

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

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

DATE: June 13, 2008

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Light-Walled Rectangular
Pipe and Tube from the People's Republic of China

Background

On November 30, 2007, the Department of Commerce (the "Department") published the preliminary determination of this investigation.¹ The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate benefits from these programs. Additionally, we have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the briefs. We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this investigation for which we received comments and rebuttal comments from parties:

Comment 1: Application of CVD Law to Non-Market Economies

Comment 2: Double Counting/Overlapping Remedies

Comment 3: Requirement to Provide Evidence of Lower Prices

Comment 4: Proposed Cutoff Date for Identifying Subsidies

Comment 5: Purchases of Hot-rolled Steel by Respondents

Comment 6: Whether State-owned Hot-rolled Steel Suppliers are "Authorities"

Comment 7: Hot-rolled Steel Benchmark Issues

¹ 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, 72 FR 67703 (Nov. 30, 2007) ("Preliminary Determination"). Subsequent to the Preliminary Determination, the Department issued an Amended Preliminary Determination. See Light-walled Rectangular Pipe and Tube from the People's Republic of China: Notice of Amended Affirmative Preliminary Countervailing Duty Determination, 72 FR 73322 ("Amended Preliminary Determination").

Comment 8: Use of Hot-Rolled Steel to Produce Subject Merchandise Shipped to the United States

Comment 9: One Supplier Treated as State-owned is Private and the Volume of Hot-Rolled Steel Supplied by Baosteel

Comment 10: Land/Financial Contribution

Comment 11: Land/Benchmark

Comment 12: Discount Rate

Comment 13: Provision of Water

Comment 14: Government Policy Lending

Comment 15: All Others Rate

Use of Adverse Facts Available

Qingdao Xiangxing Steel Pipe Co., Ltd.

For reasons explained in the Federal Register notice, we continue to base the net countervailable subsidy rate for Qingdao Xiangxing Steel Pipe Co., Ltd. (“Qingdao”) on adverse facts available (“AFA”) for this final determination. Consistent with our approach in the Preliminary Determination,² for programs based on the provision of goods at less than adequate remuneration (“LTAR”), we are using the rate applied to Zhangjiagang Zhongyuan Pipe-Making Co., Ltd. (“ZZPC”) and affiliated companies (collectively, “ZZ Pipe”) for the provision of hot-rolled steel (“HRS”) for LTAR. For value added tax (“VAT”) programs, we are still unable to utilize company-specific rates from this proceeding because neither respondent received any countervailable subsidies from these subsidy programs. Therefore, for VAT programs, we continue to apply the highest subsidy rate for any program otherwise listed, which in this instance is ZZ Pipe’s rate for the provision of HRS for LTAR. For grant programs, we are relying on the rate calculated for ZZ Pipe in connection with its purchase of land-use rights.

Finally, for the six alleged income tax programs pertaining to either the reduction of the income tax rates or the reduction or exemption from income tax, we continue to apply an adverse inference that Qingdao paid no income tax during the period of investigation (i.e., calendar year 2006). The standard income tax rate for corporations in the People’s Republic of China (“PRC”) is 30 percent, plus a 3 percent provincial income tax rate. Therefore, the highest possible benefit for these six income tax rate programs is 33 percent. We are applying the 33 percent AFA rate on a combined basis (i.e., the six programs combined provided a 33 percent benefit). This 33 percent AFA rate does not apply to income tax deduction or credit programs. For income tax deduction or credit programs, we continue to apply the highest subsidy rate for any program otherwise listed, which in this instance is ZZ Pipe’s rate for the provision of HRS for LTAR.

In the recent final determination in CWP from the PRC, the Department excluded provincial-specific programs from the calculation of the AFA rate for a non-responding company where record evidence indicated that the respondent did not operate within the relevant provinces.³ In

² See Preliminary Determination, 72 FR at 63878-79.

³ See Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 72 FR 31966, 31968 (June 5, 2008) (“CWP from the PRC”).

the instant investigation, there is no record evidence indicating that Qingdao did not operate within the province at issue in this investigation (i.e., Zhejiang). Consequently, we are including provincial-specific programs in Qingdao's AFA rate. On this basis, we determine that Qingdao's net countervailable subsidy rate is 200.58 percent.⁴ We do not need to corroborate the calculated subsidy rates we are using as AFA because they are not considered secondary information as they are based on information obtained in the course of this investigation.⁵

The GOC

In response to the Department's inquiries, the GOC provided some information on the ownership structure of the HRS industry in China.⁶ Specifically, the GOC reported that state-owned enterprise ("SOE") members of the China Iron and Steel Association ("CISA")⁷ accounted for approximately 71 percent of HRS production in China in 2006.⁸ In making this claim, the GOC specifically reported that CISA determined whether the HRS producers that comprise the aforementioned percentage were considered to be state-owned or private.⁹ However, at verification, when the Department asked how CISA determined whether a HRS producer was private or state-owned, a representative from CISA explained that CISA does not classify member companies according to ownership structure. Instead, we learned that the reported ownership structure of CISA members was developed by the GOC's legal counsel through public sources. Specifically, the GOC's legal counsel explained that factual information on individual or corporate shareholders of CISA members was usually based on self-assessed titles on a company's website.¹⁰ Thus, the GOC misrepresented the source of the information on whether HRS producers were privately or state-owned, and the reported data reflected the company's own assessments of their ownership category.

Section 776(a)(2)(D) of the Tariff Act of 1930, as amended ("the Act"), states that the Department shall use the facts otherwise available in reaching a determination if an interested party provides information that cannot be verified as provided by section 782(i) of the Act. In addition, section 776(a)(2)(A) of the Act states that the Department shall use facts available

⁴ See Memorandum to the File entitled "Final Determination Selection of the Adverse Facts Available Rate for Qingdao Xiangxing Steel Pipe Co., Ltd." (June 13, 2008). This memorandum is available in the Department's Central Records Unit ("CRU").

⁵ See Section 776(c) of the Tariff Act of 1930, as amended ("the Act"); see also the Uruguay Round Agreement Act Statement of Administrative Action, attached to H.R. Rep. No. 103-316 Vol I at 870 (1994), reprinted in 1994 U.S.C.C.A.N 3773, 4163 ("SAA").

⁶ See letter from the GOC to the Secretary of Commerce Regarding Third Supplemental Questionnaire Response at page 14 (December 28, 2007) ("GOC 3rd SQR"); see also Memorandum from Verification Team to Susan Kuhbach Regarding the Government of the People's Republic of China National Government Verification Report at Verification Exhibit A-2 (March 5, 2008) ("GOC National Verification Report").

⁷ The GOC explains that CISA members represent the largest share of steel production in China. See The GOC 3rd SQR at page 34.

⁸ See The GOC 3rd SQR at page 35. The GOC explains that CISA members represent the largest share of steel production in China. The GOC government ownership information was updated at verification by reporting that CISA members accounted for 70.81 percent of HRS production in China in 2006. See the GOC National Verification Report at Exhibit A-2.

⁹ See The GOC 3rd SQR at page 35.

¹⁰ See GOC National Verification Report at pages 8-9.

when a party withholds information that has been requested by the Department. Further, section 776(b) of the Act states that if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. As noted above, the ownership of HRS producers was not verified because CISA does not record data by type of ownership. Moreover, we find that the GOC did not act to the best of its ability by failing to properly disclose how the reported ownership structures of CISA members were obtained. In misrepresenting how the information was obtained, the GOC did not provide the Department with “full and complete answers.”¹¹ Instead, the GOC purposefully made a decision to conceal how the information on ownership structure was derived. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the ownership of HRS producers in China.

To determine the percentage of HRS production accounted for by SOEs, we used the list of producers prepared by CISA.¹² However, we did not accept the GOC’s characterization of these companies’ ownership. Instead, where either record evidence indicates that a HRS producer is state-owned, or the GOC failed to provide factual evidence supporting its classification of the company, we have categorized those producers as state-owned. Based on this analysis, we find that 96.1 percent of HRS production by CISA members is accounted for by SOEs.¹³ By extension, we conclude on the basis of available record evidence that 96.1 percent of HRS production in China is by SOEs.¹⁴ We are relying on this number to find that the GOC provides the majority, or a substantial portion of HRS in China for determining the appropriate benchmark for measuring adequacy of remuneration for government provided HRS. See Comment 7, below.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (“AUL”) of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the Department’s regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System (the “IRS Tables”). The AUL period in this proceeding is 15 years according to the IRS Tables.

¹¹ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

¹² Our decision to use the HRS producers identified as CISA members to derive the ownership percentage of the HRS industry in no way diminishes or minimizes our finding that the GOC did not provide the Department with “full and complete answers.” We continue to find that the GOC misrepresented how the information was obtained, and have drawn adverse inferences accordingly.

¹³ See Memorandum from LWRP team to Susan Kuhbach Regarding Business Proprietary Information Memorandum for the Final Determination, at Attachment 1 (June 13, 2008) (“BPI Memorandum”).

¹⁴ See BPI Memorandum at Attachment 1.

We have determined that we will identify and measure subsidies in China beginning on the date of that country's accession to the WTO, December 11, 2001.¹⁵ Therefore, we are allocating non-recurring subsidies received after December 11, 2001, over the 15-year AUL.

Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard.¹⁶ According to the CVD Preamble, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits). . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.¹⁷

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The 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.¹⁸ Our findings regarding cross-ownership and attribution for Lets Win and ZZ Pipe are as follows.

¹⁵ See Comment 2 of the Issues and Decision Memorandum for CWP from the PRC and Comment 4, below for a further discussion of this issue.)

¹⁶ See Countervailing Duties; Final Rule, 63 FR 65348, 65401 (November 25, 1998) ("CVD Preamble").

¹⁷ See id.

¹⁸ See Fabrique de Fer de Charleroi v. United States, 166 F. Supp 2d 593, 603 (CIT 2001) ("Fabrique").

Lets Win:

Lets Win, a Taiwanese-owned “productive” foreign-invested enterprise, responded on behalf of itself. Lets Win also named two affiliates involved in the company’s export activities.

Consistent with the Preliminary Determination, we have excluded these companies from our analysis because they are located outside of China.¹⁹

ZZ Pipe:

In its response, ZZPC identified numerous affiliated companies and responded on behalf of itself, a producer of the subject merchandise, and four of its affiliates: ZZPC’s parent company, Jiangsu Qiyuan Group Co., Ltd. (“Group”); and three input suppliers to ZZPC, Jiangsu Zhongjia Steel Co., Ltd. (“JZSC”), Zhangjiagang Zhongxin Steel Product Co., Ltd. (“ZZSP”), and Zhangjiagang Baoshuiqu Jiaqi International Business Co., Ltd. (“Jiaqi”). The remaining affiliates do not produce subject merchandise or otherwise fall within the situations described in 19 CFR 351.525(b)(6)(iii)-(v). Therefore, they are not addressed further here.

The details of the affiliations between ZZPC, Group, JZSC, ZZSP, and Jiaqi are proprietary and were addressed for the Preliminary Determination separately.²⁰ Consistent with the Preliminary Determination,²¹ we continue to find that ZZPC, Group, JZS, ZZSP, and Jiaqi are cross-owned companies within the meaning of 19 CFR 35.525(b)(6)(vi).

Because they are cross-owned and because Group is the parent company of ZZPC, we determine that any subsidies bestowed on Group are properly attributed to Group’s consolidated sales under 19 CFR 351.525(b)(6)(iii). With respect to Jiaqi, this company is a trading company and does not produce any merchandise. Rather, it purchased and provided inputs to ZZPC during the period of investigation (“POI”). Because it is not an input producer, we are not treating Jiaqi as an input supplier as described in 19 CFR 351.525(b)(6)(iv) (which refers to subsidies received by the input producer). ZZPC’s other input suppliers, JZSC and ZZSP, provide ZZPC with steel strip. These companies are not trading companies: both produce cold-rolled steel. The types of inputs JZSC, ZZSP and Jiaqi provide to ZZPC are proprietary and are addressed separately.²²

Discount Rates

The selection of a discount rate for purposes of allocating subsidy benefits over time does not in any meaningful way differ from the selection of a commercial benchmark interest rate to calculate the benefit from government-provided long-term loans. For the reasons explained below, we find that distortions are present in China banking sector and, therefore, that interest rates in China do not provide an appropriate basis for calculating a discount rate in this proceeding.

¹⁹ See Preliminary Determination, 72 FR at 67706.

²⁰ See Memorandum to the File from Damian Felton to Susan Kuhbach, Regarding Preliminary Results Calculation Memorandum for (ZZ Pipe) (November 26, 2007) (“ZZ Pipe Preliminary Calculation Memorandum”).

²¹ See Preliminary Determination, 72 FR at 67706.

²² See ZZ Pipe Preliminary Calculation Memorandum.

In our analysis of China as a non-market economy in the antidumping duty investigation of CLPP from the PRC,²³ we found that China'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.²⁴ In CFS from the PRC, the Department found that the GOC continues to dominate the domestic Chinese banking sector and prevents banks from operating on a fully commercial basis. Moreover, while foreign-owned banks do operate in China, they are subject to the same restrictions as the state-owned commercial banks ("SOCBs"). Further, the foreign banks' share of assets and lending is negligible compared with the SOCBs. Therefore, as discussed in greater detail in CFS from the PRC, because of the market-distorting effects of the GOC in the China banking sector, foreign bank lending does not provide a suitable benchmark.²⁵

For these reasons, we determine that it is appropriate to use an external benchmark for discount and interest rates. And, as in CFS from the PRC, we have used a regression-based methodology relying on the inflation-adjusted interest rates of countries with similar per capita gross-national incomes ("GNIs") to compute the benchmark. We determined which countries are similar to China 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. China falls in the lower-middle income category, a group that included 49 countries as of July 2004.²⁶

Many of these countries reported short-term lending and inflation rates to the International Financial Statistics ("IFS").²⁷ With the exceptions noted below, we used this data set to calculate the inflation-adjusted interest rates for these countries.²⁸ We did not include those economies that the Department considered to be non-market economies for AD purposes for any part of 2004: China, Armenia, Azerbaijan, Belarus, Georgia, Moldova, Turkmenistan, and Ukraine. The benchmark necessarily also excludes any economy that did not report lending and inflation rates to IMF for 2004. Finally, the Department also excluded two aberrational countries: (1) Angola, with an inflation-adjusted 2004 rate of 38.79 percent; and (2) Brazil, with an inflation-adjusted 2004 rate of 48.33 percent.

We then calculated the interest rate that would exist in China if it were a market economy using a regression analysis relating the inflation-adjusted interest rates and an average governance indicator for these countries.²⁹ This regression provides the most suitable market-based

²³ See 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) ("CLPP from the PRC").

²⁴ 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 CLPP from the PRC. See also Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) ("CFS Final"), and accompanying Issues and Decision Memorandum, at Comment 10.

²⁵ See CFS from the PRC Issues and Decision Memorandum, at Comment 10.

²⁶ See Memorandum to the File, Regarding Final Determination Calculation Memorandum for (ZZ Pipe) (June 13, 2008) ("ZZ Pipe Final Calculation Memorandum") at Attachment 4, or see <http://web.worldbank.org>, search engine term: "lower middle income."

²⁷ See id. at Attachment 5, or see <http://www.imfstatistics.org>.

²⁸ See id. at Attachment 6.

²⁹ See The World Bank governance indicators were placed on the record in a Memorandum to the File: re, Calculations for the Post-Preliminary Analysis of the Provision of Land for Less Than Adequate Remuneration for

benchmark and discount rate for China because it takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to state-imposed significant distortions in the banking sector discussed above.³⁰

On this basis, the Department calculated inflation-adjusted short-term benchmark lending rates of 8.15 percent for 2004.³¹

The lending rates reported in IFS represent short-term lending, and there is not sufficient publicly available long-term interest rate data upon which to develop a robust benchmark for long-term loans. To address this problem, the Department has computed an adjustment to convert the short-term rate to a long-term rate using Bloomberg U.S. corporate BB-rated bond rates. We have used this constructed long-term interest rate (23.97 percent for 2004) as the discount rate for the year in which the government agreed to provide the benefit.³²

The discount rate is discussed further in Comment 12, below.

Analysis of Programs

I. Programs Determined to Be Countervailable

A. Hot-rolled Steel for Less Than Adequate Remuneration

In the Preliminary Determination, the Department determined that the GOC's provision of HRS through its state-owned producers is a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, and that it confers a benefit on light-walled rectangular pipe and tube ("LWR") producers because the good is sold for LTAR as described in section 771(5)(E)(iv) of the Act.³³ We further determined that HRS was provided to a limited number of users and, hence, specific in fact.

