exhibit 29. Aifudi's reported rate is the lowest of the three. The petitioners' information indicates Aifudi's park had 20 residents at the end of 2002 and was mainly focused ''on machinery, electronic, chemical, medical and new material industries.'' *Id.* at Exhibit 32.

In their November 13, 2007 comments, the petitioners argue that SSJ's and Aifudi's land-use transactions are regionally specific and company-specific. The petitioners argue that regional specificity exists both as a matter of law and fact in this case. They argue that because companies in industrial parks receive benefits not generally available to all individual companies the Department should find regional specificity. They argue that the assignment of land-use rights was at the discretion of the government authority and therefore that there is also grounds to find company-specific specificity in this case.

For the reasons described below, the Department preliminarily determines that the provision of land-use rights to both SSJ and Aifudi constitutes a countervailable subsidy in the form of land-use rights provided for less than adequate remuneration. Both respondents obtained their land-use rights from government authorities within China-SSJ from Shouguang municipal authorities and Aifudi from Huantai County (a division of the city of Zibo) authorities. According to SSJ, the Shouguang Municipal State Land and Resources Administration Bureau set the price and issued the certification of land-use rights. According to Aifudi, after negotiations with the local town of Guoli, its application for land-use rights was first approved by the Huantai County Land Resource Bureau, which issued a temporary land-use certificate, and then approved at a higher level by the provincial authority, which issued a permanent certificate. Thus the sale of these 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, the Department preliminarily determines that the sale of these land-use rights was specific, because it is limited to an enterprise or industry located within a designated geographical region pursuant to section 771(5A)(D)(iv) of the Act. As discussed in detail above, both respondents are situated in industrial parks that are

[23] More precisely, Golden Moon obtained the land-use rights and shares its land with Aifudi. However, because we have determined these two companies to be cross-owned, we refer to Aifudi as the buyer.

within the jurisdiction of the authorities that provided their land-use rights and set the terms of those rights; *i.e.*, SSJ's park is within the authority of Shouguang municipality and Aifudi's park is within the authority of Huantai County.[24] By SSJ's own admission, its land-use fees were waived because it is located in Chenming Industrial Park. By Aifudi's own admission, Huantai County provided preferential land-use rates to companies located within Huantai New Century Industry Park. Thus, both respondents received land on preferential terms as a result of locating in their respective industrial parks.

With regard to the petitioners' arguments that these transactions are also company-specific, we do not believe there is currently enough information on the record to substantiate such a finding. In *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 72 FR 63875, 63885 (November 13, 2007), we stated our intention to seek further information regarding the possible company-specific nature of land-use transactions in China. Likewise, in the preliminary determination of the rectangular pipe investigation, issued concurrently with this notice, the Department stated that we intend to seek further information on these questions and to issue an interim analysis describing our preliminary findings with respect to this program. *See Light-walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination.* Accordingly, the Department will consider further the facts and arguments on this issue for purposes of the final determination. As such, we invite parties to submit information and argument on the basis for making a specificity determination with respect to the provision of land and how adequate remuneration should be determined. These submissions should be made no later than December 21, 2007.

We further determine that the GOC's provision of land rights is a financial contribution within the meaning of section 771(5)(D)(iii). Finally, the Department has determined that the sale of these rights provided 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 less than adequate remuneration. 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.''

Section 351.511(a)(2) of the Department's regulations sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration. 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.

(1) The Department Cannot Apply a First Tier Benchmark

As a general matter, the most direct means of determining whether a government obtained adequate remuneration is normally through a comparison with private transactions for a comparable good or service, in this case, the sale of land-use rights, in the country. Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country, or outside the country (the latter transaction would be in the form of an import, and therefore not applicable to provision of land-use rights). This is because such prices generally would be expected to reflect most closely the commercial environment of the purchaser under investigation. However, a particular problem can arise in applying this standard when the government is the sole supplier of the good or service in the country or within the area where the respondent is located. In these situations, there may be no alternative market prices available in the country (*e.g.*, private prices, competitively-bid prices, import prices, or other types of market reference prices). Moreover, a first tier benchmark is not appropriate where the government accounts for a significant or overwhelming portion of the sales of the good in question or where the government's presence in the market is likely to have produced significant distortions in the price formation of the good. *See Countervailing Duties, Final Rule, Preamble*, 63 FR 65347, 65378 (November 25, 1998) (''Where it is reasonable to conclude that 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''). In such cases, the ''commercial environment of the purchaser'' is distorted by the overwhelming presence of the government and cannot give rise to a price that is sufficiently free from the effects of government actions. The use of such an internal benchmark would be akin to comparing the benchmark to itself, *i.e.*, such a benchmark would reflect the distortions of the government presence. *See Softwood Lumber*, 67 FR 15545 and accompanying Issues and Decision Memorandum, at 34.