The Department continues to find that the GOC's provision of HRS through its state-owned steel producers provides a countervailable subsidy.³⁴ Specifically, we determine that the GOC is providing a good, HRS, for LTAR, and that this good is being provided to a limited number of industries. In a change from the Preliminary Determination, we are also finding countervailable purchases of HRS from privately-owned trading companies that purchase HRS from state-owned producers. For these transactions, the GOC's financial contribution (provision of a good) is made to the trading company suppliers that purchase the HRS, while all or some portion of the benefit is conferred on the LWR producers who purchase the HRS from the trading companies.³⁵

(ZZ Pipe) (April 21, 2008) at Attachment 4, or see www.worldbank.org/wbi/governance.

³⁰ See ZZ Pipe Final Calculation Memorandum at Attachment 6.

³¹ See *id.*

³² See *id.* at Attachment 7.

³³ See Preliminary Determination, 72 FR at 67707.

³⁴ See Comment 6 regarding our determination of whether these suppliers are "authorities," within the meaning of section 771(5)(B) of the Act.

³⁵ See Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company – Specific Reviews: Certain Softwood Lumber from Canada, 69 FR 75917 (December 20, 2004) and accompanying Issues and Decision Memorandum at Comment 47 (Other Non-Stumpage Programs, #3) ("Lumber from Canada –

During the course of the investigation, we did not ask the respondents to report the amount of HRS purchased from trading company suppliers that was produced by SOEs. We will seek this information in any future administrative review if this investigation results in a countervailing duty order. For this final determination, however, we have carefully reviewed the record to determine what information is available to calculate this amount for purposes of this final determination. As discussed above under “Use of Adverse Facts Available,” the GOC reported that SOE members of the CISA accounted for 70.81 percent of HRS production in China in 2006. As discussed in the “Use of Adverse Facts Available” section above, we are using it in this instance as neutral facts available because no adverse inference is warranted. See Comment 5 for further discussion of this matter. Consequently, we find that 70.81 percent of HRS purchased from trading companies was produced by SOEs.

For HRS purchased directly from producer suppliers, we have reviewed the information submitted by the GOC regarding the companies’ ownership. Where the GOC provided the requested information and it showed that a producer supplier is private, we have not countervailed the HRS purchased from that supplier.³⁶

Parties commented extensively on what constitutes adequate remuneration for this program. After examining the parties’ arguments and all the information on the record, we continue to use a world market price from *Steel Benchmark* to determine whether HRS provided by government entities was sold for LTAR in accordance with 19 CFR 351.511(a)(2)(ii). However, in a change from the Preliminary Determination, consistent with 19 CFR 351.511(a)(2)(iv), we are adjusting the *Steel Benchmark* prices to account for import duties. See Comment 7 for further discussion of the benchmark.

To calculate the benefit, we took the difference between the monthly benchmark price and the amount paid by the respondent companies for HRS produced by SOEs. We attributed this benefit to Lets Win’s and ZZPC’s sales during the POI. On this basis, we determine the countervailable subsidy rate to be 1.90 percent ad valorem for Lets Win and 15.18 percent ad valorem for ZZ Pipe.³⁷

B. Land for Less Than Adequate Remuneration

ZZ Pipe purchased land-use rights from the GOC in 1998, 2001, 2004, and 2006. Based on our finding that subsidies cannot be identified or measured in China prior to that country’s accession to the WTO on December 11, 2001, we are not examining the 1998 and 2001 transactions because they occurred prior to this date. The 2004 transaction is discussed further below.

First AR Results”); Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet and Strip from India, 71 FR 7534 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 8.

³⁶ See Comment 5 for a further discussion.

³⁷ See Memorandum to the File from Damian Felton to Susan Kuhbach, Regarding Final Determination Calculation Memorandum for (ZZ Pipe) (June 13, 2008) (“ZZ Pipe Final Calculation Memorandum”); see also Memorandum to the File from Shane Subler to Susan Kuhbach, Regarding Final Determination Calculation Memorandum for (Lets Win) (June 13, 2008) (“Lets Win Final Calculation Memorandum”).

Finally, for the reasons explained in the Post-Preliminary Analysis,³⁸ we determine that any benefit from the 2006 purchases would occur in 2007. Therefore, these purchases will be addressed in a subsequent administrative review if this investigation results in a countervailing duty order.

In our Post-Preliminary Analysis, we determined that the GOC provided ZZ Pipe with a countervailable subsidy through the government's provision of land in 2004. We continue to find that ZZ Pipe received a countervailable subsidy in connection with this transaction. However, we have revised our analysis. Specifically, we determine that the GOC's failure to collect the full amount owed by ZZ Pipe for the land-use rights purchased in 2004 is revenue forgone, with the benefit equal to the amount not collected.³⁹ We further determine that this subsidy is specific in fact because it was provided to a limited number of recipients.⁴⁰

To calculate the benefit, we treated the uncollected payment as a non-recurring grant and allocated it over the AUL using the discount rate described above under "Subsidies Valuation Information." We attributed the subsidy to the combined sales of ZZPC. On this basis, we determine that ZZ Pipe received a countervailable subsidy of 0.10 percent ad valorem.⁴¹

This issue is addressed further in Comment 10.

C. Income Tax Subsidies for Foreign Invested Enterprises (FIEs) - Reduced Income Tax Rates for FIEs Based on Location

FIEs are encouraged to locate in designated coastal economic zones, special economic zones, and economic and technical development zones in China through preferential tax rates. This program was originally created in 1988 under the Provisional Regulations of the Ministry of Finance of the PRC Concerning the Reduction and Exemption from Enterprise Income Tax and Consolidated Industrial and Commercial Tax for the Encouragement of Foreign Investment in Coastal Open Economic Zones and is currently administered under the Income Tax Law of the PRC for Enterprises with Foreign Investment and Foreign Enterprises (FIE Tax Law). Under Article 7 of the FIE Tax Law, "productive" FIEs located in the designated economic zones pay corporate income tax at a reduced rate of either 15 or 24 percent, depending on the zone. According to the GOC, the FIE Tax Law has been repealed effective January 1, 2008, and there are no provisions regarding this program in the new Income Tax Law of the PRC for Enterprises.

Lets Win is located in a coastal economic development zone and paid income tax at the reduced rate of 24 percent during the POI.

³⁸ See Post-Preliminary Analysis for the Provision of Land For Less Than Adequate Remuneration (April 21, 2008) ("Post-Preliminary Analysis").

³⁹ See section 771(5)(D)(ii) of the Act.

⁴⁰ See section 771(5A)(D)(iii)(I) of the Act.

⁴¹ Consistent with 19 CFR 351.524(b)(2), we determined that the benefit was greater than 0.5 percent of the relevant sales in 2005 and found allocation was appropriate. See ZZ Pipe Final Calculation Memorandum.

Consistent with the Preliminary Determination, we determine that the reduced income tax rate paid by “productive” FIEs under this program confers a countervailable subsidy.⁴² The reduced rate is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings.⁴³ We further determine that the reduction afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Lets Win as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company’s tax savings received during the POI by the company’s total sales during that period. To compute the amount of the tax savings, we compared the rate Lets Win would have paid in the absence of the program (30 percent) with the rate it paid (24 percent).

On this basis, we determine that Lets Win received a countervailable subsidy of 0.27 percent ad valorem under this program.

II. Programs Determined to Be Not Countervailable

A. Provision of Inputs for Less than Adequate Remuneration

1. Electricity: We continue to determine that the provision of electricity to LWR producers in China is neither de jure nor de facto specific. Although producers in a few particular industries are eligible for discounts under the law, all other large-scale enterprises within the localities we investigated pay the same rate for their electricity, including the LWR producers we examined. On this basis, we determine that the GOC’s provision of electricity does not confer a countervailable subsidy on the producers/exporters of the subject merchandise during the POI.
2. Water: In the Preliminary Determination, we found that the GOC’s provision of water to ZZ Pipe during the POI conferred a countervailable subsidy because ZZ Pipe reported paying a lower rate than the published tariff rate for industrial users for certain months during the POI. In addition, we did not issue a preliminary finding on the provision of water provided to Lets Win because of discrepancies between the amount paid by Lets Win and the applicable tariff schedule.⁴⁴ However, for the reasons explained in Comment 13 below, we find that the government’s provision of water does not confer a countervailable subsidy on either ZZ Pipe or Lets Win.

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

Consistent with the Preliminary Determination, we determine that the VAT refund received upon the export of LWR does not confer a countervailable benefit because the amount of the VAT rate

⁴² See Preliminary Determination, 72 FR at 67707.

⁴³ See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

⁴⁴ See Preliminary Determination, 72 FR at 67708.

levied on sales of LWR to the domestic market (at a rate of 17 percent) exceeded the amount of VAT exempted upon the export of LWR (at a rate of 13 percent).⁴⁵

III. Post-POI Programs

Government Restraints on Exports: Hot-rolled Steel and Zinc

Petitioners alleged that the GOC restrains exports of HRS and zinc by means of export taxes, which artificially suppress the price a producer in China can charge for these inputs into LWR. The export restraints allegedly giving rise to a subsidy were announced on May 30, 2007, *i.e.*, after the POI. Although the export duties were implemented retroactively, there is no basis to conclude that the export duties affected the prices paid by the respondents for HRS and zinc prior to May 30, 2007, because those purchases had already been made. Therefore, any subsidy conferred by the export duties on HRS and zinc would properly be addressed under our Program-wide Change regulation, 19 CFR 351.526(a). That regulation states that the Department may take a program-wide change into account in establishing the estimated countervailing duty cash deposit rate if: (1) the Department determines that subsequent to the period of investigation or review, but before a preliminary determination in an investigation, a program-wide change has occurred; and (2) the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question.

In this investigation, ZZ Pipe and Lets Win submitted their monthly purchase prices for HRS and zinc for periods prior to and following the May 30, 2007, announcement. We analyzed this information for the Preliminary Determination. The data showed fluctuations in the prices of these inputs both before and after the announcement of the export duties. Moreover, the data available for the months after the announcement were limited. No interested party commented on this issue between the Preliminary Determination and this final determination. Therefore, consistent with the Preliminary Determination, we are not including these alleged subsidy programs in our cash-deposit rates.⁴⁶

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

- A. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
- B. The “Two Free, Three Half” Program
- C. Reduced Income Tax Rates for Foreign Invested Enterprises (FIEs) Based on Location
- D. Local Income Tax Exemption and Reduction Program for “Productive” FIEs
- E. Income Tax Exemption Program for Export-oriented FIEs
- F. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-oriented Enterprises
- G. Reduced Income Tax Rate for Technology and Knowledge Intensive FIEs
- H. Reduced Income Tax Rate for High or New Technology FIEs
- I. Preferential Tax Policies for Research and Development at FIEs

⁴⁵ See Preliminary Determination, 72 FR at 67709.

⁴⁶ Id. at 67710.

- J. Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies
- K. Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs
- L. Program to Rebate Antidumping Legal Fees in Zhejiang Province
- M. Export Interest Subsidy Funds for Enterprises Located in Zhejiang Province
- N. Loans Pursuant to Liaoning Province's Five-year Framework
- O. VAT and Tariff Exemptions on Imported Equipment
- P. VAT Rebates on Domestically Produced Equipment
- Q. The State Key Technologies Renovation Project Fund
- R. Grants to Loss-making State-owned Enterprises
- S. Provision of Inputs for Less Than Adequate Remuneration: Natural Gas
- T. Foreign Currency Retention Program
- U. Government Policy Lending Program

IV. Programs Determined To Be Terminated

- A. Exemption from Payment of Staff and Worker Benefits for Export-oriented Enterprises

The Department has determined that this program was terminated on January 1, 2002, with no residual benefits. See CFS from the PRC Issues and Decision Memorandum at "Programs Determined to be Terminated."

Analysis of Comments

Comment 1: Application of CVD Law to Non-Market Economies

The GOC and producer/exporter Guangdong Walsall Steel Pipe Industrial Co., Ltd. ("GWSP") argue that the Federal Circuit has ruled as a matter of law that the CVD law cannot be applied to nonmarket economies⁴⁷ ("NMEs") and for two decades after that 1986 ruling the Department consistently refused to undertake CVD investigations of NMEs. According to the GOC and GWSP, the Federal Circuit did not hold this issue to be within the Department's discretion, stating that, "In the United States, as we have held, Congress elected to deal with the problem {of imports from state-controlled economies} under the antidumping law and not under the countervailing duty law."⁴⁸ The Federal Court also made clear, in the GOC's and GWSP's view, that the Department does not have the authority to begin applying the CVD law to China on its own because the Court stated that it is up to the Congress to decide what remedies are appropriate.⁴⁹ The GOC and GWSP contend that implicit in the Federal Circuit's ruling is the recognition that the NME AD methodology also provides a remedy for subsidies because unsubsidized surrogate input values are used.

The GOC and GWSP find at least two major problems with applying the CVD law to NMEs. First, the Department's reliance on out-of-country benchmarks confirms that it cannot measure subsidies in China. The GOC and GWSP point to the two subsidies preliminarily countervailed

⁴⁷ See Georgetown Steel Corp. v. United States, 801 F. 2d 1308 (Fed. Cir. 1986) ("Georgetown Steel").

⁴⁸ See Georgetown Steel 801 F. 2d at pages 1317-18.

⁴⁹ See id.

in this proceeding – the government’s provision of HRS and land – and the Department’s use of out-of-country benchmarks because government control or dominance of the HRS and land markets in China means that there are no market prices for HRS or land in China. Yet, according to the GOC and GWSP, the absence of market prices to measure the deviation or misallocation of resources caused by governmental intervention was one of the key considerations underlying the Department’s 20-year practice of not applying the CVD law to China.⁵⁰

The GOC and GWSP next point to the Georgetown Steel Memo⁵¹ and CFS from the PRC, in which the Department purportedly differentiated China’s current economy from that of Soviet-style planned economies. However, according to the GOC and GWSP, that analysis was completely abstract, having nothing to do with any program under investigation and, thus, it is irrelevant to whether the subsidies in this investigation can be fairly and accurately measured in China’s current economy. Every time the Department resorts to a benchmark outside of China, the GOC and GWSP contend, the Department confirms that it cannot reasonably measure purported Chinese subsidies.

The GOC and GWSP use the Department’s methodology for computing a benchmark interest rate in CFS from the PRC (and discount rate in this case)⁵² as an example of the Department’s inability to reasonably measure Chinese subsidies. The constructed average rate across currencies and economies cannot possibly, in the GOC’s or GWSP’s view, reflect what a market rate would be in China without government intervention because interest rates are affected by factors other than inflation and governance considerations, and the Department admits that it cannot adjust for China-specific conditions. Thus, the GOC and GWSP contend, all the Department is measuring is the difference between what the Chinese firms pay in interest and an average. By definition, some of the countries used in the sample will have lower interest rates than the average and, the GOC and GWSP claim, this does not mean that these countries’ interest rates are subsidized. Thus, it should not be so for China.

The GOC and GWSP claim that the Department’s purported measurement of land subsidies⁵³ – using “indicative land values” taken from one publication and yields on real estate investment trusts (which are not rental rates) from another - presents the same problem. According to the GOC and GWSP, land is inherently local, with its value dependent upon local conditions, including the value of the uses to which it can be put, and the Department has simply measured the extent to which prices for land in various parts of China differ from prices for land in the particular areas of Thailand for which the Department has data, when there is no reason at all that those prices should be the same.

⁵⁰ The GOC and GWSP cite to Carbon Steel Wire Rod from Poland; Final Negative Countervailing Duty Determination, 49 FR 19374, 19375 (May 7, 1984).

⁵¹ See Memorandum from Shauna Lee-Alaia and Lawrence Norton to David M. Spooner Regarding Countervailing Duty Investigation of Coated Free Sheet Paper from the People’s Republic of China - Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China’s Present-Day Economy, at pages 5 and 10 (March 29, 2007) (“Georgetown Steel Memo”).

⁵² See Post-Preliminary Analysis.

⁵³ See Post-Preliminary Analysis; see also Laminated Woven Sacks from China: Preliminary Affirmative Countervailing Duty Determination, 72 FR 67893, 67905-09 (Dec. 3, 2007) (“Sacks from the PRC”); see also Certain New Pneumatic Off-the-Road Tires from the PRC: Preliminary Affirmative CVD Determination, 72 FR 71360, 71367-70 (Dec. 17, 2007) (“Tires from the PRC”).

The GOC and GWSP conclude that the Department cannot have it both ways. Specifically, the Department cannot find that prices in China are sufficiently market-based such that it can measure subsidies, while at the same time finding that it cannot use prices in China to measure subsidies because of pervasive government influence.

The second major problem identified by the GOC and GWSP in applying the CVD law to NMEs is that it leads to duplicative remedying and double counting. This argument is addressed in Comment 2.

Citing Government of China,⁵⁴ the Petitioners argue that the Department has broad discretion in determining whether to apply the CVD law and the Department should continue to do. First, the statute authorizes application to imports from all countries, according to the Petitioners. Second, Petitioners contend, the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”) permits the imposition of countervailing duties on imports from NMEs, and China agreed during its accession to the WTO to be subject to the SCM Agreement. Finally, as the Department found in CFS from the PRC, the China’s current day economy can be distinguished from the Soviet-style economies at issue in Georgetown Steel, allowing the Department to identify and measure subsidies to LWR producers.

Department’s Position:

We disagree with the GOC and GWSP regarding the Department’s authority to apply the CVD law to China. The Department’s position on the issues raised is fully explained in CFS from the PRC⁵⁵ and CWP from the PRC.⁵⁶

We further disagree with the GOC’s and GWSP’s contention that the Department is trying to have it both ways. The Georgetown Steel Memo details the Department’s reasons for applying the CVD law to China and the legal authority to do so. Contrary to the GOC’s assertions, the original Georgetown Steel does not rest on the absence of market-determined prices, and the recent decision to apply the CVD law to China does not rest on a finding of market-determined prices in China.

In Georgetown Steel, the Department based non-applicability of the CVD law on the centrally planned nature of Soviet-era economies, i.e., the government’s absolute control over the entire economy and the resultant fact that meaningful identification of bounties and grants was impossible. Of course all prices in such economies were set administratively by the government, but this was an effect, not the cause, of the non-market nature of the economy. So, in the case of Soviet-era economies, non-market-determined prices were a necessary consequence of the centrally planned nature of the economy, and one could, therefore, as a “short-cut,” equate non-market-determined prices with non-applicability. But there was no cause-and-effect relationship between the two as the GOC and GWSP assert.

⁵⁴ See Government of China v. United States, 483 F. Supp.2d 1272 (CIT 2007) (“Government of China”).

⁵⁵ See CFS from the PRC Issues and Decision Memorandum at Comment 1.

⁵⁶ See id.

In the case of China's economy today, as the Georgetown Steel Memo makes clear, China no longer has a centrally planned economy and, as a result, China no longer administratively sets most prices. As the Georgetown Steel Memo also makes clear, it is absence of central planning, not market-determined prices, that makes subsidies identifiable and the CVD law applicable to China.⁵⁷ The citation to the EIU quote, "market forces now determine the price of more than 90 percent,"⁵⁸ was meant to highlight the scope of price liberalization in China. The Department used a direct quote because some analysts equate "decontrolled price" with "market-determined price," even though the Department does not. The important distinction between "decontrolled price" and "market-determined price" is clear in the Georgetown Steel Memo (and the August 30 Memorandum), where the Department explains, "The fact that enterprises generally are free to set wages and the majority of prices does not ipso facto lead to the conclusion that wages and prices are market-based in all instances. Private enterprises and citizens in China, though generally free to pursue entrepreneurial activities, still conduct all business within the broader, distorted economic environment over which the PRC Government has not ceded fundamental control."⁵⁹

As the Department explains in the Georgetown Steel Memo, extensive China government controls and interventions in the economy, particularly with respect to the allocation of land, labor and capital, undermine and distort the price formation process in China and, therefore, make the measurement of subsidy benefits potentially problematic.⁶⁰ The problem is such that there is no basis for either outright rejection or acceptance of all China prices or costs as CVD benchmarks because the nature, scope and extent of government controls and interventions in relevant markets can vary tremendously from market to market. Some China prices or costs will be useful for benchmarking purposes, *i.e.*, are market-determined, and some will not, and the Department will make that determination on a case-by-case basis, on the basis of the facts and evidence on the record. Thus, because of the mixed, transitional nature of China's economy today, there is no longer any basis to conclude, from the existence of some "non-market-determined prices," that the CVD law is not applicable to China.

Contrary to the GOC's and GWSP's assertions, the Department's case-by-case approach on benchmarks has not resulted in the use of external benchmarks in all instances. For example, in CWP from the PRC,⁶¹ the Department relied upon actual import transactions in China and world market prices we deemed to be equivalent to actual import transactions in China to value HRS. For HRS in this case and interest rates, on the other hand, the Department found that because direct government controls and interventions are pervasive in China's steel and lending markets, external benchmarks were warranted. Therefore, although the GOC takes issue with the particular benchmarks that the Department used for HRS in this case and interest rates, the GOC cannot claim that the Department summarily excluded all internal China prices from consideration. The fact remains that the Department followed a case-by-case approach and selected appropriate benchmarks on the basis of facts and evidence on the record in each case, as required by the mixed, transitional nature of China's economy.

⁵⁷ See Georgetown Steel Memorandum at page 5.

⁵⁸ See *id.*

⁵⁹ See *id.*

⁶⁰ See *id.*, and August 30 Memorandum at page 22.

⁶¹ See CWP from the PRC Issues and Decision Memorandum at Comment 7.

With respect to the use of external benchmarks for measuring subsidy benefits, China is not special or unique. The Department has several times in the past, in cases involving market economies, resorted to external benchmarks when facts and evidence on the record warrant it, consistent with our statute and regulations. For example, the Department found in CFS from Indonesia, that Malaysian export prices provided the most appropriate basis for determining an external benchmark price to use in assessing stumpage rates in Indonesia.⁶² We found that these prices were consistent with market principles within the meaning of 19 CFR 351.511(a)(2)(iii) and were the most appropriate basis for deriving a market-based stumpage benchmark for determining whether the government of Indonesia provided stumpage for less than adequate remuneration. Furthermore, the Department also used an out-of-country benchmark in Lumber from Canada Investigation.⁶³ In this case, the Department has followed its established practice of using out-of-country benchmarks where actual transaction prices are significantly distorted because of government involvement in the market. Moreover, a case-by-case approach is what China agreed to in its Accession Protocol,⁶⁴ which explicitly provides for use of external benchmarks, where there are special difficulties in applying standard CVD methodology.

On the specific HRS, land, and interest rate benchmarks used, see the Department's positions at Comments 7, 11, and 14, respectively.

Comment 2: Double Counting/Overlapping Remedies

The GOC and GWSP argue that application of the NME AD methodology and the market economy CVD methodology lead to duplicative remedies and double counting. By double counting, the GOC and GWSP mean that AD and CVD duties provide overlapping remedies for the same conduct.

The GOC and GWSP contend that the clearest example of double counting occurs with export subsidies. According to the GOC and GWSP, the reason this would occur is that in competitive markets, export subsidies would be expected to result in a lower export price than a domestic price. Citing Uranium from France AD Final Results,⁶⁵ the GOC and GWSP claim that the Department has accepted this analysis and, consistent with section 772(c)(1)(C), corrects for this double counting.

⁶² See Final Affirmative Countervailing Duty Determination: Coated Free Sheet Paper from Indonesia, 72 FR 60642 (October 25, 2007) ("CFS from Indonesia") and the accompanying Issues and Decision Memorandum at "GOI's Provision of Standing Timber for Less Than Adequate Remuneration" and Comments 11 and 12.

⁶³ See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545 (April 2, 2002) ("Softwood Lumber from Canada Investigation") and accompanying Issues and Decision Memorandum, at "Provincial Stumpage Programs"; and Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada, 67 FR 36070, 36076 (May 22, 2002).

⁶⁴ See Protocol of Accession of the People's Republic of China, WT/L/432 at paragraph 15 (November 23, 2001) ("Accession Protocol") provided at Attachment 2, Volume 2, Exhibit 85 of the Petition (July 6, 2007).

⁶⁵ See Notice of Final Results of First Antidumping Administrative Review: Low Enriched Uranium From France, 69 FR 46501, 46505 (August 3, 2004) ("Uranium from France AD Final Results").

Domestic subsidies, at least in market economy cases, do not lead to double counting, according to the GOC and GWSP. This is because in competitive markets domestic subsidies would lead the recipient to lower prices in both markets. As a result, the GOC and GWSP contend, the subsidy does not lead to price discrimination so when the Department imposes CVD duties, it fully offsets the subsidy and through AD duties properly offsets any price discrimination.⁶⁶ The GOC and GWSP again cite to Uranium from France AD Final Results⁶⁷ to argue that the Department has also adopted this economic analysis.

In contrast to the situations described above, the GOC and GWSP claim that double counting exists in concurrent AD and CVD investigations against NMEs because normal value is not based on home market prices or costs, but instead on surrogate values unaffected by any subsidies in China. Thus, while the prices charged by the NME producer will decrease in response to the domestic subsidy, normal value will remain unchanged. According to the GOC and GWSP, the CVD will offset the subsidy and AD duties will then be levied in an amount that includes the difference between normal value and U.S. price that is caused by the subsidy. The GOC and GWSP conclude that the AD calculation will always provide a full remedy for any domestic subsidy provided in the exporting NME because it ensures that the U.S. price will recover full market, non-subsidized values for all inputs, other expenses and profit.

As a result, the GOC and GWSP claim that Chinese producers are “taxed” twice in the form of overlapping AD and CVD duties for the same purported offense, *i.e.*, that the price they pay for certain inputs is purportedly not a market-determined price. These parties point to a specific example from this case to illustrate their argument: In the Preliminary Determination, the Department found that respondent, ZZPC, received a benefit through the GOC’s provision of HRS using a world market, benchmark price that ranged between US\$ 500.50 and US\$609 per metric ton over the POI. To the extent that ZZPC paid a price lower than the world market price, the amount of the difference was treated as a subsidy. In the concurrent AD case, the Department computed normal value using, *inter alia*, a surrogate value for hot-rolled steel of US\$619 per metric ton.⁶⁸ This amount, according to GOC and GWSP, was not reduced by the purported domestic HRS subsidy ZZPC received, as it would have been in a market economy case (where the Department would have used the actual price paid by the market economy producer for its HRS). Thus, the GOC and GWSP claim, ZZPC is subject to CVDs to the extent it paid SOEs less than the world market price for HRS, and it is subject to ADs to the extent that its U.S. price for LWR pipe is insufficient to recover the unsubsidized, market-country surrogate value for HRS. Because the surrogate value used for HRS in the AD case was higher than the world market price benchmark for HRS used in the CVD case, the GOC and GWSP contend that the Department’s AD calculation fully captures any and all subsidy benefit conferred by the SOE’s provision of HRS.

⁶⁶ At page 17 of their case brief, the GOC and GWSP further explain that the same result occurs when normal value is based on constructed value.

⁶⁷ See Uranium from France AD Final Results, 69 FR at 46505.

⁶⁸ See ZZ Pipe Preliminary Calculation Memorandum at attachments 1 and 4.d.

The GOC and GWSP further cite to The Law and Economics of Simultaneous Countervailing Duty and Anti-dumping Proceedings,⁶⁹ to explain the price effects of export and domestic subsidies, the interrelationship of AD and CVD remedies for both types of subsidies, and in market economy and NME cases.

To address the double remedy issue, the GOC and GWSP contend that the Department should terminate this CVD investigation. Alternatively, the Department must adjust its antidumping calculations not only for the amount of any export subsidies, but also for the amount of any domestic subsidies.

Petitioners did not address this issue.

Department's Position:

The Department has previously addressed the double counting arguments raised by the GOC and GWSP in the antidumping investigations of coated free sheet paper and circular welded pipe from the PRC.⁷⁰ The GOC and GWSP have not cited to any statutory authority that would allow us to terminate this countervailing duty investigation to avoid double counting and the CVD law provides no authority to make an adjustment to the CVD calculations to prevent double counting. If any adjustment to avoid a double remedy is possible, it would only be in the context of an antidumping investigation and no party raised this claim in the companion antidumping investigation of LWR.

Comment 3: Requirement to Provide Evidence of Lower Prices

Citing the positions taken by the Department CFS from the PRC Final LTFV Determination⁷¹ and Tires from PRC Preliminary LTFV Determination⁷² regarding double counting, the GOC and GWSP argue that the Department has imposed false burdens of proof on respondents that do not exist in the law and are flatly contradicted by the Department's analysis in Uranium from France Final AD Results.⁷³

According to the GOC and GWSP, the issue is not whether or to what extent domestic subsidies lower prices. Thus, they claim, there is no basis for the Department to require evidence of that effect. Instead, the AD and CVD laws presume that the subsidy allows the foreign seller to

⁶⁹ See Brian D. Kelly, The Law and Economics of Simultaneous Countervailing Duty and Anti-dumping Proceedings, 3 Global Trade and Customs Journal, Issue 1 at 41 (2008). See also, GAO, US-CHINA TRADE: Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties, GAO-05-474 at 4, 28, 48 (June 2005).

⁷⁰ See Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007) ("CFS from the PRC Final LTFV Determination") and accompanying Issues and Decision Memorandum at Comment 2; see also CWP from the PRC Issues and Decision Memorandum at Comment 6.

⁷¹ See CFS from the PRC Final LTFV Determination Issues and Decision Memorandum at Comment 2.

⁷² See Certain New Pneumatic Off-The-Road Tires From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 9278, 9287 (Feb. 20, 2008) ("Tires from PRC Preliminary LTFV Determination").

⁷³ See Uranium From France AD Final Results, 69 FR at 46505.

lower prices in both markets by the amount of the subsidy with the result that no dumping margin is created by the subsidy. However, the GOC and GWSP contend, there is no basis for presuming that the domestic subsidy does not create a dumping margin in an NME case.

The GOC and GWSP argue that the Department has previously taken steps to prevent duplicative remedies without requiring any specific evidence. These parties point to SSWR from Korea and Welded Pipe from Thailand as instances where the Department refused to collect a double remedy in the form of section 201 duties and AD duties⁷⁴ and note that the Federal Circuit upheld the Department without requiring any more than a conceptual depiction of the double counting problem.⁷⁵ They further point to Uranium from France AD Final Results⁷⁶ where the Department rejected arguments that CVD duties should be treated as a cost in AD cases. According to the GOC and GWSP, the Department's conclusion in Uranium from France AD Final Results⁷⁷ ("domestic subsidies are assumed not to affect dumping margins, because they lower prices in both the U.S. and the domestic market of the exporting country equally") cannot be reconciled with the Department's statement in CFS from PRC Final LTFV Determination⁷⁸ ("we find the assertion that the AD law embodies the presumption that domestic subsidies automatically lower {domestic and export} prices, pro rata, to be baseless").

The GOC and GWSP also argue that the Department's refusal to address the double counting problem – because its existence had not been demonstrated with evidence - fails for legal reasons. First, to the extent that the Department believes that this is a factual matter, the Department failed to investigate the issue, according to the GOC and GWSP. The GOC and GWSP argue that AD and CVD investigations are investigative in nature, not adjudicatory, and that respondents have no burden of proof to establish double counting any more than petitioners have a burden to establish the absence of double counting.⁷⁹

Second, the GOC and GWSP believe the Department has created a rebuttable presumption that double counting does not exist, but has done so without providing the required advance notice to the parties in the current CVD and AD cases and without identifying the evidence that would be needed to rebut the presumption or providing the opportunity to present that evidence.⁸⁰

⁷⁴ See Stainless Steel Wire Rod from the Republic of Korea: Final Results of Administrative Antidumping Review, 69 FR 19153, 19161 (Apr. 12, 2004) ("SSWR from Korea"); see also Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 69 FR 61649 (October 20, 2004) ("Welded Pipe from Thailand") and accompanying Issues and Decision Memorandum at pages 3-4.

⁷⁵ See Wheatland Tube Co. v. United States, 495 F.3d 1355, 1363 (Fed. Cir. 2007).

⁷⁶ See Uranium from France AD Final Results, 69 FR at 46506. See also U.S. Steel Group v. United States, 15 F. Supp. 2d 900 (CIT 1998).

⁷⁷ Id.

⁷⁸ See CFS from PRC Final LTFV Determination and accompanying Issues and Decision Memorandum at Comment 2.

⁷⁹ See Freeport Minerals Co. v. United States, 776 F.2d 1029, 1034 (Fed. Cir. 1995); Timken Co. v. United States, 166 F. Supp. 2d 608, 629-630 (CIT 2001); Wieland-Werke AG v. United States, 4 F. Supp. 2d 1207, 1212 (CIT 1998); Rhone-Poulenc, Inc. v. United States, 927 F. Supp. 451, 456 (CIT 1996).

⁸⁰ See Transcom, Inc. v. United States, 294 F. 3d 1371, 1382 (Fed. Cir. 2002); British Steel plc v. United States, 879 F. Supp. 1254, 1316-17 (CIT 1995) (affirmed in part sub nom LTV Steel Co. Inc. v. United States, 174 F.3d 1359 (Fed. Cir. 1999)).