As a general matter, in our analysis of the PRC as a non-market economy in the recent investigation of *Certain Lined Paper Products from the PRC*, we found that real property rights in China remain poorly defined and weakly enforced, with a great divergence between *de jure* reforms and *de facto* implementation of these reforms. *See* attachment 2 of the *Loan Benchmark Memo* at 46. In arriving at this conclusion, the Department also discussed the extent of government involvement in the PRC land market, as discussed below. Given these distinguishing characteristics of the land market in China, we preliminarily determine that we cannot rely on prices, private or otherwise, from this market for purposes of a first tier benchmark in this case.

As an initial matter, we note that private land ownership is prohibited in China. *See* attachment 2 of the *Loan Benchmark Memo* at 41, citing Article 9 of the PRC Constitution. 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

[24] As noted, Aifudi reports that Huantai County's approval had to be cleared at the provincial level. Since both Aifudi and SSJ are within Shandong Province, presumably SSJ's land-use rights also required provincial-level approval. Moreover, land in municipal districts is ultimately owned by the central government. *See, e.g.*, September 24, 2007 questionnaire response of the GOC at Exhibit S–1 (''Implementation Regulations of the Law on Administration of Land, State Council Order No. 256'').

referred to as state-owned or ''owned by the whole people''). At the same time, however, the government permits individuals and firms to hold, own and transfer land-use rights for long-term non-agricultural use, *e.g.*, industrial production land-use rights for up to 50 years. *See* attachment 2 of the *Loan Benchmark Memo* at 41–42, citing *The Land Administration Law of the People's Republic of China* (as amended August 29, 1998) and the *Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in Urban Areas* (1990). These (non-agricultural) land-use rights are transferred through government-to-enterprise (primary market) as well as through enterprise-to-enterprise (secondary market) transactions. *See* attachment 2 of the *Loan Benchmark Memo* at 43, citing Ho, Samuel P.S., and Lin, George C.S., *Emerging Land Markets in Rural and Urban China: Policies and Practices* (The China Quarterly, 2003), p. 688. The question therefore arises whether prices in the secondary market can be used for purposes of a first tier benchmark.

Noting that the government, either at the national or local level, is the ultimate owner of all land in China, we examined whether the PRC government exercises control over the supply side of the land market in China as a whole so as to distort prices in the primary and secondary markets.

We first examined the supply of agricultural land available for non-agricultural use. Despite the *de jure* reforms that the PRC government has implemented in recent years, agricultural land-use rights remain limited in scope, and are poorly defined and weakly enforced. *See* attachment 2 of the *Loan Benchmark Memo* at 44. As a result, farmers in China do not have secure land-use rights and have severe restrictions on the right to alienate their land. Further, land expropriation is a source of major tensions and protests throughout China. Villages and other local governments have often exercised broad, unrestricted powers to expropriate land from farmers and sell the land-use rights to firms or land developers, often with little or no compensation to the farmer. Farmers may receive only a fraction of the economic value of their land when it is expropriated. *See* attachment 2 of the *Loan Benchmark Memo* at 44, citing *The Economist Intelligence Unit, ViewsWire, China Politics: Beware of Protests Foreigners*, October 25, 2005. Moreover, the legal status of agricultural land as ''collectively owned'' must first be changed to ''state-owned'' before the land can be sold for non-agricultural use. The power to effect that conversion rests solely with local governments. *See* attachment 2 of the *Loan Benchmark Memo* at 42, citing *The Law of the People's Republic of China on Management of Urban Real Estate* (January 1, 1995).

The supply of land for non-agricultural use in the primary and secondary markets also depends, in part, on land previously allocated to state-owned enterprises (''SOEs'') on a purely administrative basis. In the past, the government allocated land-use rights to SOEs for a nominal one-time charge and annual fee. These ''allocated'' land-use rights do not expire, may not be leased or mortgaged, and can be transferred (or shared for commercial purposes) only if they are first converted to ''granted'' land-use rights, *i.e.*, those rights transferred to private entities as described below. Again, the power to effect this conversion rests solely with the government. *See* attachment 2 of the *Loan Benchmark Memo* at 43, citing *The Economist Intelligence Unit, Country Commerce: China*, 2006, at 37, and Ho, Samuel P.S., and Lin, George C.S., *Emerging Land Markets in Rural and Urban China: Policies and Practices* (The China Quarterly, 2003) at 687. SOEs have illegally used allocated land-use rights, without first converting them to ''granted'' land-use rights in order to attract foreign investment. *See* attachment 2 of the *Loan Benchmark Memo* at 45, citing *The Economist Intelligence Unit, Country Commerce: China*, 2006, at 38. This suggests that the conversion of allocated land-use rights to granted land-use rights is not a *pro forma* process.

An enterprise can also purchase ''granted'' land-use rights directly from the government. Granted land-use rights require a large up-front fee but carry no annual fees aside from taxes. See attachment 2 of the *Loan Benchmark Memo* at 43–44, citing Ho, Samuel P.S., and Lin, George C.S., *Emerging Land Markets in Rural and Urban China: Policies and Practices* (The China Quarterly, 2003) at 688, the *Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in Urban Areas*, (May 24, 1990), and the *Law of the People's Republic of China on Management of Urban Real Estate*, (January 1, 1995).

Thus, Chinese government authorities control, albeit on a de-centralized basis, the supply and allocation of land that can be used by non-state-owned enterprises for non-agricultural purposes. Moreover, due to the nature of the restrictions, the government controls extend not only to the primary market, but to the secondary market as well. This control significantly distorts the price paid for the granted land-use rights in both the primary and secondary markets. For example, if farmers had land-use rights that were well-defined and effectively enforced, there might be less land available for non-agricultural use and higher prices for granted land-use rights. The price of granted land-use rights is further distorted by the fact that the vast majority of such rights are still not transferred via public auctions, tenders or listings, as required by law, but via ''closed-door'' negotiations. Despite *de jure* reforms to increase transparency and competitive market conditions, one report notes that:

> One of the main problems that emerged with the system for granting land-use rights was that the vast majority of land grants were conducted by agreement rather than by auction or a tendering process. According to unofficial statistics, as of June 2002, approximately 95% of all land-use rights had been granted via private, bilateral agreements between local land bureaus and grantees. The problem is that when the agreement method is used, there is generally little or no competitive pricing or transparency. It is believed that the state has lost billions of dollars in state revenue through the granting of land-use rights at prices below market value.
>
> On July 1, 2002, regulations came into effect that prohibit grants by agreement for land to be used for commercial purposes. The purpose of the regulations is to promote transparency and ensure that market prices are maintained. The land-use rights for commercial land must be granted by means of auction, a tendering process or a new kind of ''listing'' process. When land-use rights are granted by means of the ''listing'' process, the land is listed at a land exchange center and interested parties are given a certain period of time within which to submit bids.

See China's Land Law: An overview, as placed on the file of this investigation in a memorandum from Toni Page, Analyst, to the File titled ''Land Benchmark Information'' (November 26, 2007) at attachment 1 on file in the Department's CRU (*Land Benchmark Memo*).