Third, the GOC and GWSP contend that the Department lacks any factual or evidentiary basis for the presumption. As argued above, economic theory and the structure of the AD statute as recognized by the Department in Uranium from France AD Final Results both recognize that the expected effect of a domestic subsidy is to reduce U.S. price, but the Department has impermissibly presumed the converse. The GOC and GWSP acknowledge the Department's power to create a presumption but cannot do so here because there is no economic or rational basis to presume that any domestic subsidy did not affect that producer's U.S. price and did not thereby create double counting.⁸¹

Fourth, the GOC and GWSP argue that the presumption the Department has created is adverse to respondents and was applied by the Department without any attempt to gather evidence to make this determination. Consequently, in their view, the Department is violating the statutory requirement that the Department cannot make adverse inferences unless a respondent fails to cooperate.⁸²

Finally, according to the GOC and GWSP, the Department is violating the due process rights of non-investigated respondents because its decision is irrebuttable. If both ZZPC and Lets Win are excluded from any order because their CVD rates are de minimis (as they were in the Preliminary Determination), the companies subject to the "all others" rate cannot possibly rebut the presumption of a 15.59 percent CVD rate because it is a fictional number, unequal to any actual number received by any producer. Hence, in the view of the GOC and GWSP, the presumption is effectively irrebuttable and, thus, impermissible.

Petitioners did not address this issue.

Department's Position:

As noted above in response to Comment 2, any claims regarding double counting are properly raised in an antidumping investigation. Therefore, this issue is not relevant in this CVD investigation.

Comment 4: Proposed Cutoff Date for Identifying Subsidies

The GOC and GWSP disagree with the Department's decision to identify and measure countervailable subsidies for China as of December 11, 2001, the date on which China joined the WTO because China's WTO accession was an external event, which does not ipso facto establish the legality of applying U.S. CVD law to China. The GOC and GWSP argue that the Department should use a date of January 1, 2005, to be consistent with the analysis in the

⁸¹ See NLRB v. Baptist Hosp. Inc., 442 U.S. 773, 787 (1979); United Scenic Artists, Local 829 v. NLRB, 762 F.2d 1027, 1034 (D.C. Cir. 1985); British Steel plc v. United States, 929 F. Supp. 426, 454-55 (CIT 1996); Sec'y of Labor v. Keystone Coal Mining Co., 151 F.3d 1096, 1100 – 01 (D.C. Cir. 1998) (quoting Chemical Mfrs. Ass'n v. Dep't of Transp., 105 F.3d 702, 705 (D.C. Cir. 1997) (quoting NLRB v. Curtin Matheson Scientific, Inc. 494 U.S. 775 (1990); and National Mining Ass'n v. Babbitt, 172 F.3d 906, 911 (D.C. Cir. 1999).

⁸² See Nippon Steel v. United States, 337 F.3d 1373, 1381 (Fed. Cir. 2003) and Dorbest v. United States, 462 F. Supp. 2d 1262, 1317 (CIT 2006).

Georgetown Steel Memorandum which purported to analyze economic and market conditions in present day China or at most, for the period of investigation in CFS from the PRC, which began on January 1, 2005. According to the GOC, there is no evidence or analysis to support an earlier date.

Petitioners did not address this issue.

Department's Position:

After careful consideration, we disagree with the GOC's and GWSP's argument that we should adopt a cut-off date of January 1, 2005, to be consistent with the analysis in the Georgetown Steel Memorandum or to be in alignment with the period of investigation for CFS from the PRC.

We find that it is appropriate and administratively desirable to establish a uniform date from which the Department will identify and measure subsidies in China for purposes of the CVD law, and have adopted December 11, 2001, the date on which China became a member of the WTO, as that date. We have selected this date because of the reforms in China's economy in the years leading up to its WTO accession and the linkage between those reforms and the China's WTO membership.⁸³ The changes in the China's economy that were brought about by those reforms permit the Department to determine whether countervailable subsidies were being bestowed on Chinese producers. For example, the GOC eliminated price controls on most products; since the 1990s, the GOC has allowed the development of a private industrial sector; and, in 1997, the GOC abolished the mandatory credit plan.⁸⁴ Additionally, the Accession Protocol contemplates the application of the CVD law to China. While the Accession Protocol, in itself, would not preclude application of the CVD law prior to the date of accession, the Protocol's language in Article 15(b) regarding benchmarks for measuring subsidies and China's assumption of obligations with respect to subsidies provide support for the notion that China's economy had reached the stage where subsidies and disciplines on subsidies (e.g., countervailing duties) were meaningful.

Therefore, for this final determination, we have selected the date of December 11, 2001, as the date from which we will measure countervailable subsidies in China.

Comment 5: Purchases of Hot-rolled Steel by Respondents

Petitioners contend that ZZ Pipe, Lets Win, and the GOC have obstructed the Department's investigation by not disclosing the mill origin of the respondent producers' HRS. Petitioners argue that Chinese pipe producers are pursuing a strategy of disclaiming HRS source information in an attempt to get out from under the Department's finding in CWP from the PRC Preliminary Determination⁸⁵ that the GOC is providing HRS for less than adequate remuneration through its

⁸³ See Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001), placed on the record in this investigation in the Memorandum to the File, entitled: Addition to the Proceeding Record (June 13, 2008).

⁸⁴ See Georgetown Steel Memo.

⁸⁵ 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

state-owned steel mills. Therefore, according to petitioners, the Department should find countervailable the GOC's provision of HRS through state-owned enterprises (SOEs), as it did in the Preliminary Determination, but should also apply adverse facts available for respondent company purchases from trading companies.

Regarding ZZ Pipe, Petitioners claim that the company provided the Department with "useless" information about purportedly privately held trading companies and as a result of ZZ Pipes's lack of cooperation, the Department relied on facts otherwise available in the Preliminary Determination to find that the GOC provided HRS to ZZ Pipe for less than adequate remuneration. Since then, the Department has learned of other SOE suppliers to ZZ Pipe. Moreover, according to petitioners, at verification, the Department learned that ZZ Pipe knows the sources of its HRS purchases because the producer's name is on every coil or strip the company purchased during the POI.⁸⁶

Regarding Lets Win, petitioners point out that the Department relied on that respondent's claim that it purchased HRS only from private suppliers for the Preliminary Determination, although the Department did acknowledge petitioners' position that Lets Win should have mill certificates for the HRS it purchased. For this final determination, the Department has new information, according to petitioners. Specifically, Lets Win has acknowledged that it can learn the identity of its HRS suppliers by requesting the mill certificates from its trading company suppliers. However, Lets Win has not provided the Department with the information needed to determine the share of Lets Win's HRS purchased from private suppliers.

Petitioners raise additional comments about particular suppliers that we cannot summarize publicly. Therefore, we have addressed these comments in Comment A of the BPI Memorandum.⁸⁷

Petitioners argue that ZZ Pipe's failure to provide information was made worse by the GOC's lack of cooperation in disclosing the percentage of HRS producers in China that are state-owned. Similarly, Lets Win refused to provide the Department with the mill certificates the company obtained, according to petitioners. Given the extreme scarcity of private steel mills in China, petitioners argue that it is implausible that Lets Win could have purchased the quantities at issue from privately owned mills. Therefore, petitioners contend, for purchases that ZZ Pipe and Lets Win claim are from private mills and for which no mill certificate was presented, the Department should apply an adverse inference. In support, petitioners point to CORE from Korea,⁸⁸ in which the Department applied AFA because the respondent did not provide mill certificates. Here, in petitioners' view, the Department faces the identical situation and, consequently, should assume that all unaccounted for purchases were from SOEs. Alternatively, the Department

Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 72 FR 63875, 63882-3 (November 13, 2007) (CWP from the PRC Preliminary Determination).

⁸⁶ See Memorandum from Damian Felton to Susan Kuhbach Regarding (ZZ Pipe) Verification Report, at page 4 (February 27, 2008) ("ZZ Pipe Verification Report").

⁸⁷ See BPI Memorandum, at Comment A.

⁸⁸ See Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review, 61 FR 18547 (Apr. 26, 1996) ("CORE from Korea"). The Department's decision in this case was upheld in AK Steel Corp. v. United States, 21 CIT 1265, 1267 (1997) ("AK Steel").

should use record information on the percentage of Chinese HRS producers that are SOEs to determine what percentage of the unaccounted-for HRS purchases by ZZ Pipe and Lets Win were from SOEs.

Petitioners conclude by arguing that if purchases from trading companies are not appropriately countervailed, then respondents will be able to conceal purchases from SOEs in future investigations.

The GOC and GWSP contest Petitioners' argument that respondents should receive an AFA rate because they did not identify all producers of HRS purchased through trading companies. In support, they point to section 776(b) of the Act which states that the Department may apply AFA only where it finds a party has failed to cooperate by not acting to the best of its ability.⁸⁹ In this case, the GOC and GWSP claim that this condition has not been met because the Department never asked the respondent companies to identify the suppliers of their suppliers, or whether such upstream suppliers were private or state-owned. Absent such a request, according to the GOC and GWSP, the respondent companies cannot be viewed as non-compliant. Moreover, these parties argue that the Department's questions were properly framed to address the subsidy as alleged by the Petitioners, *i.e.*, the provision of HRS by SOEs. According to the GOC and GWSP, Petitioners never alleged that HRS was provided at less than adequate remuneration to upstream input suppliers.

The GOC and GWSP also argue that there is no rule stating that a respondent that cannot supply mill certificates at verification will be subject to AFA. Contrary to Petitioners' assertions, the GOC and GWSP contend that AK Steel merely stands for the proposition that AFA can be applied when information submitted in a response cannot be verified. In the instant case, the GOC and GWSP claim, no information in the responses required the mill certificates for purposes of verification, and there is no indication that ZZ Pipe failed to provide such mill certificates.⁹⁰

Finally, the GOC and GWSP assert that there is no record evidence to support Petitioners' claim of additional SOE suppliers to ZZ Pipe. Business registration forms were supplied for all of these companies establishing that they are private, foreign or collectively owned. Accordingly, the GOC and GWSP contend, the Department should continue to treat these suppliers as private companies.

Lets Win disputes petitioners' position that AFA should be applied. Contrary to petitioners' mischaracterizations of the record evidence, Lets Win claims that the Department verified that the company purchased all of its HRS from privately owned trading companies during the POI and that the company explained fully why it does not consistently receive mill certificates. Moreover, in an attempt to comply with the Department's inquiry, Lets Win requested its

⁸⁹ The GOC and GWSP also point to Ta Chen Stainless Steel Pipe v. United States, No. 97-008-01344, 1999 WL 1001194 at 13-14 (CIT Oct. 28, 1999); NSK Ltd. v. United States, 910 F. Supp. 663, 671 (CIT 1995); Olympic Adhesives, Inv. v. United States, 899 F.2d 1565, 1572-75 (Fed. Cir. 1990); and Queen's Flowers de Colombia v. United States, 981 F. Supp. 617, 628 (CIT 1997).

⁹⁰ The GOC and GWSP also point to record evidence that ZZPC does not maintain information that would allow HRS to be traced back to the producer. See ZZ Pipe Verification Report at page 4.

suppliers to provide mill certificates and the Department verified the mill certificates that Lets Win received with its purchases of HRS in 2006. In these circumstances, Lets Win argues that AFA should not be applied.

Lets Win further argues that petitioners have never alleged that HRS was provided at less than adequate remuneration to upstream input suppliers of the producer respondents. Yet, in asking the Department to apply AFA, petitioners are in effect improperly expanding the scope of the investigation to include purchases from trading companies that have never been alleged to be state-owned. According to Lets Win, the Department has no authority to countervail purchases made at arm's length between two private companies, and that doing so is an illegal application of the U.S. CVD law.

Department's Position:

As explained above in the "Analysis of Programs" section for Hot-rolled Steel for Less Than Adequate Remuneration, we are now finding purchases of HRS from trading companies that purchase HRS from state-owned producers to be countervailable. However, we disagree with Petitioners' contention that we should apply AFA to ZZ Pipe and Lets Win because they did not disclose the amount of HRS purchased from trading company suppliers that was produced by SOEs. Rather, we agree with the GOC and GWSP that we never asked the respondent companies to report these amounts. Thus, the respondents have not failed to provide requested information and no adverse inference is warranted. However, as noted above, should this investigation result in a countervailing duty order, we will require this information from respondents in any subsequent administrative reviews.

Similarly, we do not share Petitioners' position that because the Department observed at verification producer names on the HRS purchased by ZZ Pipe, that ZZ Pipe necessarily recorded such information for purchases of HRS during the POI and, thus, withheld information from the Department. ZZ Pipe explained that HRS is inspected once it arrives at the company and product specifications (i.e., the width, thickness, and weight) are recorded but producer information is not necessarily recorded.⁹¹ Consequently, we do not find that ZZ Pipe withheld information.

Finally, we agree with the GOC and GWSP that AK Steel speaks to applying AFA only when information submitted in a response cannot be verified. In the instant investigation, we did not ask respondents to provide the amounts of steel purchased through trading companies from SOE producers and, thus, we do not reach the issue of whether something can or cannot be verified.

Nonetheless, in light of our decision that purchases of SOE-produced HRS from trading companies provide a countervailable subsidy, we need to quantify the amount of such HRS. Section 776(a)(1) of the Act states that where needed information is not available on the record, the Department shall use facts otherwise available. As explained above, we are not applying AFA to the respondent companies for their purchases through trading companies because we did not ask them to report such information. Instead, we have reviewed other non-adverse

⁹¹ See ZZ Pipe Verification Report at page 4.

information on the record to use as a basis for determining the amount of HRS purchased from trading companies that was produced by SOEs. As noted above in the “Analysis of Programs” section for Hot-rolled Steel for Less Than Adequate Remuneration, we are relying on the GOC-reported SOE production figure for CISA members (i.e., 70.81 percent). Because the GOC supplied this information, we do not believe that using this amount is adverse to the respondent companies.

Regarding Petitioners’ contention that the ownership structure of certain producer suppliers demonstrates that those producer-suppliers are SOEs, we agree in part. Because the identity of these suppliers is proprietary, we have addressed this information in Comment A of the BPI Memorandum. However, as a general matter, the Department has previously determined that the governing body of a village (i.e., a village committee) is a government entity such that ownership by a village constitutes government ownership of a company. Specifically, in Brake Rotors from the PRC, the Department examined the February 25, 1999, Organic Law on the Village Committee of the PRC (“Village Committee Law”) and determined that the Chinese government can come in different forms from national to regional to local and that the Panjacun Village Committee was a form of local government in the PRC.⁹² In that determination the Department stated that “government control of companies in non-market economies, such as the PRC, is not limited strictly to central government control, but can also include levels of sub-national government, including provincial, township or village government.”⁹³

In light of this, the Department has set up a rebuttable presumption that companies owned by village committees should be treated as government authorities. Consequently, where respondents have not provided information on the record to indicate that companies owned by village committees are not state controlled, we find those companies should also be classified as an “authority.”⁹⁴

Finally, regarding Lets Win’s argument that the Petitioners never alleged that upstream suppliers received HRS for LTAR, we do not believe that such an upstream allegation is necessary here. Instead, as noted above, a financial contribution is made to the trading company suppliers that purchase HRS, and a benefit is conferred on LWR producers that purchase that HRS for less than adequate remuneration.

Comment 6: Whether State-owned Hot-rolled Steel Suppliers are “Authorities”

The GOC and GWSP dispute the Department’s presumption in the Preliminary Determination that all SOEs are government entities for purposes of finding a financial contribution. The GOC and GWSP argue that not every government entity is an “authority” within the meaning of section 771(5)(B) of the Act, and the Department recognized this in the Preamble to its regulations where it stated that it expected to continue treating “most” government-owned

⁹² See Brake Rotors From the People’s Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review, 70 FR 69937 (November 18, 2005) (“Brake Rotors from the PRC”), and the accompanying Issues and Decision Memorandum at Comment 7.

⁹³ See id.

⁹⁴ See the BPI Memorandum at Comment A for the producer suppliers that are considered to be collectively owned and, thus, “authorities.”

companies as the government itself.⁹⁵ Moreover, citing DRAMS from Korea,⁹⁶ the GOC and GWSP claim that the Department has articulated a five-factor test to determine whether an entity is an “authority,” which includes investigation into a company’s: 1) government ownership; 2) the government’s presence on the entity’s board of directors; 3) the government’s control over the entity’s activities; 4) the entity’s pursuit of governmental policies or interests; and 5) whether the entity is created by statute. The GOC and GWSP argue that the degree of government ownership is a threshold consideration because an entity clearly cannot be an authority in the absence of significant government ownership but this factor has little further relevance, as the Department itself has found that some 100-percent government-owned companies should not be treated as government entities.⁹⁷ Instead, according to the GOC and GWSP, the real question under the approach followed in DRAMS from Korea is whether the entity exercises governmental authority.