Contemporaneous with the regulations discussed above, local governments introduced measures to make the process of acquiring and developing land more transparent. Auction regulations were introduced in Shenzen, Guangzhou, Beijing, Shanghai and Guangxi. *See The Economist Intelligence Unit, Viewswire, China Regulations: Local Governments Simplify Land-Use Rule*, August 2, 2002, at attachment 2 of the *Land Benchmark Memo*. Further research indicates,

however, that despite efforts on the part of the central and local governments, auctions, tenders and listings did not become the standard means for transferring land-use rights at that time. For example, the central government issued new regulations in 2006, with the introduction of minimum land prices and the reiteration of the requirement for open market mechanisms for primary sales of industrial land. *See Asian Industrial Property Market Flash*, CB Richard Ellis, CBRE Research, Q1 2007. *See* attachment 3 of the *Land Benchmark Memo* at 2. *See, also, id* at 5, stating that ''(t)he transfer of industrial land via the public bidding, listing and auction method began in Shanghai in the first quarter of 2007 following the new regulations issued by the Central Government in 2006.''

One news article commenting on the 2006 regulations noted that, with respect to land:

> Market-based practices in China are still in the embryonic stage. In most regions, the government has transferred land through negotiation with investors, which led to rampant corruption. The ministry's statistics indicated that the government transferred 163,000 hectares of land nationwide last year, but only 35 percent of it was dealt through the bidding and auction. The ministry considered this an achievement, representing an increase from 14.5 percent in 2002.

See Law to Expose Illegal Land Deal, China Daily, August 1, 2006, attachment 4 of the *Land Benchmark Memo*.

Even with the greater use of auctions, tenders and listing, the process behind such transfer mechanisms must be examined carefully to ensure that, for example, there is sufficient competition in the bidding process. For example, one market report describes the ''land use right transfer announcements'' of 120 industrial land plots posted in 2007, noting that:

> In addition to specifications such as plot size and plot ratio, the announcements included requirements concerning investment amount and potential bidders' industries. For example, the announcement for Site No. 200701001 in Jinshan District specified that bids be from plastic board/pipe or other material manufacturing companies and required a total investment of between RMB 150–175 million. Although the inclusion of bidder related requirements reduced competition, large swathes of industrial land have now been transferred through public bidding, listing, and auction.

See Asian Industrial Property Market Flash, CBRE, Q2 2007, attachment 5 of the *Land Benchmark Memo* at 5.

On the basis of the evidence on the record, we preliminarily determine that there are no usable first tier in-country benchmarks to measure the benefit from the transfer of land-use rights during the POI. Our preliminary determination with respect to internal prices for industrial land-use rights necessarily reflects the evidence on the record at this time. We will carefully review and consider all additional information submitted on the record during the course of this proceeding regarding the primary and secondary markets, including auctions, tenders and listings, as well as agricultural land conversions and other land assessment, pricing and transfer procedures.

(2) The Department Cannot Apply a Second Tier Benchmark

The second tier benchmark, according to the regulations, 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(a)(2)(iii). In selecting a world market price under this second approach, the Department will examine 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*, 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. *See Preamble*, 63 FR at 65378. As with the use of import prices discussed above under the first tier benchmark analysis, we preliminarily conclude that land, an *in situ* property, does not lend itself to be considered under this tier. Land is generally not simultaneously ''available to an in-country purchaser'' while located and sold out-of-country on the world market.

(3) The Department Will Use a Benchmark from Outside China

Since we are not able to conduct our analysis under the second tier of the regulations, consistent with the hierarchy, we next consider whether the government pricing of land-use rights is consistent with market principles. This approach is also set forth in section 351.511(a)(2)(iii) of the Department's regulations and is explained further in the *Preamble:*

> (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.

See Preamble, 63 FR at 65378.

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 weak definitions and protection of property rights, the overwhelming presence of government involvement in the land-use rights market, as well as the documented deviation from the authorized methods of pricing and allocating land, the purchase of land-use rights in China is not conducted in accordance with market principles. Specifically, we have found 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* attachment 2 of the *Loan Benchmark Memo* at page 46, (stating that, China'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. In practice, however, laws and regulations are regularly violated by individuals and local governments. While the private market for land-use rights has grown, SOEs own a significant amount of land-use rights that they received free of charge. Also, commercial land sales are often conducted illegally. In short, property rights remain poorly defined and weakly enforced (emphasis added).

Further, as cited above, ''(t)he problem is that when the agreement method is used (as opposed to the auction method), there is generally little or no competitive pricing or transparency. It is believed that the state has lost billions of dollars in state revenue through the granting of land-use rights at prices below market value.'' *See* attachment 1 of the *Land Benchmark Memo*. In light of all the evidence on the record, and given the Department's understanding that auctions have yet to become a widely adopted means of selling land-use rights, we have reason to preliminarily determine that land-use rights in China are not priced in accordance with market principles.

Given this finding, we looked for an appropriate basis to determine the extent to which land-use rights are provided for less than adequate remuneration. We have preliminarily determined that this analysis is best achieved by comparing the prices for land-use rights in China with comparable market-based prices for land purchases in a country at a comparable level of economic development that is in a reasonably proximate region outside of China. Specifically, we have determined that the most appropriate benchmark analysis in this case would be to compare respondents' land use rights to the sales of certain industrial land in industrial estates, parks and zones in Thailand. For this, we are relying on prices from a real estate market report on Asian industrial property that was prepared outside the context of this proceeding by an independent and internationally recognized real estate agency with a long-established presence in Asia. *See* attachment 5 of the *Land Benchmark Memo* at 3, and attachment 3 of the *Land Benchmark Memo*, at 3 (collectively, the *Asian Industrial Property Reports*). The Thai government has established three industrial promotion zones in Thailand, with varying degrees of incentives offered in each zone. *See* attachment 5 of the *Land Benchmark Memo* at 11. The industrial land prices that form the basis of our preliminary benchmark are in Zone 1, which is comprised of greater Bangkok and adjacent provinces. The *Asian Industrial Property Reports* do not include indicative land values for Zones 2 and 3.

As a general matter, we note that China and Thailand have similar levels of per capita GNI, namely, $2010 and $2990, respectively. *See* attachment 6 of the *Land Benchmark Memo*. Further, recognizing that it may be appropriate to focus on the regional characteristics relevant to the land under investigation, we note that both respondents are located in Shandong province. Shandong province has a higher per-capita GNI of approximately $2900 (2006), even more closely on par with Thailand. *See Market Profiles on Chinese Cities and Provinces*, attachment 7 of the *Land Benchmark Memo*. With respect to other factors that may speak to regional comparability, population density in China and Thailand are roughly comparable, with 141 persons per square kilometer (k^2) in China and 127/k^2 in Thailand. *See* attachment 6 of the *Land Benchmark Memo*. Population density is higher than national averages in both Shandong and Zone 1 in Thailand, at 562/k^2 and 908/k^2, respectively. *See IIASA Data—Population Growth* (2004 data) and *List of Provinces of Thailand by Population Density* (2000) data, attachments 8 and 9, respectively, of the *Land Benchmark Memo*.

Additionally, we note that producers consider a number of markets, including Thailand, as an option for diversifying production bases in Asia beyond China. Therefore, the same producers may compare prices across borders when deciding what land to buy. For example, the *Asian Industrial Property Reports* compare real estate prices in China with other prices in Asia, including Thailand. *See Asian Industrial Property Reports,* both at 3. With respect to Thailand, we note that studies by the Japan External Trade Organization (JETRO), which compared Asian alternative investment destinations to China, stated that ''Thailand got the highest score as the best location for establishing a production base over the next five to 10 years.'' *See Japan firms rate Vietnam best alternative to China,* Nikkei Weekly, April 10, 2006 at attachment 10 of the *Land Benchmark Memo.* Further, JETRO finds that Thailand ranks as the second-best choice after China as a location for expanding both high and mid to low-end production. *See FY2005 Survey of Japanese Firms' International Operations,* Japan External Trade Organization, March 2006 at 13 and *JETRO Releases its Latest Survey of Japanese Manufacturers in ASEAN and India* at attachments 11 and 12, respectively, of the *Land Benchmark Memo.* Finally, a report by a private company notes that, ''(m)any foreign companies believe that Thailand is still a strategic choice for a Southeast Asian production base.'' *See Industrial Property Guide, Thailand* at attachment 13 of the *Land Benchmark Memo.*

Therefore, we preliminarily determine that the ''indicative land values'' for land in Thai industrial zones, estate and parks outlined in the *Asian Industrial Property Reports* present a reasonable and comparable benchmark to the land-use rights in Shandong industrial zones at issue in this investigation. As discussed above, we have considered certain economic and demographic factors in arriving at this conclusion. However, we also note that other factors may inform this decision, including the availability of data on prices, investment flows, availability of land, and industry density in a certain region. We intend to continue to explore this issue and invite comments from the parties.