The GOC and GWSP continue that, based on the record, Baosteel was the only SOE that supplied hot-rolled steel to either ZZPC or Lets Win. Although the record is thinner than it otherwise might be because the Department did not properly investigate the issue,⁹⁸ these parties argue that application of the five-factor test to Baosteel shows that Baosteel did not exercise any element of governmental authority and, thus, cannot be considered an “authority.” Addressing each of the factors, the GOC and GWSP claim that:⁹⁹

1. Baosteel had significant private ownership during the POI (27 percent).
2. Its board of directors apparently had eleven members, five of whom are independent, while the remaining members are officers of the company. Baosteel’s board of supervisors is chaired by the partner of a law firm and the remaining members are senior officials from the company. There is no evidence that any director or supervisor is a government official, and civil servants are prohibited from serving in a management or board position by Article 53 of the Civil Service Law.
3. There is no evidence of government control over Baosteel, including pricing or production decisions.
4. There is no evidence that Baosteel pursues governmental interests. It is publicly listed with fiduciary responsibilities under the PRC Company Law to its substantial private shareholders. The fact that private ownership of the company has been increasing shows that these investors view Baosteel as a worthwhile investment alternative to purely private companies.

⁹⁵ See CVD Preamble, 63 FR at 65402.

⁹⁶ See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003), and accompanying Issues and Decision Memorandum at pages 16-17 (“DRAMS from Korea”). See also Pure Magnesium and Alloy Magnesium from Canada: Final Affirmative Countervailing Duty Determinations, 57 FR 30946, 30954 (July 13, 1992) (“Magnesium from Canada”); Certain Fresh Cut Flowers from the Netherlands: Final Affirmative Countervailing Duty Determination, 52 FR 3301, 3302, 3310 (Feb. 3, 1987); and Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Affirmative Countervailing Duty Determination, 64 FR 30636, 30642-43 (June 8, 1999).

⁹⁷ See DRAMS from Korea Issues and Decision Memorandum at page 61.

⁹⁸ As argued by these parties in connection with double remedies (see Comment 3, above), the Department may not presume an outcome without providing notice that it will employ such a presumption and without providing an opportunity for parties to rebut the presumption.

⁹⁹ Citations to the record are provided at the GOC and GWSP’s Case Brief (April 30, 2008) at pp. 36-38.

5. Baosteel operates under the PRC Company Law and does not exist by virtue of any special statute.

Based on this, the GOC and GWSP conclude that the Department should determine that Baosteel operates as an entity distinct from the GOC and that there is no financial contribution through Baosteel's provision of HRS.

Petitioners dispute the GOC's and GWSP's claim that Baosteel is the only SOE supplier of HRS to the respondent companies because the claim fails to acknowledge that there is no difference between state-owned and collectively-owned enterprises for purposes of finding a financial contribution. Although the GOC has asserted that the Department ruled otherwise,¹⁰⁰ the Department did not group collectively-owned enterprises with privately-owned enterprises for purposes of the financial contribution analysis in CWP from the PRC. Petitioners contend that collective ownership is another mechanism for state-ownership of the economy, and point to the GOC's website which contrasts the current policy of reform to the former, "exclusively public-owned economy," which included only collectively owned and state-owned enterprises.¹⁰¹ Thus, Petitioners urge the Department to treat respondent companies' purchases of HRS from collectively owned producers as having satisfied the financial contribution requirement.

Department's Position:

First, the GOC has claimed that Baosteel is the only SOE supplier to the respondents. Because the Baosteel division in question is a trading company,¹⁰² the GOC, by inference, is claiming that no producer-suppliers to respondents are SOEs. We disagree with the GOC and find that record evidence indicates that other producer-suppliers to respondents are SOEs. Because the identity of these other suppliers is proprietary, we have addressed this information in Comment A of the BPI Memorandum.

Under the GOC's argument, the Department must make a determination of whether these government-owned HRS suppliers (other than Baosteel) are "authorities" within the meaning of section 771(5)(B)(i) of the Act by performing the five-factor test on each supplier. While we agree that the Department has used such a test in some prior cases,¹⁰³ there is insufficient evidence on the record of this investigation to do so with respect to these suppliers. Beyond the levels of government ownership for these companies, the GOC has not provided the information

¹⁰⁰ See Letter from Arnold & Porter LLP on behalf of Bureau of Fair Trade for Imports & Exports of the Ministry of Commerce of the People's Republic of China ("BOFT") to Secretary of Commerce (November 13, 2007).

¹⁰¹ Information from the GOC's website, China in Brief 2007, Diverse Economic Elements, available at <http://www.china.org.cn/english/features/China2007/238571.htm> (May 2, 2008), was included in Petitioners' Rebuttal Brief (May 5, 2008) at Exhibit 1.

¹⁰² See the GOC and GWSP's Case Brief (April 30, 2008) at page 32.

¹⁰³ See, e.g., DRAMS from Korea Issues and Decision Memorandum at pages 16-17, and Magnesium from Canada, 57 FR at 30954. We note, however, that in other cases, we have not applied this test where a government owned company provided a financial contribution to the respondent. See, e.g., Notice of Preliminary Results of CVD Review: Certain Hot Rolled Carbon Steel Flat Products from India, 71 FR 1512, 1516 (January 10, 2006) (unchanged in final), where the Department countervailed the provision of iron ore from a mostly government-owned mine without any reference to the five-factor test.

that is needed to conduct the analysis. Therefore, for purposes of this final determination, we have applied a rule of majority ownership to determine whether a government-owned HRS supplier is an “authority” within the meaning of section 771(5)(B)(i) of the Act. Specifically, where a HRS producer-supplier is majority-owned by a government entity, we are treating that supplier as an “authority.” We will reconsider the necessity and feasibility of applying the five-factor test during an administrative review, should this investigation result in a countervailing duty order.

Regarding Baosteel, although we make no finding at this time whether we are required to apply the five-factor test in these circumstances, we nevertheless address the GOC’s comments regarding Baosteel as follows. The GOC argues that information on the record is sufficient to allow the Department to conduct the five-factor test and find that Baosteel is not an “authority.” Although the GOC has cited record information related to each of the five factors, we find that the information is not sufficient for us to conclude that Baosteel is not an “authority.” Because Baosteel is majority-owned by the government, the first factor clearly supports the argument that Baosteel is an “authority.” As we explain below, however, we find that the information presented by the GOC on the other four factors is not sufficient for us to conclude that Baosteel is not an “authority.”

- 1) **Board of Directors:** The GOC contends that there is no evidence that any member of Baosteel’s Board of Directors is a government official. As support, the GOC notes that five members of the Board are independent directors that hold positions in consulting, academia, and banking. Regarding the six remaining directors, who make up the majority of the Board’s membership, the GOC only states that these members “are company directors – officers of the company.” The GOC, however, has not addressed information in the 2006 Annual Report indicating that one of these members during the POI – Mr. Wu Yaowen – “has been trusted by the State-owned Assets Supervision and Administration Commission of the State Council as the outside director of Baosteel Group as well as director of the Company.”¹⁰⁴ We do not have any information on the remaining five internal directors of the company. Furthermore, the record does not even demonstrate conclusively that Baosteel’s independent board members have no ties to the government. For example, the 2005 Annual Report indicates that at least one independent director, Mr. Gao Shangquan, was also a director of state-owned China Minmetals Corp. Ltd.¹⁰⁵ Therefore, the role of the government in Baosteel’s board of directors is inconclusive, but the record suggests that members of the board during the POI may have had ties to the government.

¹⁰⁴ See Baosteel’s 2006 Annual Report, included in the letter from the GOC to Secretary of Commerce Regarding Comments in Advance of Preliminary Determination at Annex 1, page 12 (“2006 Annual Report”).

¹⁰⁵ See The 2006 Annual Report at page 11 indicates that this director’s term ended as of the 2005 Annual Shareholders’ Meeting on May 17, 2006.

- 2) **Government Control Over Activities:** The GOC argues that there is no evidence of government control over Baosteel's activities, including pricing or production decisions. As evidence, the GOC contends that no governmental authority regulates steel producers or sets prices. The GOC, however, has cited no information specific to the activities of Baosteel to support its claim.
- 3) **Pursuit of Government Policies or Interests:** The GOC argues that Baosteel does not pursue government interests because it has a duty under PRC law to protect shareholders and to maximize profitability. These facts alone, however, do not demonstrate that Baosteel does not pursue government interests. For example, Baosteel's 2005 Annual Report states, "China has strengthened macroeconomic control over steel industry since 2004 and issued the first *Steel Industry Development Policies* in 2005...The steel industry will undergo strategic restructuring, which aims to increase industry concentration led by major enterprise groups."¹⁰⁶ The 2005 Annual Report at page 28 also states that one of the "Major tasks" of Baosteel's 2006 Business Plan is to "Speed up the implementation of the 11th Five-Year projects and new projects' efforts to meet output, quality, and efficiency standards." Furthermore, the 2006 Annual Report at page 26 also refers to China's "steel industry policy" and states, "The state's relevant policy and measures provide support to domestic regional market layout and adjustment, offering strategic opportunities for the Company to achieve leapfrogging development." Finally, the 2006 Annual Report at page 7 states that Baosteel Group Corporation, the controlling shareholder, "mainly deals with state-owned assets within the authorized scope set by the State Council." Although these are general statements in Baosteel's annual reports, they suggest that the GOC may pursue government policies and interests through its ownership of Baosteel.
- 4) **Creation by Statute:** The GOC argues that Baosteel operates under the same PRC Company law as private enterprises. This information, however, is not sufficient to determine that Baosteel is not created by statute. The GOC has cited no information on Baosteel's ultimate controlling shareholder, the State-owned Assets Supervision and Administration Commission of the State Council.

We find that the information on the record is not sufficient to conclude that Baosteel is not an "authority." The GOC has presented general information on each of the five factors, which is contradicted by other general information on the record. Therefore, for this final determination, we have used the same rule of majority ownership applied to other producer-suppliers to determine whether Baosteel is an "authority" within the meaning of section 771(5)(B)(i).

Because we are finding that certain producer-suppliers are "authorities," we do not reach the issue of whether they are private entities entrusted or directed by the GOC to provide a financial contribution to the respondents.

¹⁰⁶ See Baosteel's 2005 Annual Report at page 25, provided in Volume 2, Attachment 2, Exhibit 80 of the Petition ("2005 Annual Report").

Comment 7: Hot-rolled Steel Benchmark Issues

Citing section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(2)(i), the GOC and GWSP state that the Department is required to use in-country prices as its benchmark for determining whether the government is providing HRS for less than adequate remuneration unless such prices are significantly distorted. In this case, they contend, the record evidence proves that SOEs function as market participants and private transaction prices for HRS in the PRC are not significantly distorted.

The threshold issue, according to the GOC and GWSP is to define the good or service being provided by the government. Defining the good (and the market for that good) overly broadly, they claim, will sweep in irrelevant products and skew the analysis of government involvement and the pricing data selected as the benchmark. Although petitioners broadly alleged that HRS was being provided to the respondents for less than adequate remuneration, the GOC and GWSP contend that the evidence shows the HRS provided by SOEs was narrow strip (*i.e.*, hot rolled coils < 600 mm wide). These parties point out that Lets Win purchased no HRS for production of the subject merchandise and, in any case, did not purchase any HRS from SOEs. ZZPC purchased only a *de minimis* amount of wide strip (*i.e.*, hot rolled coil > 600 mm) and it is not clear whether that wide strip was sourced from an SOE. Thus, not only was narrow strip the only hot-rolled input provided by an SOE, according to the GOC and GWSP, it was also the predominant hot-rolled input used by the producer respondents. Accordingly, the GOC and GWSP argue that the only benefit at issue is whether narrow strip steel was purchased for less than adequate remuneration.¹⁰⁷

The GOC and GWSP claim the narrow strip produced in China is a distinct product, with distinct production processes, physical characteristics, uses and pricing. Within the narrow strip industry, they assert, government-owned companies account for only 25 percent of production. Citing the CVD Preamble,¹⁰⁸ the GOC and GWSP contend that this low level of government ownership does not meet the threshold for establishing distortion.

If the Department does not agree that the narrow strip market is the appropriate market to analyze, the GOC and GWSP contend that the Department must define the alternative relevant product and market. In its questionnaires, according to the GOC and GWSP, the Department asked about all HRS products, but this includes HRS products that cannot be used to produce subject merchandise, such as products over 4mm in thickness. The parties further claim that the GOC provided all data available to it regarding the extent of government ownership of producers of all HRS products for 2005 and updated that information for 2006 at verification. This information shows that in 2006, SOEs controlled somewhere between 44 – 70 percent of domestic Chinese HRS production, according to the GOC and GWSP, and that this level is

¹⁰⁷ In a footnote to their Case Brief, the GOC and GWSP seek to distinguish the issue they have posed here from the issue addressed by the Department in Comment 2 of Issues and Decision Memorandum from CLPP from Indonesia. In CLPP from Indonesia, the Department was dealing with an attribution question, whereas there is no attribution question in the instant proceeding. Instead, according to the GOC and GWSP, whether or not other HRS products could be used to produce LWR is irrelevant because only narrow strip was provided to the respondent producers. See GOC's and GWSP's Case Brief at foot note 24.

¹⁰⁸ See CVD Preamble, 63 FR at 65377.

consistent with information submitted in the petition that SOEs accounted for 56.8 percent of total steel production capacity in 2004.¹⁰⁹

The GOC and GWSP urge the Department to look beyond government ownership and consider the nature and structure of the market to assess whether government involvement significantly distorts prices. In particular, the GOC and GWSP argue that certain aspects of the HRS market in China demonstrate that government involvement does not distort market prices. First, according to the GOC and GWSP, there is no single government-set price. Instead, every producer is free to set its own prices, which distinguishes this case from prior cases such as Lumber from Canada Investigation,¹¹⁰ where provincial governments set prices for stumpage administratively and the Department found that the prices were set to accomplish economic policy goals rather than to obtain a fair market value. The GOC and GWSP claim that SOEs compete with one another, eliminating the market power a high degree of state ownership might give rise to if concentrated in a single producer.

Second, the GOC and GWSP claim that the Chinese HRS market is highly fragmented. The 44 large-and medium-sized steel producers that reported their production data to CISA, together accounted for only 52 percent of HRS production in China; the An Ben Steel Group, the single largest producer, only accounted for 9.6 percent; and the five largest producers combined accounted for less than 30 percent of total production and one of the largest five producers is privately-owned.¹¹¹ The GOC and GWSP contend that these facts confirm there is no entity with the market power to set prices for the industry.

Third, the GOC and GWSP contend that major SOEs that produce HRS are publicly-listed corporations, with a significant and increasing degree of private ownership,¹¹² and that they operate under the same PRC laws as private corporations. Consequently, these companies have a fiduciary duty to protect their shareholders and to maximize profits. The GOC and GWSP point out that private investment in these companies would not be increasing if they were subsidizing their customers through low prices and earning below-market returns.

Fourth, the GOC and GWSP use Baosteel as an example to illustrate that SOEs are profitable. Baosteel reported a profit of 28 percent, or RMB 19 billion in its 2006 annual report and its return on equity was 15.87 percent.¹¹³ The GOC and GWSP contend that in light of this profitability, Baosteel is unlikely to be selling for less than adequate remuneration.

¹⁰⁹ See China's Trade Policy Review, submitted in the Petition (July 6, 2007), Vol. 3, Exhibit 7 or 16, p.191.

¹¹⁰ See Lumber from Canada Investigation accompanying Issues and Decision Memorandum.

¹¹¹ See GOC National VR at Exhibit A-2; see also Congressional Research Service, Steel: Price and Policy Issues (August 31, 2006) at page 21.

¹¹² The GOC and GWSP provide citations to the record support their claims regarding the public listings of these companies at footnote 33 of their Case Brief.

¹¹³ The GOC and GWSP provide citations to the record support their claims regarding Baosteel's profitability and return on equity at pp. 47-48 of their Case Brief.

Fifth, the GOC and GWSP point out that private ownership is growing,¹¹⁴ and argue that if SOEs were distorting the market by charging less than market level prices, private producers would not be entering the market.

Sixth, according to the GOC and GWSP, the available HRS pricing data in China indicate that prices reflect local supply and demand conditions. Specifically, these data show that prices vary by producer, by month, by region, and with no clear pattern of higher or lower prices being charged by private or SOE producers.¹¹⁵ The GOC and GWSP contend that this evidence suggests a fully functioning market and not one distorted by state ownership.

If the Department nonetheless rejects actual in-country prices as the benchmark for determining whether HRS has been provided for less than adequate remuneration, the GOC and GWSP argue that the Department should not use narrow strip import prices or commodity HRS composite prices such as those reported in the *Steel Benchmarker*. According to the GOC and GWSP, these products are not comparable to the narrow strip produced in China and, as the Department made clear in Lumber from Canada – First AR Results,¹¹⁶ it cannot use world-market or cross-border benchmarks for broad classes of goods, but instead must limit its comparison to goods comparable to those provided by the government. As the GOC and GWSP have argued, the narrow strip produced in China is produced from billet (not slab), using relatively low quality alloys. In contrast, as indicated by information in the petition,¹¹⁷ steel imports into China are concentrated in high value-added products. Therefore, the GOC and GWSP contend, import prices and *Steel Benchmarker* prices are not suitable as benchmarks for the narrow strip available in China.

Instead, the GOC and GWSP argue that the Department should rely on 19 CFR 351.511(a)(2)(iii) and determine whether the prices paid by respondent producers are “consistent with market principles.” In this regard, the GOC and GWSP claim that Baosteel’s sales of HRS were priced consistently with market principles. Citing the CVD Preamble, Wire Rod from Trinidad and Tobago 2002, and Wire Rod from Trinidad and Tobago 1997,¹¹⁸ the GOC and GWSP point out that the Department will consider the government provider’s price-setting philosophy, costs (including rate of return), or possible price discrimination in analyzing consistency with market principles. Based on record evidence, the GOC and GWSP claim that Baosteel’s prices are fully consistent with market principles.¹¹⁹

¹¹⁴ The GOC and GWSP provide citations to the record support their claims regarding increasing investment at page 48 of their Case Brief.

¹¹⁵ The GOC and GWSP provide citations to the record support their claims regarding prices at pp. 48 - 49 of their Case Brief.

¹¹⁶ See Lumber from Canada – First AR Results and the accompanying Issues and Decision Memorandum regarding benchmark discussion of comparability.

¹¹⁷ See China’s Trade Policy Review, submitted at Petition, Vol. 3, Exhibit 7 or 16, p.191.

¹¹⁸ See CVD Preamble, 63 FR at 65378; Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 67 FR 55810 (August 23, 2002) and accompanying Issues and Decision Memorandum at Comment 6 (“Wire Rod from Trinidad and Tobago 2002”); and Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago, 62 FR 54960 (October 22, 1997) (“Wire Rod from Trinidad and Tobago 1997”).

¹¹⁹ The GOC and GWSP provide citations to the record to support their claims regarding Baosteel’s profitability, return and prices at pages 51-52 of their Case Brief.

Petitioners urge the Department to continue to reject Chinese prices as a benchmark because the GOC has not cooperated to the best of its ability to provide information about the extent of government involvement in the HRS market. As evidence submitted by the petitioners makes clear, however, there is not a usable market-determined price for HRS in China. Consequently, petitioners urge the Department to rely on a world market price, *i.e.*, the *Steel Benchmark* price, in accordance with 19 CFR 351.511(a)(2)(ii).

Petitioners also reject the GOC's and GWSP's arguments that the Department's analysis should focus on the narrow-strip industry. Petitioners argue that the difference between sheet and narrow-strip steel is insignificant, and this difference does not create a separate industry. Petitioners further argue that the government involvement that distorts prices for sheet necessarily also distorts the prices for strip, a narrower version of the same product.

Department's Position:

We have addressed comments by parties separately.

Relevant Input for the Production of LWR (GOC and GWSP)

The GOC and GWSP argue that the Department will distort its analysis if it defines the market too broadly. However, we find that limiting our analysis to narrow strip as the relevant HRS input in this investigation distorts our analysis in the opposite way – it defines the relevant market and industry too narrowly.

First, the GOC has argued that SOEs only provided narrow strip to LWR producers during the POI. As explained in the Analysis of Programs section above, however, we find that the GOC made a financial contribution (provision of a good) to trading companies that purchased HRS from SOE producers during the POI. Because specific purchase information is business proprietary, we have addressed the information in Comment B of the BPI Memorandum. The level of government involvement in the HRS industry in China indicates that SOEs produced much of the HRS purchased through trading companies. Therefore, we disagree with the GOC's contention that record evidence demonstrates that the only HRS product provided by SOEs to LWR producers was narrow strip.

We have addressed the GOC and GWSP's contention that Lets Win only used cold-rolled steel to produce LWR and did not purchase HRS from any state-owned supplier in Comment 8, below.

We also do not find that there are any relevant distinctions between strip under 600 mm in width and strip 600 mm or over that would lead us to conclude that producers in each category constitute separate industries. The GOC's submitted price information shows that strip 600 mm or wider is sold in the same steel grades as strip less than 600 mm in width.¹²⁰ Furthermore, Lets

¹²⁰ See letter from the GOC to the Secretary of Commerce Regarding Original Questionnaire Response at Exhibit 106 (September 28, 2007).

Win stated that it uses a cutting machine to cut steel strip into specified widths,¹²¹ meaning that it can cut wider coils into narrower lengths. Therefore, taken as a whole, this record evidence indicates that it would be inappropriate to find that producers of strip below 600 mm in width constitute a separate industry for purposes of this investigation.

Benchmark (GOC and GWSP, and Petitioners)

The Department's regulation at 19 CFR 351.511(a)(2) sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) ("tier one"); (2) world market prices that would be available to purchasers in the country under investigation ("tier two"); or (3) an assessment of whether the government price is consistent with market principles ("tier three").

As we have explained in Lumber from Canada Investigation, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.¹²² This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. In the Preliminary Determination, we did not rely on market-determined prices from actual transactions within China (i.e., tier one) for determining what constitutes adequate remuneration from government-provided HRS, because of the GOC's failure to provide information on the HRS industry as a whole.¹²³ Instead, relying on AFA, we used world market prices (i.e., tier two benchmark) from *Steel Benchmark* for hot-rolled band (i.e., HRS that is 5 mm thick x 1200-1500mm wide) that would be available to purchasers in China.

Subsequent to the Preliminary Determination and in response to requests by the Department, the GOC provided some information on the ownership structure of the HRS industry in China.¹²⁴ Consequently, for the final determination we are not simply rejecting tier one benchmarks as we did in the Preliminary Determination but, instead, we are examining record information regarding all potential benchmark prices in order to determine the appropriate benchmark under the adequate remuneration hierarchy.

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions involving Chinese buyers and sellers that can be used to determine whether the government-provided HRS was sold for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of the market for a good or service, prices for such goods and services in the country will be

¹²¹ See letter from Lets Win to the Secretary of Commerce Regarding First Supplemental Response, at page 8 (October 31, 2007).

¹²² See Lumber from Canada Investigation Issues and Decision Memorandum at page 36.

¹²³ See Preliminary Determination, 72 FR at 67705.

¹²⁴ See The GOC 3rd SQR at page 14; see also GOC National Verification Report at Exhibit A-2.

considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.¹²⁵

As explained above in the “Use of Adverse Facts Available” section above, in this proceeding we are finding that 96.1 percent of HRS production in the PRC is from SOEs.¹²⁶ Consequently, because of the government’s overwhelming involvement in the PRC HRS market, the use of private producer prices in China would be akin to comparing the benchmark to itself, (*i.e.*, such a benchmark would reflect the distortions of the government presence).¹²⁷ As we explained in Canadian Lumber Investigation:

Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.¹²⁸

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

We disagree with the GOC’s and GWSP’s underlying assertions in support of their arguments that the Department must look beyond the degree of state-ownership of the HRS industry in China and consider the actual nature and structure of the industry. First, the assertions that: (1) there is no single or uniform government-set price; (2) the HRS industry is highly fragmented; (3) state-owned producers purportedly operate the same as private companies; (4) private investment in the HRS industry is growing; and, finally, (5) a functioning market exists because prices fluctuate from day-to-day and vary across regions in China, do not mitigate the fact that the government accounts for a significant portion of production (*i.e.*, 96.1 percent of Chinese HRS production is from SOEs). In such instances, it is reasonable to conclude that domestic prices for comparable goods provided from private sources are effectively determined by the government provided prices. Second, we find that the profitability of SOE HRS producers (*e.g.*, Baosteel) is not relevant to the determination of whether HRS was sold for LTAR.

Next, we are not relying on trade statistics showing the unit values of HRS imported into China as a tier one benchmark because the import quantities are small relative to Chinese domestic production of HRS.¹²⁹ Therefore, imports are insufficient to serve as reliable benchmarks.

¹²⁵ See CVD Preamble, 63 FR at 65377.

¹²⁶ Even if arguendo we were to rely on the GOC’s 70.81 percent production figure, we would still find that government production accounts for a significant portion of the HRS industry, so that it is reasonable to conclude that private prices in China are significantly distorted and, therefore, are unusable as benchmarks.

¹²⁷ See Lumber from Canada Investigation Issues and Decision Memorandum at page 34.

¹²⁸ Id. at pages 38-39.

¹²⁹ See GOC National Verification Report at Exhibit A-2; see also the Memorandum to the File: re, China Import Statistics for Hot-rolled Steel (June 6, 2008).

We next turn to tier two benchmark prices stemming from world market prices that would be available to purchasers in the country under investigation. In the Preliminary Determination, we used the world market export price for hot-rolled band from *Steel Benchmark*.¹³⁰ We acknowledge that the hot-rolled band for which we have a price cannot be used to produce LWR (i.e., the wall thickness of hot-rolled band is 5mm thick whereas the wall thickness for LWR is less than 4mm). However, we are unable to identify another world market price for HRS that can be used to produce LWR. Section 776(a)(1) of the Act provides that the Department shall apply “facts otherwise available” if, inter alia, necessary information is not on the record. We note that the *Steel Benchmark* information may be a conservative benchmark because additional rolling would be required to produce the thinner HRS used in LWR production and, therefore, the market price for thinner HRS would presumably be higher. Consequently, based on facts available we continue to find these prices appropriate to measure the adequacy of remuneration for government-provided HRS during the POI.

Finally, pursuant to 19 CFR 351.511(a)(2)(iv), we are adjusting the *Steel Benchmark* prices to include import duties. We would additionally adjust for delivery charges as required by the Department’s regulations, but the information needed to make such an adjustment is not available in this proceeding. However, we will seek this in any future administrative review if this investigation results in a countervailing duty order.

Comment 8: Use of Hot-Rolled Steel to Produce Subject Merchandise Shipped to the United States

Lets Win claims that the record is clear that none of the HRS it purchased was used to produce subject merchandise exported to the United States. According to Lets Win, it produces merchandise outside the scope of this investigation from HRS. As such, even if it did purchase HRS for less than adequate remuneration, Lets Win claims that such purchases are not countervailable because they relate to non-subject merchandise.

Department’s Position:

We disagree with Lets Win’s contention that its purchases of HRS are not countervailable. Lets Win argues that its purchases of HRS are not countervailable because the Department verified that Lets Win did not sell any products to the United States made from HRS during 2006. At verification, however, the Department only reviewed production orders for several months of 2006 and noted no orders of pipe produced from HRS.¹³¹ Our statement in the Lets Win VR that we noted no orders of pipe made from HRS for selected months of the POI is not an acknowledgement that subject merchandise imported into the United States did not benefit from the subsidy for purchases of HRS at LTAR. This would require the Department to trace the subsidy from the purchase of HRS through production to the importation of merchandise into the United States.

¹³⁰ See *Steel Benchmark* prices, as provided in the Petition, Volume IV, Attachment 2, Exhibit 173 (July 6, 2007).

¹³¹ See Memorandum from David Neubacher and Hardeep Josan to Susan Kuhbach Regarding (Lets Win) Verification Report at pages 3-4 (March 3, 2008) (“Lets Win VR”).

In CFS from the PRC, the Department faced the same issue of whether to trace subsidized inputs to merchandise sold to the United States and merchandise sold to other markets. The Department stated, “The Department has implemented tying regulations to attribute subsidies rather than tracing subsidies through the company. By analogy, we will not trace subsidized inputs through a company’s production process.”¹³² The Department found no basis to tie subsidies bestowed on the input product exclusively to sales in the domestic Chinese market absent a showing that the input product could not have been used to produce subject merchandise.¹³³ Lets Win claimed that it uses cold-rolled steel to produce subject merchandise exported to the United States because of customer preferences.¹³⁴ There is no question, however, that HRS can be used to produce the subject merchandise.

As the Department noted in CFS from the PRC, the Department also did not trace subsidized inputs in IPA from Israel, in which the Department attributed input subsidies to all downstream products that the input could have been used to produce, regardless of whether the input was actually used to produce subject merchandise.¹³⁵ Furthermore, as the Department also noted in CFS from the PRC, the CIT in Fabrique upheld the Department’s position that it is not appropriate to trace the benefit of a particular subsidy to specific items actually imported into the United States.¹³⁶ Therefore, we continue to find that Lets Win’s purchases of HRS for LTAR are countervailable because we do not trace subsidized inputs through a company’s production process.

Comment 9: One Supplier Treated as State-owned is Private and the Volume of HRS Supplied by Baosteel

The GOC and GWSP contend that the Department incorrectly treated one of ZZ Pipe’s HRS suppliers as state-owned in the Preliminary Determination. The GOC and GWSP further contend that the Department should use the actual amount that was resold to ZZ Pipe by its affiliate, rather than presuming all the HRS supplied by the affiliate was produced by Baosteel.

Petitioners object to the GOC’s position regarding the ownership of this supplier stating that neither the GOC nor ZZ Pipe provided sufficient information to prove that the company was not in fact an SOE or a subsidiary of Baosteel.

Petitioners did not comment on use of the actual amount that was resold to ZZ Pipe by its affiliate.

¹³² See CFS from the PRC Issues and Decision Memorandum at Comment 18, page 102.

¹³³ Id. at page 99.

¹³⁴ See Lets Win VR at page 3.

¹³⁵ See CFS from the PRC at Comment 18, page 100, citing Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review, 63 FR 13626 (March 20, 1998) (“IPA from Israel”).

¹³⁶ See CFS from the PRC at Comment 18, page 101, citing Fabrique, 166 F. Supp. at 603. The CIT in Fabrique also cited the Federal Circuit’s decision in Saarstahl, in which the Court stated, “It would be burdensome and unproductive for the Department of Commerce to attempt to trace the use and effect of a subsidy demonstrated to have been provided to producers of the subject merchandise.” See Saarstahl A.G. v. United States, 78 F.3d 1539, 1543 (Fed. Cir. 1996) (“Saarstahl”).

Department's Position:

Given our finding that the LWR producers receive a benefit from the provision of HRS for less than adequate remuneration, the ownership of the trading companies is not relevant to this final determination. Moreover, as explained in the Analysis of Programs section, above, we are treating 70.81 percent of Chinese HRS as having been produced by SOEs. Therefore, the actual amount of Baosteel-produced HRS resold by ZZ Pipe's affiliate to ZZ Pipe is also irrelevant for this final determination.

Comment 10: Land/Financial Contribution

The GOC and GWSP object to the Department's reliance on new factual information, particularly in regard to valuing the subsidy conferred by the provision of land for less than adequate remuneration. Specifically, these parties claim that they had no notice of the information placed on the record by the Department at the time of its Post-Preliminary Analysis¹³⁷ and they were not provided an opportunity to rebut that information. Due process concerns and the Department's regulations require that parties be allowed to rebut that information and place alternative factual information on the record. Thus, according to the GOC and GWSP, the Department should delete that information from the record or provide parties with the opportunity to submit factual information in rebuttal.

Beyond their procedural objections, the GOC and GWSP contend that although the Department analyzed this transaction as a financial contribution in the form of a provision of a good or service (see section 771(5)(D)(iii) of the Act), the Department made no finding that land *is* a good or service. According to the GOC and GWSP, it is neither. Instead, land and land use rights are considered realty. In support, they cite to Black's Law Dictionary, quoting the Uniform Commercial Code, which defines "goods" as moveable personal property other than money.¹³⁸ The GOC and GWSP claim that if there was any financial contribution made to ZZ Pipe it was either in the form of a grant or non-collection of revenue, as discussed further below.

The GOC and GWSP agree with the Department's Post-Preliminary Analysis that the Zhangjiagang Land Bureau's provision of land was not de jure specific on the grounds that the Land Bureau did not limit access to land-use rights to the LWR industry, or any group of industries, and all purchasers were charged based on independent appraisal prices. The GOC and GWSP posit that if ZZ Pipe had paid the appraised price for its land use rights, there would have been no subsidy. Thus, in their view, the subsidy arises not from the land contract as executed but from the government's subsequent non-collection of the revenue it was due under the contract. Accordingly, the financial contribution is in the form of revenue forgone (see section 771(5)(d)(ii) of the Act).

The GOC and GWSP argue that the facts of this case support their approach.¹³⁹ Specifically, they claim that there is no evidence that the city (Zhangjiagang) land bureau did not receive full payment for the land use rights in question. Instead, as with Lets Win's purchase of land use

¹³⁷ See Post-Preliminary Analysis.

¹³⁸ The GOC and GWSP provide citations for their position at page 55 of their Case Brief.

¹³⁹ The GOC and GWSP provide citations for their position at pages 57-58 of their Case Brief.

rights in 2001, the town where ZZ Pipe is located was involved in the land transaction and the town government paid the remaining portion of the purchase price to the city land bureau. The GOC and GWSP point to the fact that ZZ Pipe in its response referred to its land use payments as having been made to the Jingang Town Assets Management Company. Thus, the GOC and GWSP contend, the financial contribution was not the provision of land by the city government, but instead was a grant from the town government in the amount of the difference between the contract price and the price paid by ZZPC.

The GOC and GWSP argue that if the Department, nonetheless, analyzes this transaction as the provision of a good, the agency should still measure the benefit as the difference between the price paid by ZZPC and the non-specific appraisal/contract price. Citing Magnesium from Canada,¹⁴⁰ the GOC and GWSP state that the non-specific price is a non-subsidized price and, hence, it provides a proper benchmark for measuring the adequacy of remuneration.

Petitioners did not comment on this issue.

Department Position:

In our Post-Preliminary Analysis, we found that the GOC's provision of land use rights to ZZ Pipe in 2004 conferred a countervailable subsidy on ZZ Pipe. Specifically, we found that the GOC had provided land for less than adequate remuneration and we calculated the benefit using as our benchmark the price of land in Thailand. Regarding specificity, we determined that the subsidy was not specific as a matter of law because there was no evidence that the GOC expressly limited access to land-use rights to the pipe and tube industry or certain enterprises within the pipe and tube industry. However, we found the subsidy to be specific in fact because the GOC did not follow or apply the normal process of administering land-use rights as explained by the GOC and enumerated by the government's land-use laws.

For this final determination, we have carefully reviewed the facts and our past practice in this regard, and have revised our analysis. We find that by failing to pay the agreed-upon price for those land-use rights, ZZ Pipe received a financial contribution in the form of revenue forgone, with the benefit being equal to the unpaid amount. We also determine that this subsidy was specific in fact because ZZ Pipe failed to pay the amount owed as required by the procedures in place for the sale of land-use rights. According to the GOC, failure to pay the full amount owed allows the local land bureau to terminate the contract and land registration cannot proceed until the full amount has been paid.¹⁴¹ Therefore, the evidence indicates that the actual recipients of the subsidy are limited in number (see section 771(5A)(D)(ii)(I)).¹⁴² Consequently, we determine that ZZ Pipe received a countervailable subsidy.

¹⁴⁰ See Magnesium from Canada, 57 FR at 30949-50.

¹⁴¹ See Post-Preliminary Analysis at page 4.

¹⁴² The GOC and GWSP contend that the town government intervened and paid the remainder owed by ZZPC to the city government. There is no evidence of that on this record. However, even if this were true, it does not detract from our finding that the number of subsidy recipients is limited as there is no evidence, nor do the GOC and GWSP claim, that any assistance provided by the town government is non-specific.

We have changed our method of analyzing this transaction after reviewing our past practice and concluding that the Department typically treats different types of government actions with respect to goods and services as different forms of financial contributions. Specifically, where the Department is investigating whether the price negotiated between the government and a respondent confers a subsidy, we have treated the financial contribution as the provision of a good under section 771(5)(D)(iii) of the Act.¹⁴³ Alternatively, where the government is providing a discount from the price or waives a fee that is part of the price, the Department has treated the financial contribution as revenue forgone under section 771(5)(D)(ii) of the Act. We find that the later analysis is more appropriate here given the particular facts in this case.

This analytical framework of treating the negotiation of a lease as the provision of a good has been followed in Wire Rod from Germany,¹⁴⁴ Wire Rod from Trinidad and Tobago¹⁴⁵ and SSWR from Italy,¹⁴⁶ while the reduction of the amount owed for land has been treated as revenue forgone in Plate from Korea.¹⁴⁷ We have followed a similar framework with respect to electricity. Where the Department is investigating the rate set for a particular group of users (typically, large industrial users), we analyze the allegation in terms of the provision of a good.¹⁴⁸ However, where there are discounts from the established rates for particular users, we address them as revenue forgone.¹⁴⁹

With respect to the GOC's and GWSP's claim that they lacked notice and did not have the opportunity to rebut information placed on the record by the Department in support of the Post-Preliminary Analysis, we disagree. The alleged provision of land for less than adequate remuneration has been subject to investigation since the initiation of this case and although it was classified under "Programs for Which More Information is Required" in the preliminary determination for this investigation, the Department preliminarily determined in another proceeding very shortly thereafter (Sacks from the PRC)¹⁵⁰ that the provision of land conferred a countervailable subsidy. In Sacks from the PRC, the Department presented a full explanation of the methodology and the information it used to make its calculations. Moreover, the GOC and

¹⁴³ The Department has a longstanding practice of treating the provision of land (particularly through leasing) as the provision of a good. See Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany, 62 FR 54990, 54994 (October 22, 1997) ("SWR from Germany"); Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago, 62 FR 55003, 55008 (October 22, 1997) ("SWR from Trinidad and Tobago"); Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy, 63 FR 40474, 40481-85 (July 29, 1998) ("SSWR from Italy"); and Final Negative Countervailing Duty Determination: Live Cattle from Canada, 64 FR 57040, 57041 (October 22, 1999).

¹⁴⁴ See SWR from Germany.

¹⁴⁵ See SWR from Trinidad and Tobago.

¹⁴⁶ See SSWR from Italy.

¹⁴⁷ Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 64 FR 73176, 73184 (December 29, 1999) ("Plate from Korea")

¹⁴⁸ See, e.g., Magnesium from Canada at 30949 – 50 and SWR from Trinidad and Tobago at 55006.

¹⁴⁹ See, e.g., Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea, 64 FR 30636, 30646 (June 8, 1999)

¹⁵⁰ 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, 72 FR 67893, 67905 (December 3, 2007) ("LWS from the PRC")

GWSP had ample opportunity and have fully availed themselves of that opportunity to make arguments about the methodology through the briefing process.

Comment 11: Land/Benchmark

The GOC and GWSP object to the Department's use of land values near Bangkok, Thailand as benchmarks for prices in Zhangjiagang, Jiangsu Province, China, because this approach, in their view, is irrational as an economic proposition and contrary to law because it overlooks domestic benchmarks in favor of out-of-country benchmarks effectively forbidden by the WTO and U.S. law.

The petitioners did not address this issue.

Department's Position:

Because we did not use an out-of-country benchmark for this final determination, this issue is moot.

Comment 12: Discount Rate

The GOC and GWSP challenge the discount rate used by the Department in its Post-Preliminary Analysis for allocating the benefit of ZZ Pipe's land over time. Citing to 19 CFR 351.524(d)(3)(i), the GOC and GWSP claim that Department must use a Chinese interest rate because Chinese rates can only be rejected if they have been found to be a countervailable subsidy, which they have not. Moreover, according to the GOC and GWSP, the Department cannot rely on Thermal Paper from the PRC¹⁵¹ as it did in the Post-Preliminary Analysis, because in that case the Department did find countervailable loans.

The GOC and GWSP posit that the regulation requires use of a company-specific interest rate (or a close approximation thereof) because that interest rate reflects the actual benefit to the particular company. Consistent with this, the regulations permit the Department to disregard a company's own interest rate when that rate has been found to be a countervailable subsidy because using that subsidized rate would effectively be counting the subsidy in computing the benefit. Here, the GOC and GWSP contend, no subsidy has been found so use of ZZPC's interest rate properly measures the actual benefit to the recipient.

The GOC and GWSP further contend that the Department's calculation of the discount rate is flawed. First, in converting the short-term benchmark interest rate to a long-term rate, the difference between short- and long-term interest rates should be measured as a spread and added, not as a ratio to be multiplied. The GOC and GWSP acknowledge that there is typically a "term premium" that reflects the fact that lenders seek a premium for longer term debt to compensate for the additional risk. However, they cite to numerous sources to argue that this premium is

¹⁵¹ See Lightweight Thermal Paper from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 13850 (March 14, 2008) ("Thermal Paper from the PRC")

expressed in absolute terms.¹⁵² The GOC and GWSP also point out that the Department implicitly recognizes this in its inflation adjustment which is based on absolute, additive adjustments between nominal and real interest rates, and not a ratio.

Second, the GOC and GWSP contend that there is no factual basis for predicting a short-term interest rate in China using a sample of 31 low income countries. To the contrary, according to these parties, record evidence shows that there is neither theoretical nor empirical support for correlating income and interest rates.¹⁵³

Third, the GOC and GWSP assert that the regression analysis used to compute the interest rate is flawed because to use a regression analysis the Department must first determine all important variables that affect interest rates and perform the analysis using those variables. However, according to the GOC and GWSP, no evidence has been put forward to show that the composite governance indicator or the individual components of the governance indicator have any correlation to interest rates. To the contrary, they claim, the Department's own regression shows that there is no statistically significant relationship between the average governance indicator and the CPI-adjusted interest rate. The GOC and GWSP assert that despite this, the Department's analysis arbitrarily relies on one factor to the exclusion of other, potentially more relevant indicators such as national savings rates and inflation rates.

Finally, the GOC and GWSP argue that the spread between short-term and long-term rates on corporate bonds in the United States does not have any relevance to economic conditions in China and, hence, cannot be used to convert a short-term Chinese rate into a long-term Chinese rate. Moreover, the GOC and GWSP contend that the Department has arbitrarily selected BB corporate bonds. According to the GOC and GWSP these rating apply to somewhat speculative, low grade borrowers that are not comparable to ZZPC and its affiliates which received high credit ratings.¹⁵⁴

The petitioners did not comment on this issue.

Department's Position:

We acknowledge that the Department's regulations express a preference for discount rates based on the actual cost of long-term fixed-rate loans taken out by the firm, or an average of such loans in the country. However, the selection of a discount rate for purposes of allocating subsidy benefits over time does not in any meaningful way differ from the selection of a commercial benchmark interest rate to calculate the benefit from government-provided long-term loans. In the case of benchmarking, from the lender's standpoint, the interest rate establishes an economic equivalence between (a) the loan (principal) disbursed today and (b) the *future* loan repayments

¹⁵² The GOC and GWSP provide citations to support their claims regarding the use of an additive absolute premium at page 71 of their Case Brief.

¹⁵³ The GOC and GWS provide citations to the record to support their claim that there is no correlation between income levels and interest rates at page 72 of their Case Brief.

¹⁵⁴ The GOC and GWSP provide citations to support their claims regarding the quality of U.S. debt instruments and ZZPC's credit ratings at page 74 of their Case Brief.

(principal and interest) he receives from the borrower. In the case of discounting, from the subsidy recipient's standpoint, the discount rate establishes an economic equivalence between (a) the grant equivalent received today as one lump sum and (b) a *future* stream of smaller payments received over time. Since the economic equivalence established in these two cases (between "money now and money later") is fundamentally the same, the nature of the interest rates also must be fundamentally the same, which means that if interest rates are not a meaningful basis for establishing an economic equivalence in the first case, they are also not a meaningful basis for establishing an economic equivalence in the second case.

In this case, because we have found that the role of the GOC in the PRC banking sector has distorted all lending rates in that country, we have rejected all internal PRC interest rates as benchmarks (see "Subsidies Valuation Information-Discount Rate" section, above). Therefore, we determine that it is appropriate to continue to use an out-of-country long-term lending benchmark as the discount rate for allocating the benefits over time under 19 CFR 351.524(d)(3)(i)(C).

Regarding the first of the alleged flaws in the Department's calculation of the discount rate, we disagree that adding the spread between these rates would yield a more accurate result. As a general rule, a lender will not set an interest rate on an n-year loan that is lower than what he could earn, for example, on a short-term, one-year investment rolled over n-1 times. Thus, if " i_t " is the one-year rate in year t, the difference ("mark-up") between the one-year rate and the n-year rate (in year one) is no less than $[(1 + i_1)(1 + i_2)(1 + i_3) \dots (1 + i_n) - 1] - i_1$. This difference is an increasing function of the one-year rate in all years, *i.e.*, the difference *increases* as the one-year rate in year one (or any other year) increases. This is exactly the result of the ratio approach – for a given loan term, as the short-term rate to which the (fixed) corporate bond rate ratio increases, the mark-up increases. The spread approach, in contrast, results in a mark-up that is *independent* of the short-term rate, *i.e.*, the mark-up is the same whether the short-term rate to which the mark-up is applied is 2 percent or 10 percent. This result is particularly hard to explain when differences in short-term rates reflect differences in "baseline" risk levels, *i.e.*, risk that is country- or market-specific and increases with the length of the loan term – something that the ratio approach, but not the spread approach, captures.

Regarding the GOC's and GWSP's arguments regarding the Department's reliance on countries at a similar income level for the regression, it would make no sense to employ a benchmark calculation methodology that, in effect, "worked back" to a PRC (NME) interest rate by accounting for cross-country differences in *all* of the factors that determine interest rates. Instead, the Department used simple regression analysis to estimate what interest rates in China would be *if China were a market economy* at its current level of economic development. Given the constraint on accounting for cross-country differences in factors that would, in effect, result in working back to a PRC (NME) interest rate, the Department limited the country selection criteria to per capita income. Moreover, in light of the GOC's dominance in and control of the Chinese credit sector, it is reasonable to account only for differences in factors that do not result directly from that dominance and control, *i.e.*, institutional and governance strength that typically vary across market economies and can affect the accounting and economic cost of financial intermediation (between savers and borrowers). In other words, countries with lower per capita

GNI tend to have higher interest rates than countries with higher per capita GNI, a fact demonstrated by the lending rates across countries.¹⁵⁵

Finally, the Department used a *ratio* of, not the difference between, short-term to long-term U.S. corporate bond rates, which reduces, but does not necessarily eliminate the extent to which U.S. economic conditions are reflected in the long-term interest rate benchmark. However, detailed corporate bond data (or other long-term loan rate data) that allows for distinctions between risk classes is available for only a very limited number of countries, and the Department is not aware of better data for purposes of calculating a long-term interest rate benchmark.

Comment 13: Provision of Water

The GOC and GWSP state that the Department's preliminary finding that ZZ Pipe received a subsidy from the GOC's provision of water resulted from ZZ Pipe's inadequate explanation of the discrepancies between what the company paid for water and the published tariff rate. The GOC and GWSP claim that the discrepancies arose because of inconsistent inclusion and exclusion of VAT in reporting payments for water and that all the discrepancies were resolved in later submissions and/or during verification.¹⁵⁶

Based on the information now before it and case precedents,¹⁵⁷ the GOC and GWSP claim that the Department should find the GOC's provision of water to be non-specific because it has been demonstrated that the respondents paid the published rates, other industrial users paid those same rates, and there are a large number of industrial users of water. The GOC and GWSP also claim that in the absence of price discrimination, there is no benefit. Finally, the GOC and GWSP contend that the water tariff rates are set and applied consistent with market principles,¹⁵⁸ and, hence, would not confer a benefit under 19 CFR 351.511(a)(2)(iii).

The petitioners did not address this issue.

Department's Position:

In the Preliminary Determination, we found that the GOC's provision of water to ZZ Pipe during the POI conferred a countervailable subsidy because ZZPC reported paying a lower rate than the published tariff rate for industrial users for certain months during the POI.¹⁵⁹ However, at verification ZZ Pipe explained why ZZPC's rates as reported diverged from the published tariff rate. Specifically, ZZ Pipe provided factual evidence which demonstrated that ZZPC in fact paid the applicable tariff rate for the months previously in question, and the discrepancies stemmed

¹⁵⁵ See ZZ Pipe Final Calculation Memorandum at Attachment 5.

¹⁵⁶ The GOC and GWSP provide citations to the record support their claims regarding verification at p. 75 of their Case Brief.

¹⁵⁷ See Fresh Asparagus from Mexico: Final Negative Countervailing Duty Determination, 48 FR 21618 (May 13, 1983) and Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination, 64 FR 73176, 73192-3 (Dec. 29, 1999).

¹⁵⁸ The GOC and GWSP provide citations to the record support their claims regarding the consistency of the water rates with market principles at p. 76 of their Case Brief.

¹⁵⁹ See Preliminary Determination, 72 FR at 67708.

from inconsistent inclusion and exclusion of VAT in reporting ZZPC's monthly water bill payments.¹⁶⁰

In addition, we did not issue a preliminary finding on the provision of water to Lets Win because of discrepancies between the amount paid by Lets Win and the applicable tariff schedule. At verification, Lets Win provided copies of all water bills and payment documentation for the POI. This factual evidence indicates that Lets Win paid the applicable tariff rate for water during the POI.¹⁶¹ Consequently, we agree with the GOC and GSWP that based on record evidence, the provision of water in Jiangsu Province, Zhejiagang (location of ZZPC) and Kunshan (location of Lets Win) is neither de jure nor de facto specific. The respondents paid the applicable published rates, other industrial users paid those same rates and there are a large number of industrial users of water.¹⁶² On this basis, we determine that the GOC's provision of water does not confer a countervailable subsidy.

Comment 14: Government Policy Lending

Petitioners claim that the record established during this investigation demonstrates that national, provincial and municipal government authorities in China have a general policy of supporting the steel industry and that LWR pipe producers are part of that industry. This policy is effectuated, Petitioners contend, through countervailable loans to HRS producers. Petitioners cite to specific objectives in the Iron and Steel Policy¹⁶³ to promote the industry, a program implemented by the State Administration of Metallurgical Industry (now merged with the National Development and Reform Commission) to provide over \$6 billion in government funds, including RMB 28 million in loans, to China's steel industry so that it would be competitive after China's accession to the WTO, and the 11th Five-Year Plan,¹⁶⁴ which sends signals to the steel industry and to government-owned banks to undertake and fund projects.

The GOC and GWSP agree with the Department's finding in the Preliminary Determination that the evidence does not support a finding that the LWR industry received preferential policy loans pursuant to the GOC's Iron and Steel Policy. These parties contend that the Department should reaffirm this decision in this final determination because record evidence shows: (1) there is no preferential policy to encourage the development of the LWR industry, and; (2) the loans made to LWR producers by commercial banks were not influenced by the Iron and Steel Policy.

The GOC and GWSP dispute Petitioners' reliance on the Iron and Steel Policy because the investigation is about LWR pipe producers, who purchase HRS or cold-rolled steel, but do not produce basic steel products. Moreover, they assert that the Iron and Steel Policy nowhere advocates financing of the iron and steel, or the LWR industries, but instead disfavors investment

¹⁶⁰ See ZZ Pipe Verification Report at pages 12-13.

¹⁶¹ See Lets Win Verification Report at page 7.

¹⁶² See the Department's Kunshan, Zhangjiagang, and Jiangsu Province Verification Report, at pages 7-8 and 19-20 (March 5, 2008).

¹⁶³ See the Order of the National Development and Reform Commission (No. 35) on the Development Policies for the Iron and Steel Industry (July 8, 2005) (the "Iron and Steel Policy"), as provided at the GOC's Original Questionnaire Response, at Exhibit 96.

¹⁶⁴ See the Outline of the Eleventh Five-Year Blueprint (Guihua) (11th Five-Year Plan"), provided in the GOC's Original Questionnaire Response, at Exhibit 93.

in small producers such as Lets Win and ZZPC. Similarly, the GOC and GWSP state that the 11th Five-Year Plan does not target the LWR industry and, again, sets as a goal reducing surplus production capacity. Neither the 10th Five-Year Plan¹⁶⁵ nor the Directory Catalogue on Readjustment of Industrial Structure (Version 2005) (the “Directory Catalogue”) encompasses LWR and none of the respondents was designated as “key” or “backbone” industries during the POI. Thus, in the GOC’s and GWSP’s view, there is no evidence of a government program to provide preferential financing to LWR producers.¹⁶⁶

The GOC and GWSP further argue that there is no evidence that banks based any of their lending decisions to LWR producers on a government policy or program. In their view, “policy lending” as alleged by the petitioners simply does not exist. The materials submitted by the GOC in this case demonstrate that China has an effective commercially-oriented lending market; loan pricing is determined by market forces with bank lending decisions based upon commercial considerations and risk analysis; and government industrial policy has a very limited role in lending decisions. The GOC and GWSP point out that the Department visited three banks that made loans to respondents over the POI and there was no evidence that the loan approvals or loan rates were influenced by any government program.¹⁶⁷

Finally, the GOC and GWSP claim that there is no de facto specificity because there is no evidence that state-owned banks make loans to specific industries. The GOC and GWSP point to the Georgetown Steel Memo, which states that the credit plan under which the People’s Bank of China directly allocated credit to specific sectors was abolished in 1997.¹⁶⁸

Department’s Position:

In the Preliminary Determination, we found the Government Policy Lending Program not to be countervailable. However, we stated that we would continue to investigate whether the GOC’s Iron and Steel Policy and other plans apply to the LWR industry.¹⁶⁹ As explained further below we continue to find that based on the totality of the record evidence, LWR producers did not receive policy loans pursuant to the national level plans for iron and steel, industrial structure adjustment, or technology development.¹⁷⁰ However, in a departure from the Preliminary Determination, we are now finding the Government Policy Lending Program to be “not-used,” as opposed to “not countervailable.” Consequently, we plan to continue to examine this program closely in any subsequent administrative review

¹⁶⁵ See the Outline of the Tenth Five-Year Plan (Jihua) (“10th Five-year Plan”), provided in the GOC’s Original Questionnaire Response, at Exhibit 92.

¹⁶⁶ The GOC and GWSP provide citations to the record support their claims regarding the various plans and policies at page 6 of their Rebuttal Brief.

¹⁶⁷ The GOC and GWSP provide citations to the record support their claims regarding the bank visits during verification at p. 10 of their Rebuttal Brief.

¹⁶⁸ See Georgetown Steel Memo at page 8.

¹⁶⁹ See Preliminary Determination, 72 FR at 63883.

¹⁷⁰ In addition, Petitioners cite to a program by the State Administration of Metallurgical Industry that ensures that China’s steel industry would be competitive after entry into the WTO. We find that there is no evidence on the record that the loans received by respondents were pursuant to this program. The respondents’ loans examined by the Department during the course of this investigation were granted long after China joined the WTO.

At the outset, we note that Petitioners' argument that record evidence demonstrates that government authorities in China effectuate policy through countervailable loans to HRS is not at issue in this case. Rather, we are investigating whether LWR producers, not HRS producers received policy loans. We address the various policy documents we investigated below.

11th Five-Year Plan

While the 11th Five-Year Plan lists specific policy goals relating to the steel industry, there are no provisions explicitly providing for financing and credit. Thus, in and of itself, this Five-Year Plan does not provide a basis for finding that Policy Lending exists for the LWR industry. However, we have also considered it in connection with the other policy documents we examined listed below.

Iron and Steel Policy

We begin with what is meant by "major iron and steel project{s}" as specified in the Iron and Steel Policy. We find that the scope definition within the Iron and Steel Policy describing the "iron and steel industry" makes it difficult to discern whether the LWR industry is covered by the Iron and Steel Policy. At the national government verification, we spent considerable time trying to determine definitively whether the LWR industry is covered by the Iron and Steel Policy. As a general matter, the GOC stated numerous times that LWR is not covered by the Iron and Steel Policy, and the LWR industry does not produce general steel products. However, the GOC failed to provide any factual evidence in support of its statements. For example, we asked to see a positive list of the companies in the iron and steel industry that would state definitively what is included under the policy. We were told that no such list existed, other than the problematic scope definition within the policy itself. The GOC explained that it was uncertain whether even a metallurgical dictionary or encyclopedia would contain a definition of "metal products."¹⁷¹ The GOC did provide a 2006 metal products industry publication to demonstrate that the term "metal products" relates to "steel wire products" and not steel products writ large.¹⁷² We do not, however, find the metal industry publication provided by the GOC to be a particularly convincing method to discern what is meant by "metal products" as stated in the scope definition in the Iron and Steel Policy.

At the national government verification, we also asked whether the GOC could provide documents that would illustrate the type of iron and steel projects that are subject to the approval and endorsement provisions specified in the Iron and Steel Policy. We explained that if LWR projects were not among those subject to the approval and endorsement provisions, they would not appear in such documentation and, thus, would help substantiate the GOC's statements that LWR industry is not covered by the Iron and Steel Policy. The GOC explained that documents identifying such projects are highly sensitive and could not be provided to the Department.¹⁷³

Accordingly, the Department finds that the GOC impeded its investigation by refusing to provide requested information during the investigation. The Department attempted several times to find

¹⁷¹ See GOC National Verification Report at pages 21-22.

¹⁷² See GOC National Verification Report at pages 21, citing Verification Exhibit A-1.

¹⁷³ See GOC National Verification Report at pages 21-22.

a reasonable approach to getting the needed information, but the GOC refused to work with the Department in this matter. Because of this refusal, the Department was unable to verify important claims made by the GOC on the record of this case. While, as explained below, the lack of the GOC's cooperation does not affect our analysis, such a lack of cooperation in any future segments of this case could result in the application of an adverse inference.

Although the GOC's unwillingness to provide this information precluded us from verifying at the national government whether LWR producers were subject to the approval and endorsement provisions of the Iron and Steel Policy, we did receive information and were able to verify the loans received by the respondents. We note that the Iron and Steel Policy includes only one reference to using loans to support particular producers or activities.¹⁷⁴ Specifically, Article 16 states that:

For a major iron and steel project that is based on home-made equipment as newly developed, that state shall grant policy supports in such aspects as...discounted interest rate{s}...¹⁷⁵

Other references to financing are negative in the sense that they address loans to iron smelting, steel smelting, and steel rolling, all of which are "discouraged."¹⁷⁶

Based on our examination of company loans, none of the loans reported by the respondents was for the purpose of financing the purchase of any equipment.¹⁷⁷ Thus, regardless of whether the Iron and Steel Policy covered LWR, we find that there is no evidence indicating that LWR producers received policy loans pursuant to or because of the particular producers or activities supported by the Iron and Steel Policy.

Encouraged Industries, Products and Companies

We note that the only mention of a specific financing tool in the Interim Provision of Promoting Industrial Structure Adjustment ("ISA") is found at Article 17, which states that for encouraged projects, all financial institutions shall provide credit in compliance with credit principles.¹⁷⁸ The Directory Catalogue, which is the tool used by the ISA to identify encouraged products, does not categorize LWR as encouraged.¹⁷⁹ Consequently, we find that the respondents did not receive preferential lending pursuant to, or because of the ISA and the Directory Catalogue.

¹⁷⁴ Export credits are mentioned in Article 27, but appear to relate to exporting technology. In any case, there is no evidence that respondents received export credits.

¹⁷⁵ See the Iron and Steel Policy, at Article 16.

¹⁷⁶ See the Iron and Steel Policy, at Articles 10 and 25; see also the Iron and Steel Policy, at Article 24 for another provision speaking to discouraging financing.

¹⁷⁷ See letter from ZZ Pipe to the Secretary of Commerce Regarding Original Questionnaire Responses (September 27, 2007); see also letter from Lets Win to the Secretary of Commerce Regarding Original Questionnaire Response, at Exhibit 6 (October 1, 2007).

¹⁷⁸ See the Petition (July 6, 2007), Attachment 2, Vol. 1 of 4, at Exhibit 67.

¹⁷⁹ See id., at Exhibit 66.

Technology Development Plan

We find that in that the Technology Development Plan does explicitly provide for policy lending to high technology enterprises.¹⁸⁰ In particular, Article 15 of the Circular Implementing the Technology Development Plan states that the China Development Bank and the Export-Import Bank of China may provide soft loans to high and new technology enterprises for taking part in project investment, and provide financial support to export and import key technologies.¹⁸¹ Also, Article 16 instructs commercial banks to: (1) lend to high-tech projects “in accordance with national investment policy and credit policy;” and (2) further encourages the nominally “commercial banks” to “prioritize” loans to support the exportation of the products of high technology enterprises.¹⁸² However, we found no evidence at verification that loans received by Lets Win and ZZPC were bestowed pursuant to, or because of the Technology Development Plan.¹⁸³ In addition, there is no evidence on the record suggesting that the respondents were eligible to receive financing under the Technology Development Plan. Moreover, Lets Win and ZZPC did not receive loans from the China Development Bank or the Ex-Im Bank of China, which are the two state-owned banks that are specifically directed to provide policy loans pursuant to the Technology Development Plan.¹⁸⁴ Consequently, we find that Lets Win and ZZPC did not use this program. However, we plan to continue to examine the Technology Development Plan closely in any subsequent administrative review.

Sub-National Development Policies

At verification, we discovered that despite what ZZ Pipe reported in its questionnaire responses, ZZ Pipe did receive a designation (*i.e.*, an “Honorable Enterprise”) from a local government.¹⁸⁵ ZZ Pipe explained that the designation was granted based on sales turnover, and no reduced interest rates or special benefits from banks were received due to this.¹⁸⁶ However, we found no evidence at verification that loans received by ZZ Pipe were bestowed pursuant to, or because of, this local government designation or sub-national development policies.¹⁸⁷ In addition, there is

¹⁸⁰ See The Medium and Long Term Science and Technology Development Plan (2006-2020) (“Technology Development Plan”) provided in the GOC’s Third Supplemental Response, at Exhibit 3S-12 (December 21, 2007).

¹⁸¹ See the State Council Circular on Several Policies Implementing the Outline of the Medium and Long Term Science and Technology Development Plan (2006-2020), GUOFA {2006} Printing and Circulating Certain Supporting Polices for Implementation of the Outline of Medium and Long-Term Plan for National Scientific and Technological Development (2006-2020) (“Circular Implementing the Technology Development Plan”), at Article 15, provided in the GOC’s Third Supplemental Response, at Exhibit 3S-19 (December 21, 2007).

¹⁸² See the Circular Implementing the Technology Development Plan, at Article 16.

¹⁸³ See the Department’s Kunshan, Zhangjiagang and Jiangsu Province Verification Report, at pages 5-7 and 16-17.

¹⁸⁴ See letter from ZZ Pipe to the Secretary of Commerce Regarding Original Questionnaire Responses (September 27, 2007); *see also*, letter from Lets Win to the Secretary of Commerce Regarding Original Questionnaire Response, at Exhibit 6 (October 1, 2007).

¹⁸⁵ See the ZZ Pipe Verification Report, at page 20; *see also* the letter from ZZ Pipe to the Secretary of Commerce Regarding Original Questionnaire Responses at pages 11-12 (September 27, 2007); and the letter from ZZ Pipe to the Secretary of Commerce Regarding First Supplemental Responses, at page 4 (November 5, 2007).

¹⁸⁶ See the ZZ Pipe Verification Report at 14.

¹⁸⁷ See the Department’s Kunshan, Zhangjiagang and Jiangsu Province Verification Report at pages 16-17.

no evidence indicating that loans received by Lets Win were bestowed pursuant to, or because of, any sub-national development policies.¹⁸⁸ Therefore, we find that ZZ Pipe and Lets Win did not receive government policy loans relating to any sub-national policies or plans.

Comment 15: All Others Rate

The GOC's Arguments: The GOC and GWSP argue that the Department's methodology for computing the amended all others rate is contrary to law. They urge the Department not to include the AFA rate applied to the mandatory respondent, Qingdao, in the average calculated to apply to all others.

Petitioners did not address this issue.

Department's Position:

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 determined entirely on the basis of facts available.

In the Preliminary Determination, we assigned ZZ Pipe's ad valorem rate as the all others rate because it was the only non-de minimis, non-AFA rate. In the Amended Preliminary Determination, ZZ Pipe's rate fell to de minimis. Therefore, we were unable to follow the method preferred by the statute. Consequently, for the all others rate calculated for the Amended Preliminary Determination, we averaged ZZ Pipe's rate, Lets Win's rate and Qingdao's rate.¹⁸⁹

For the final determination, we now have the information required to calculate the all others rate as preferred by the statute (*i.e.*, ZZ Pipe's rate is not de minimis and is not based entirely on facts available). Consequently, we have assigned ZZ Pipe's rate to all others.¹⁹⁰

¹⁸⁸ See the Department's Kunshan, Zhangjiagang and Jiangsu Province Verification Report at pages 5-7

¹⁸⁹ Section 705(5)(A)(ii) of the Act states that "{if} the countervailable subsidy rates established for all exporters and producers individually investigated are zero or de minimis rates, or are determined entirely under section 776, the administering authority may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated."

¹⁹⁰ Pursuant to 19 CFR 351.204(d)(3), Lets Win's rate is excluded from the all-other rate because Lets Win is a voluntary respondent.

Recommendation

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

AGREE _____ DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)