In order to calculate the benefit, we first multiplied the benchmark land rate (deflated from 2007 to the year the transactions were approved by the state authority) by the total area of SSJ's and Aifudi's tracts. We then subtracted the price actually paid for these tracts by the two respondents to derive the total unallocated benefit. We next conducted the ''0.5 percent test'' (19 CFR 351.524(b)(2)) for the years in which the transactions were approved by dividing the total unallocated benefit for each respondent by the appropriate sales denominator. 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 amount across the term of the land agreements using the standard allocation formula in 19 CFR 351.524(d) and determined the amount attributable to 2006. For SSJ, we divided the 2006 benefit by SSJ's total sales to calculate a subsidy of 2.17 percent *ad valorem.* For Aifudi, we divided the 2006 benefit by Aifudi and Golden Moon's total sales to calculate a subsidy of 11.51 percent *ad valorem.*

II. 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 it is transmitted for local distribution by two state-owned transmission companies, State Grid and China South Power Grid. Generally, prices for uploading electricity to the grid and transmitting it are regulated by the GOC, as are the final sales prices. *See, e.g., Circular on Implementation Measures Regarding Reform of Electricity Prices*, (*FAGAIJIAGE* (2005) No. 514, National Development and Reform Commission) at Appendix 3 of the *Provisional Measures on Prices for Sales of Electricity* at Article 29 (''Government departments in charge of pricing at various levels shall be responsible for the administration and supervision of electricity sales prices.''), provided within the GOC response at Exhibit R–1 (September 24, 2007).

Electricity consumers are divided into broad categories such as residential, commercial, large-scale industry, and agriculture. The rates charged vary across customer categories and within customer categories based on the amount of electricity consumed. Moreover, among industrial users, certain industries are specifically broken out and these industries receive special, discounted rates. Based on our

review of the rate schedules submitted for Shandong province and Zibo city, where respondents SSJ and Aifudi, respectively, are located, discounted rates are established for small and medium-sized chemical fertilizer producers. Thus, there is not a discounted rate for LWS producers. We tied the rates reported by respondents to these schedules. We asked the GOC to provide the number of electricity users in each customer-pricing category; however, the GOC replied that the number of users in each category is huge and that there are no compiled statistics on the number of customers per category.

Based on the record evidence, we preliminarily determine that the provision of electricity to LWS producers in the PRC is neither *de jure* nor *de facto* specific. Although producers in a few particular industries are eligible for discounts under the law, all other industrial users within a locality pay the same rate for their electricity. Moreover, the absence of price discrimination among most users also supports a preliminary finding that electricity is not being provided to LWS producers for less than adequate remuneration. *See Countervailing Duties; Final Rule,* 63 FR 65348, 65378 (November 25, 1998) (stating that, where the government is the sole provider of a good or service, especially in the case of electricity, land or water, the Department may assess whether the government price was set in accordance with market principles, which may include an analysis of whether there is price discrimination among the users of the good or service that is provided and that ''(w)e would only rely on a price discrimination analysis if the government good or service is provided to more than a specific enterprise or industry, or group thereof).'' On this basis, we preliminarily determine that the GOC's provision of electricity does not confer a countervailable subsidy. *See CWP from the PRC,* 72 FR at 63883.

III. Programs Preliminarily Determined To Be Not Used by SSJ and Aifudi

We preliminarily determine that SSJ and Aifudi did not apply for or receive benefits during the POI under the programs listed below.

A. Loan Forgiveness for LWS Producers by the GOC.

B. The State Key Technologies Renovation Project Fund.

C. Grants and Other Funding for High Technology Equipment for the Textile Industry.

D. Grants to Loss-Making State-Owned Enterprises.

E. Preferential Tax Policies for Export-Oriented FIEs.

F. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises.

G. Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Origin Machinery.

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

I. Preferential Tax Policies for Research and Development.

J. Preferential Tax Policies for Township Enterprises by FIEs.

K. VAT and Tariff Exemptions for FIEs Using Imported Technology and Equipment in Encouraged Industries.

L. VAT and Tariff Exemptions on Imported Equipment (Domestic Enterprises).

M. Export Interest Subsidy Funds for Enterprises Located in Zhejiang and Guangdong Provinces.

N. Technological Innovation Funds Provided by Zhejiang Province.

O. Programs to Rebate Antidumping Legal Fees.

For purposes of this preliminary determination, we have relied on SSJ's and Aifudi's responses to preliminarily determine non-use of the programs listed above by SSJ and Aifudi. During the course of verification, the Department will examine whether these programs were used by SSJ and Aifudi during the POI.

V. Programs Preliminarily Determined To Be Terminated

A. Exemption From Payment of Staff and Worker Benefits for Export Oriented Industries

The Department determined that this program was terminated on January 1, 2002, with no residual benefits. *See Final CFS Paper from the PRC,* 72 FR 60645 at 16.

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

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

Exporter/Manufacturer	Net subsidy rate (%)
Shandong Shouguang Jianyuanchun Company Limited (SSJ)	2.57
Zibo Aifudi Plastic Packaging Co. Ltd. (Aifudi)	11.59
Han Shing Chemical Co. Ltd. and/or Han Shing Bulk Bag Co., Ltd. and/or Han Shing Co.	57.14
Ningbo Yong Feng Packaging Co., Ltd. (Ningbo)	57.14
Shangdong Qilu Plastic Fabric Group, Ltd. (Qilu)	57.14
All-Others	2.57

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* rates or any rates based solely on the facts available. Furthermore, pursuant to 19 CFR 351.204(d)(3), the Department must exclude the countervailable subsidy rate calculated for a voluntary respondent. Thus, in this investigation, we have only one rate that can be used to calculate the all-others rate, that of SSJ. Therefore, we have assigned SSJ's rate to all-others.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of LWS 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 merchandise in the amounts indicated above. Moreover, in accordance with section 703(e)(2)(A), for Ningbo and Han Shing Chemical, Ltd. (*i.e.* Han Shing Bulk Bag Co., Ltd. and Han Shing Co.), we are directing CBP to apply the suspension of liquidation to any unliquidated entries entered, or withdrawn from warehouse for consumption, on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**.

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)(B) 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), we 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 must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). 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.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone numbers; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

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: November 26, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–23459 Filed 11–30–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–923]

Raw Flexible Magnets from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

EFFECTIVE DATE: December 3, 2007.

FOR FURTHER INFORMATION CONTACT: Preeti Tolani, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0395.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 2007, the Department of Commerce (''the Department'') initiated the countervailing duty investigation of raw flexible magnets from the People's Republic of China (PRC). *See Notice of Initiation of Antidumping Duty Investigations: Raw Flexible Magnets from the People's Republic of China and Taiwan*, 72 FR 59076 (October 18, 2007). On November 8, 2007, Magnum Magnetics Corporation, petitioner, requested a 65-day extension of the preliminary determination, pursuant to section 703(c)(1)(A) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.205(e). Currently, the preliminary determination is due no later than December 15, 2007.

Postponement of Due Date for Preliminary Determination

Under section 703(c)(1)(A) of the Act and 19 CFR 351.205(e), the Department may extend the period for reaching a preliminary determination in a countervailing duty investigation until not later than the 130th day after the date on which the administering authority initiates an investigation if the administrating authority receives such a request from petitioner 25 days or more before the scheduled date of the preliminary determination. Petitioner's request for postponement of the preliminary determination was received on November 8, 2007 and, therefore, is timely pursuant to 19 CFR 351.205(e). Accordingly, we are postponing the due date for this preliminary determination by 65 days to no later than Tuesday, February 19, 2008.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: November 26, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–23391 Filed 11–30–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 07–00005]

Export Trade Certificate of Review

ACTION: Notice of application for an Export Trade Certificate of Review from XCC EXPORTZ INC.

SUMMARY: Export Trading Company Affairs (''ETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (''Certificate''). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination