



C-570-013  
Investigation  
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**Public Document**  
ADCVD Ops.II/RT/RK

**DATE:** June 30, 2014

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** Christian Marsh *ST*  
*for* Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Countervailing Duty Investigation of Carbon and Certain Alloy Steel  
Wire Rod from the People's Republic of China: Decision  
Memorandum for the Preliminary Determination

## I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of carbon and certain alloy steel wire rod (steel wire rod) from the People's Republic of China (PRC), as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

## II. BACKGROUND

### A. Case History

On January 31, 2014, the Department received a countervailing duty (CVD) petition concerning imports of steel wire rod from the PRC, filed on behalf of ArcelorMittal USA LLC, Charter Steel, Evraz Pueblo (formerly Evraz Rocky Mountain Steel), Gerdau Ameristeel US Inc., Keystone Consolidated Industries, Inc., and Nucor Corporation (Nucor) (collectively, the petitioners).<sup>1</sup> On February 20, 2014, the Department initiated a CVD investigation of steel wire rod from the PRC.<sup>2</sup> Supplements to the petition and our consultations with the Government of the PRC (GOC) are described in the Initiation Checklist.

<sup>1</sup> See Petition for the Imposition of Countervailing Duties on Imports of Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China, dated January 31, 2014 (CVD petition or petition).

<sup>2</sup> See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Initiation of Countervailing Duty Investigation, 79 FR 11085 (February 27, 2014) (Initiation Notice).



In the “Respondent Selection” section of the Initiation Notice, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data.<sup>3</sup> Accordingly, on February 25, 2014, the Department released the CBP data to all interested parties under an administrative protective order (APO), and requested comments regarding the data and respondent selection.<sup>4</sup> We received comments on the CBP data from Nucor on March 6, 2014.<sup>5</sup>

Pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2), we selected Benxi Beiyong Iron & Steel Group Import & Export Corp., Benxi Beiyong Iron & Steel (Group) Co. Ltd. (collectively, Benxi Steel) and Hebei Iron & Steel Co Ltd Tangshan Branch (Hebei Iron & Steel) as mandatory respondents.<sup>6</sup>

We issued the Initial CVD Questionnaire to the GOC and mandatory respondents on March 21, 2014.<sup>7</sup> Hebei Iron & Steel neither entered an appearance in this investigation, nor responded to the Department’s questionnaire by the submission deadline. Benxi Steel submitted its initial questionnaire response on April 11 (Section III of the questionnaire) and May 12, 2014 (remaining sections of questionnaire).<sup>8</sup> The GOC submitted its initial questionnaire response on May 12, 2014.<sup>9</sup>

On April 11, 2014, we received an unsolicited response to Section III of the CVD questionnaire from Jiangsu Shagang International Trade Co., Ltd. (Shagang).<sup>10</sup> In its submission, Shagang requested to either be selected as a mandatory respondent or be allowed to participate as a voluntary respondent.<sup>11</sup> On April 24, 2014, Nucor requested that we select an additional mandatory respondent.<sup>12</sup> Shagang reiterated its request to be selected as a mandatory respondent in this investigation on May 2, 2014.<sup>13</sup> On May 7, 2014, the Department issued its determination regarding the selection of additional mandatory and voluntary respondents in this investigation.<sup>14</sup> The Department determined it was not practicable to select an additional mandatory respondent and

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<sup>3</sup> Id., 79 FR at 11087.

<sup>4</sup> See Letter from Irene Darzenta Tzafolias, Program Manager, to All Interested Parties (February 25, 2014) (Letter to Parties).

<sup>5</sup> See Letter from Nucor, “Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Respondent Selection Comments” (March 6, 2014).

<sup>6</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, “Respondent Selection for the Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China” (March 20, 2014) (Respondent Selection Memorandum).

<sup>7</sup> Letter from Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations Office II, “Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Countervailing Duty Questionnaire” (March 21, 2014) (Initial CVD Questionnaire).

<sup>8</sup> See Benxi Steel April 11, 2014, submission (BIQR1) and May 12, 2014, submission (BIQR3).

<sup>9</sup> See GOC Initial CVD Questionnaire Response, dated May 12, 2014 (GIQR1).

<sup>10</sup> See Letter from Shagang, “Request for Voluntary Respondent Treatment and Response Identifying Affiliated Companies: Certain Alloy Steel Wire Rod from the People’s Republic of China” (April 11, 2014).

<sup>11</sup> Id. at 2.

<sup>12</sup> See Letter from Nucor, “Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Comments on Benxi Steel’s Initial Cross-Owned Affiliates Response and Request for Third Respondent” (April 25, 2014).

<sup>13</sup> See Letter from Shagang, “Response to Petitioner Request for Third Respondent: Carbon and Certain Alloy Steel Wire Rod from The People’s Republic of China” (May 2, 2014).

<sup>14</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, from James Maeder, Director, AD/CVD Operation, Office II, “Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Selection of Voluntary and Mandatory Respondents” (May 7, 2014).

determined that it would be unduly burdensome and inhibit the timely completion of the investigation to select a voluntary respondent.<sup>15</sup>

On May 12, 2014, Shagang submitted both an unsolicited response to the remaining sections of the CVD questionnaire, and a request for reconsideration of the Department's determination with respect to mandatory and voluntary respondents.<sup>16</sup> In its May 12, 2014, response to the Department's Initial CVD Questionnaire, the GOC also requested that the Department designate Shagang as a mandatory respondent. On May 20, 2014, the Department continued to find that including Shagang in this investigation as a mandatory respondent was not practicable and including it as a voluntary respondent would be unduly burdensome and inhibit the timely completion of the investigation.<sup>17</sup>

Between April 18, 2014, and June 18, 2014, the Department issued supplemental questionnaires to the GOC and Benxi Steel. Responses to these questionnaires were received between April 28, 2014, and June 20, 2014.<sup>18</sup>

On May 30, 2014, the petitioner, Nucor, made new subsidy allegations (NSAs).<sup>19</sup>

On June 16, 2014, the petitioners filed a request that the Department align the final determination of this CVD investigation with the companion antidumping (AD) investigation of steel wire rod from the PRC.<sup>20</sup> Additionally, on June 18, 2014, Nucor filed comments for the Department's consideration in reaching its preliminary determination in this investigation.<sup>21</sup>

Based upon a request from Nucor, the Department postponed the deadline for this preliminary determination until June 30, 2014.<sup>22</sup>

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<sup>15</sup> Id. at 3-4.

<sup>16</sup> See Letter from Shagang, "Shagang's Questionnaire Response and Request for Reconsideration of Mandatory or Voluntary Treatment: Certain Alloy Steel Wire Rod from the People's Republic of China" (May 12, 2014).

<sup>17</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, from James Maeder, Director, AD/CVD Operation, Office II, "Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Response to Jiangsu Shagang International Trade Co., Ltd.'s Request for Reconsideration of Selection of Voluntary and Mandatory Respondents" (May 20, 2014).

<sup>18</sup> The response to the Department's supplemental questionnaire, dated June 12, 2014, will not be received until July 11, 2014.

<sup>19</sup> See Letter from Nucor, "Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: New Subsidy Allegation" (May 30, 2014); see also Memorandum to James Maeder from Rebecca Trainor and Reza Karamloo, "New Subsidy Allegations" (June 30, 2014).

<sup>20</sup> See Letter from the petitioners, "Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Request to Align Countervailing Duty Final Determination with Antidumping Duty Final Determination" (June 16, 2014).

<sup>21</sup> See Letter from Nucor, "Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Comments" (June 18, 2014).

<sup>22</sup> See Letter from Nucor, "Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Request for Extension of Preliminary Determination" (March 31, 2014); see also "Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation," 79 FR 20171 (April 11, 2014).

## B. Period of Investigation

The period of investigation (POI) is January 1, 2013, through December 31, 2013.

## III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, and as noted in the Initiation Notice, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the Initiation Notice.<sup>23</sup> We did not receive any comments concerning the scope of this investigation.

## IV. SCOPE OF THE INVESTIGATION

The scope of this investigation covers certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately circular cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (i.e., products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093; 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the HTSUS. Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS also may be included in this scope if they meet the physical description of subject merchandise above. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

## V. ALIGNMENT

The companion AD investigation to this CVD investigation has the same scope with regard to the merchandise covered. On June 16, 2014, the petitioners submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final determination in the companion AD investigation. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), we are aligning the final CVD determination with the final determination in the companion AD investigation of steel wire rod from the PRC. The final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than November 12, 2014, unless postponed.

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<sup>23</sup> See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997); see also Initiation Notice.

## **VI. RESPONDENT SELECTION**

Section 777A(e)(1) of the Act directs the Department to determine an individual countervailing subsidy rate for each known exporter or producer of the subject merchandise. The Department, however, may limit its examination to a reasonable number of exporters or producers under section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2), if it determines that it is not practicable to determine individual countervailable subsidy rates because of the large number of exporters or producers involved in the investigation.

After careful consideration, as noted above, on March 20, 2014, the Department determined that it was not practicable to examine more than three respondents in this investigation.<sup>24</sup> Based on the CBP data, the Department selected the three publicly identifiable producers/exporters with the largest volume of subject imports as mandatory respondents, which are, in alphabetical order: Benxi Beiyong Iron & Steel Group Import & Export Corp., Benxi Beiyong Iron & Steel (Group) Co., Ltd., and Hebei Iron & Steel.<sup>25</sup>

## **VII. INJURY TEST**

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On March 25, 2014, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of steel wire rod from the PRC.<sup>26</sup>

## **VIII. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM THE PRC**

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.<sup>27</sup> In CFS from the PRC, the Department found that:

... given the substantial differences between the Soviet-style economies and China’s economy in recent years, the Department’s previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.<sup>28</sup>

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<sup>24</sup> See Respondent Selection Memorandum.

<sup>25</sup> Id.

<sup>26</sup> See Carbon and Certain Alloy Steel Wire Rod From China, 79 FR 16373 (March 25, 2014).

<sup>27</sup> See Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) (CFS from the PRC), and accompanying Issues and Decision Memorandum (IDM) (CFS IDM) at Comment 6.

<sup>28</sup> Id.

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.<sup>29</sup> Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that the Department has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.<sup>30</sup> The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.<sup>31</sup>

Additionally, for the reasons stated in CWP from the PRC, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of CVD investigations.<sup>32</sup>

## **IX. SUBSIDIES VALUATION**

### **A. Allocation Period**

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.<sup>33</sup> The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.<sup>34</sup> The Department notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly.<sup>35</sup> No party in this proceeding disputed this allocation period.

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (e.g., total sales or export sales) for the year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than over the AUL.

### **B. Attribution of Subsidies**

The Department's regulations at 19 CFR 351.525(b)(6)(i) state 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)(ii)-(v) directs that the Department will attribute subsidies received by certain

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<sup>29</sup> See, e.g., Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008) (CWP from the PRC) and accompanying IDM (CWP IDM) at Comment 16.

<sup>30</sup> Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

<sup>31</sup> See Public Law 112-99, 126 Stat. 265 §1(b).

<sup>32</sup> See, e.g., CWP IDM at Comment 2.

<sup>33</sup> See 19 CFR 351.524(b).

<sup>34</sup> See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

<sup>35</sup> As discussed above and in accordance with the Department's practice, regardless of the AUL chosen, we will not countervail subsidies conferred before December 11, 2001, the date of the PRC's accession to the WTO. See, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 63788 (October 17, 2012) (Solar Cells from the PRC) and accompanying IDM (Solar Cells IDM) at "Subsidies Valuation Information."

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 regulation 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 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.<sup>36</sup>

Benxi Steel responded to the Department's questionnaires on behalf of the following companies:<sup>37</sup>

- Benxi Steel Group Corporation (“Bengang Group”)
- Beitai Iron and Steel (Group) Co., Ltd. (“Beitai Group”)
- Benxi Beiyong Iron & Steel (Group) Co., Ltd. (“Beiyong Group”)
- Benxi Northern Steel Rolling Co., Ltd. (“Benxi Steel Rolling”)
- Benxi Beifang Gaosu Steel Wire Rod Co., Ltd. (“Benxi Beifang”)
- Benxi Beitai Gaosu Steel Wire Rod., Co., Ltd. (“Benxi Beitai”)
- Benxi Northern Steel Co., Ltd. (“Benxi Northern”)
- Benxi Beifang Second Rolling Co., Ltd. (“Beifang 2nd Rolling”)
- Benxi Beitai Ductile Iron Pipes Co., Ltd. (“Beitai Ductile”)
- Benxi Iron and Steel (Group) Metallurgy Co., Ltd. (“Benxi Metallurgy”)
- Benxi Iron and Steel (Group) Real Estate Development Co., Ltd. (“Benxi Real Estate”)
- Benxi Iron & Steel (Group) Co., Ltd. (“Benxi Group”)
- Benxi Beiyong Iron & Steel Group Import & Export Corp (“Beiyong I&E”)
- Bei Tai Iron and Steel Group Imp. and Exp. (Dalian) Co., Ltd. (“Dalian I&E”)
- Bengang Steel Plate Co., Ltd. (“Bengang Plate”)

Benxi Steel reports the following roles for each of the companies:<sup>38</sup>

- **Bengang Group** – Ultimate parent company of the responding Benxi companies.
- **Beitai Group** – Parent company of the responding Benxi companies prior to the POI.
- **Beiyong Group** – Selected respondent. Parent company of Beiyong I&E and responding subject merchandise producers. Also a producer and supplier of inputs (including steel billet) to the responding subject merchandise producers.
- **Benxi Steel Rolling** – Producer of subject merchandise.
- **Benxi Beifang** – Producer of subject merchandise.

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<sup>36</sup> See *Fabrique de Fer de Charleroi SA v. United States*, 66 F. Supp. 2d 593, 603 (CIT 2001).

<sup>37</sup> See generally, BIQR1; see also Benxi Steel's April 28, 2014, submission (BIQR2) at 5-6; BIQR3 at 4-5; and Benxi Steel's May 19, 2014, submission (BI QR4) at 4.

<sup>38</sup> *Id.*

- **Benxi Beitai** – Producer of subject merchandise.
- **Benxi Northern** – Producer and supplier to Beiying Group of inputs that Beiying Group used in the production of steel billet.
- **Beifang 2nd Rolling** – Producer of threaded bar products; supplier to Beiying Group of an input (scrap) that Beiying Group used in the production of steel billet.
- **Beitai Ductile** – Producer of ductile iron pipes; supplier to Beiying Group of an input (scrap) that Beiying Group used in the production of steel billet.
- **Benxi Metallurgy** – Pre-treated and supplied an input (treated waste powder) to Beiying Group that Beiying Group used in the production of molten iron and, ultimately, steel billet and slab.
- **Benxi Real Estate** – Producer and supplier to Beiying Group of an input (deoxidizer) that Beiying Group used in the production of molten iron and, ultimately, steel billet and slab.
- **Benxi Group** – Parent company of Benxi Real Estate.
- **Beiying I&E** – Selected respondent; exporter of subject merchandise.
- **Dalian I&E** – Exporter of subject merchandise.
- **Bengang Plate** – Supplier to Beiying Group of inputs (certain alloys, sinter, and coke) that Beiying Group used in the production of steel billet.

Based on Bengang Group’s ultimate ownership of the companies listed above (with the exception of Dalian I&E, as discussed below), we preliminarily find that these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Because Bengang Group is a parent company, we are preliminarily attributing the benefit from subsidies received by Bengang Group to Bengang Group’s consolidated sales (net of intercompany sales), in accordance with 19 CFR 351.525(b)(6)(iii).

Beitai Group was a parent company of the responding Benxi companies prior to the POI. Therefore, for conducting the 0.5 percent expense test for non-recurring subsidies<sup>39</sup> that Beitai Group received prior to the POI, we are preliminarily attributing the benefit to Beitai Group’s consolidated sales (net of intercompany sales) in the year in which the subsidy was approved, in accordance with 19 CFR 351.524(b)(2) and 19 CFR 351.525(b)(6)(iii).

Beiying Group is both a parent company of the responding subject merchandise producers and a supplier of inputs to them. We are preliminarily attributing subsidies received by Beiying Group to Beiying Group’s consolidated sales (net of intercompany sales), in accordance with 19 CFR 351.525(b)(6)(iii).<sup>40</sup>

Benxi Steel Rolling, Benxi Beifang, and Benxi Beitai are producers of the subject merchandise. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we attributed subsidies that these

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<sup>39</sup> See 19 CFR 351.524(b).

<sup>40</sup> See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 59212 (September 27, 2010) (Coated Paper from the PRC), and accompanying IDM (Coated Paper from the PRC IDM) at 9 and Comment 35, where we discuss application of the attribution regulations at 19 CFR 351.525(b)(6) to a parent company that also falls under another of the Department’s attribution regulations at 19 CFR 351.525(b)(6)(ii)-(v).

companies received to the combined sales of the products that these companies produced (net of intercompany sales).<sup>41</sup>

Benxi Northern, Beifang 2nd Rolling, Beitai Ductile, Benxi Metallurgy, and Benxi Real Estate produced and supplied inputs to Beiyong Group. Beiyong Group uses the inputs from these companies to produce intermediate products (*i.e.*, molten iron and steel billet), which Benxi Steel Rolling, Benxi Beifang, and Benxi Beitai use in turn to produce wire rod and other downstream steel products.<sup>42</sup> Hence, these inputs are dedicated exclusively to the production of higher value-added products (including steel wire rod) by Beiyong Group, Benxi Steel Rolling, Benxi Beifang, and Benxi Beitai. As such, these inputs are “merely {links} in the overall production chain.”<sup>43</sup> Therefore, we preliminarily find that the inputs Benxi Northern, Beifang 2nd Rolling, Beitai Ductile, Benxi Metallurgy, and Benxi Real Estate supplied to Beiyong Group are primarily dedicated to the production of wire rod and other downstream steel products, pursuant to 19 CFR 351.525(b)(6)(iv). Regarding the attribution of subsidies that Benxi Northern, Beifang 2nd Rolling, Beitai Ductile, Benxi Metallurgy, and Benxi Real Estate received, 19 CFR 351.525(b)(6)(iv) states the following:

If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

Benxi Northern, Beifang 2nd Rolling, Beitai Ductile, Benxi Metallurgy, and Benxi Real Estate supplied inputs to Beiyong Group, which in turn provided inputs to Benxi Steel Rolling, Benxi Beifang, and Benxi Beitai. Therefore, pursuant to 19 CFR 351.525(b)(6)(iv), we preliminarily attributed subsidies that each of the five input suppliers received to the combined sales of that input supplier, Beiyong Group (unconsolidated), and the three subject merchandise producers (*i.e.*, Benxi Steel Rolling, Benxi Beifang, and Benxi Beitai), net of intercompany sales.<sup>44</sup>

Benxi Group is the parent company of Benxi Real Estate, which, as we describe above, is a producer and supplier of inputs to Beiyong Group. We preliminarily attributed subsidies received by Benxi Group to Benxi Group’s consolidated sales, Beiyong Group’s sales (unconsolidated), and the sales of the three cross-owned subject merchandise producers (*i.e.*, Benxi Steel Rolling, Benxi Beifang, and Benxi Beitai), net of all intercompany sales, in accordance with 19 CFR 351.525(b)(6)(iii) and (iv).<sup>45</sup>

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<sup>41</sup> As Benxi Steel explained at pages 1-2 of its June 18, 2014, submission, Beiyong Group made domestic sales of subject merchandise produced by Benxi Steel Rolling, Benxi Beifang, and Benxi Beitai. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we preliminarily included these sales in the attribution of subsidies to Benxi Steel Rolling, Benxi Beifang, and Benxi Beitai.

<sup>42</sup> See BIQR1, BIQR2, and Benxi Steel May 19, 2014, submission (BIQR4).

<sup>43</sup> See Countervailing Duties; Final Rule, 63 FR 65348, 65401 (November 25, 1998) (CVD Preamble).

<sup>44</sup> See, *e.g.*, Coated Paper from the PRC IDM at 9-10, where we discuss the attribution methodology for cross-owned input suppliers under a similar corporate structure.

<sup>45</sup> See, *e.g.*, Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 75 FR 57444 (September 21, 2010) (Seamless Pipe), and accompanying IDM (Seamless Pipe IDM) at 12 and Comment 24, where we discuss application of the attribution regulations at 19 CFR 351.525(b)(6) to a cross-owned parent company that does not own the responding cross-owned producers of subject merchandise. See, *e.g.*, Coated Paper from the PRC

Beiyong I&E and Dalian I&E exported subject merchandise during the POI. Benxi Steel reported that Beitai Group, which was the parent company of the responding Benxi Steel companies prior to the POI, was still the parent company of Dalian I&E during the POI.<sup>46</sup> Benxi asserted, therefore, that Dalian I&E was not cross-owned with the responding Benxi companies during the POI.<sup>47</sup> However, 19 CFR 351.525(c) states the following:

Benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated.

Therefore, pursuant to 19 CFR 351.525(c), we preliminarily cumulated the benefits from subsidies to Beiyong I&E and Dalian I&E with the benefits from subsidies provided to the three cross-owned subject merchandise producers (i.e., Benxi Steel Rolling, Benxi Beifang, and Benxi Beitai). We attributed the benefit from subsidies received by Beiyong I&E to the combined sales of Beiyong I&E and the three cross-owned subject merchandise producers, net of intercompany sales.<sup>48</sup> We attributed the benefit from subsidies received by Dalian I&E to the combined sales of Dalian I&E and the three cross-owned subject merchandise producers, net of intercompany sales.

Benxi Steel explains that Bengang Plate purchased and resold certain inputs (certain alloys, coke, sinter, etc.) to Beiyong Group for the production of steel billet.<sup>49</sup> Bengang Plate, however, was not a producer of these inputs. Therefore, we preliminarily find that 19 CFR 351.525(b)(6)(iv), which provides for the attribution of subsidies received by an input producer to the combined sales of the input and downstream products produced by both the input supplier and a downstream producer, does not apply to Bengang Plate.<sup>50</sup> Benxi Steel, however, reports that Bengang Plate supplied electricity to Benxi Metallurgy.<sup>51</sup> Accordingly, we preliminarily determine that under 19 CFR 351.525(b)(6)(v), Bengang Plate transferred subsidies it received under the Provision of Electricity for Less Than Adequate Remuneration (LTAR) program to Benxi Metallurgy.<sup>52</sup> For additional details on this program, refer to the “Provision of Electricity for LTAR” section below. Because Bengang Plate does not fall under any other attribution scenario under 19 CFR 351.525(b)(6)(ii)-(iv), we did not countervail any other subsidies that Bengang Plate received.<sup>53</sup>

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IDM at 9-10, where we discuss the attribution methodology for cross-owned input suppliers under a similar corporate structure.

<sup>46</sup> See BIQR1 at 2-3.

<sup>47</sup> Id.

<sup>48</sup> See, e.g., Certain Steel Wheels From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 77 FR 17017 (March 23, 2012), and accompanying IDM at 5, where we discuss the attribution of subsidies to a trading company.

<sup>49</sup> See BIQR1 at 7.

<sup>50</sup> See e.g., Aluminum Extrusions From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review: 2010 and 2011, 79 FR 106 (January 2, 2014), and accompanying IDM (Aluminum Extrusions Admin Review IDM) at 92-93.

<sup>51</sup> See BIQR4 at 22.

<sup>52</sup> See Aluminum Extrusions Admin Review IDM at 92-93.

<sup>53</sup> Id.

Finally, Benxi Steel has identified numerous additional affiliated companies.<sup>54</sup> Regardless of whether cross-ownership under 19 CFR 351.525(b)(6)(vi) exists between the responding Benxi Steel companies and any of these additional companies, we preliminarily find no evidence that any attribution scenario under 19 CFR 351.525(b)(6)(ii)-(v) or 19 CFR 351.525(c) applies with regard to these companies.<sup>55</sup> Accordingly, we preliminarily did not attribute the benefit from any subsidies to these companies to the responding Benxi Steel companies, and we are not including subsidies to these companies in our analysis.

### C. Denominators

When selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). Similarly, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator (or the total export sales of the cross-owned affiliates, as described above).<sup>56</sup>

## X. BENCHMARKS AND DISCOUNT RATES

The Department is investigating loans received by the respondent from PRC policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.<sup>57</sup> The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

### A. Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark.<sup>58</sup> If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."<sup>59</sup>

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in CFS from the PRC, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would

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<sup>54</sup> See BIQR1 at Exhibit 2.

<sup>55</sup> Based on the record evidence, these additional affiliated companies are not, for example, subject merchandise or input producers pursuant to 351.526(b)(6).

<sup>56</sup> See Memorandum to Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations Office II, "Preliminary Determination Calculations for Benxi Beiyong Iron & Steel Group Import & Export Corp., Benxi Beiyong Iron & Steel (Group) Co., Ltd., and Their Cross-Owned Affiliates (collectively Benxi Steel)," dated June 30, 2014 (Preliminary Calculation Memorandum).

<sup>57</sup> See 19 CFR 351.524(b)(1).

<sup>58</sup> See 19 CFR 351.505(a)(3)(i).

<sup>59</sup> See 19 CFR 351.505(a)(3)(ii).

be found in a functioning market.<sup>60</sup> Because of this, any loans received by the respondents from private PRC or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a PRC benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in Lumber from Canada, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.<sup>61</sup>

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in CFS from the PRC<sup>62</sup> and more recently updated in Thermal Paper from the PRC.<sup>63</sup> Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in CFS from the PRC, this pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.<sup>64</sup> Beginning in 2010, however, the PRC is in the upper-middle income category and remained there from 2011 to 2012.<sup>65</sup> Accordingly, as explained further below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2012. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.<sup>66</sup>

After the Department identifies the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions.<sup>67</sup> The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.

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<sup>60</sup> See CFS from the PRC, and CFS IDM at Comment 10; see also Memorandum to the File from Reza Karamloo, Case Analyst, "Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Banking Memoranda," dated June 30, 2014 (Banking Memoranda).

<sup>61</sup> See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada, 67 FR 15545 (April 2, 2002) (Lumber from Canada) and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

<sup>62</sup> See CFS from the PRC, and CFS IDM at Comment 10.

<sup>63</sup> See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008) (Thermal Paper from the PRC) and accompanying IDM (Thermal Paper IDM) at 8-10.

<sup>64</sup> See World Bank Country Classification, <http://econ.worldbank.org/> (World Bank Country Classification); see also Preliminary Calculation Memorandum.

<sup>65</sup> See World Bank Country Classification.

<sup>66</sup> See, e.g., Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination, 78 FR 33346 (June 4, 2013) and accompanying Preliminary Decision Memorandum (DM) at "Benchmarks and Discount Rates," unchanged in Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 50391 (August 19, 2013).

<sup>67</sup> The World Bank has not yet published the World Governance Indicators for 2013. Therefore, for this preliminary determination, we have applied the 2012 short-term benchmark rate for situations that require a 2013 short-term benchmark. We intend to update the short-term benchmark if the World Bank releases all necessary information in time for us to analyze it prior to the final determination.

In each of the years from 2001-2009 and 2011-2012, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group.<sup>68</sup> This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since CFS from the PRC to compute the benchmarks for the years from 2001-2009 and 2011-2012. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries. Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010-2012 and "lower middle income" for 2001-2009.<sup>69</sup> First, we did not include those economies that the Department considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign currency-denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.<sup>70</sup> Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.<sup>71</sup>

#### B. Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.<sup>72</sup>

In Citric Acid from the PRC, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where "n" equals or

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<sup>68</sup> See Memorandum to the File from Shane Subler, International Trade Compliance Analyst, "Countervailing Duty Investigation of Carbon and Alloy Steel Wire Rod from the People's Republic of China: Interest Rate Benchmark Memorandum," dated June 30, 2014 (Interest Rate Benchmark Memorandum).

<sup>69</sup> Id.

<sup>70</sup> Id.

<sup>71</sup> Id.

<sup>72</sup> See, e.g., Thermal Paper from the PRC, and Thermal Paper IDM at 10.

approximates the number of years of the term of the loan in question.<sup>73</sup> Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.<sup>74</sup>

### C. Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is following the methodology developed over a number of successive PRC investigations. For U.S. dollar short-term loans, the Department used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rate for companies with a BB rating. Likewise, for any loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question. The resulting inflation-adjusted benchmark lending rates are provided in our Interest Rate Benchmark Memorandum.<sup>75</sup>

### D. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.<sup>76</sup> The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Preliminary Calculation Memorandum.<sup>77</sup>

## **XI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES**

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in relying on the facts otherwise available when a party fails to cooperate by not acting to the best of its

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<sup>73</sup> See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 16836 (April 13, 2009) (Citric Acid from the PRC) and accompanying IDM (Citric Acid IDM) at Comment 14.

<sup>74</sup> See Preliminary Calculation Memorandum.

<sup>75</sup> See Interest Rate Benchmark Memorandum.

<sup>76</sup> See Preliminary Calculation Memorandum.

<sup>77</sup> Id.

ability to comply with a request for information. For purposes of this preliminary determination, we find it necessary to rely on adverse facts available (AFA) for the GOC and Hebei Iron & Steel, as detailed below.

#### A. Selection of the AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."<sup>78</sup> The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>79</sup>

#### B. Application of the AFA Rate: Hebei Iron & Steel

As discussed above in the "Case History" section, the Department selected Hebei Iron & Steel as a mandatory respondent and issued the Initial CVD Questionnaire to Hebei Iron & Steel directly, as well as to the GOC, with instructions to provide the questionnaire to the respondent company. The Department confirmed that Hebei Iron & Steel received the questionnaire.<sup>80</sup> However, Hebei Iron & Steel did not provide a response to that questionnaire or make an entry of appearance in this investigation. As a result of Hebei Iron & Steel's failure to participate in this investigation and its decision not to respond to the Initial CVD Questionnaire, we preliminarily find that Hebei Iron & Steel withheld information that had been requested and failed to provide information within the deadlines established. Further, by not responding to the questionnaire, Hebei Iron & Steel significantly impeded this proceeding. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(1), (2)(A), (B) and (C) of the Act, we based the CVD rate for Hebei Iron & Steel on facts otherwise available.

We preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act because by not responding to the initial questionnaire, Hebei Iron & Steel did not cooperate to the best of its ability to comply with a request for information in this investigation. Accordingly, we preliminarily find that AFA is warranted to ensure that Hebei Iron & Steel does not obtain a more favorable result by failing to cooperate than had it fully complied with our request for information.

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<sup>78</sup> See, e.g., Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 76 FR 1971 (January 11, 2011); see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998).

<sup>79</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA).

<sup>80</sup> See Memorandum to the File from Reza Karamloo, Case Analyst, "Documentation Confirming Delivery and Receipt of the Countervailing Duty Questionnaire Issued to Hebei Iron & Steel Co Ltd Tangshan Branch," dated April 7, 2014; see also Initial CVD Questionnaire.

It is the Department's practice in CVD proceedings to compute a total AFA rate for the non-cooperating company using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.<sup>81</sup> Specifically, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not de minimis. If there is no identical program match within the investigation, or if the rate is de minimis, the Department uses the highest non-de minimis rate calculated for the same or for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-de minimis subsidy rate calculated for the same or for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.<sup>82</sup>

In applying AFA to Hebei Iron & Steel, we are guided by the Department's methodology detailed above. We begin by selecting, as AFA, the highest calculated program-specific (non-zero) rates determined for the cooperating respondents in the instant investigation. Accordingly, we are applying the subsidy rate we have calculated for Benxi Steel for the following programs:

- Preferential Loans to SOEs
- The Provision of Steel Billet for LTAR
- The Provision of Electricity for LTAR
- The Provision of Land-Use to State Owned Enterprises (SOEs) for LTAR
- Value Added Tax (VAT) and Import Duty Exemptions for Use of Imported Equipment

To calculate the program rate for the 11 income tax programs alleged in the petition which pertain to either the reduction of income tax paid or the payment of no income tax, we applied an adverse inference that Hebei Iron & Steel paid no income tax during the POI. The standard income tax rate for corporations in the PRC in effect during the POI was 25 percent.<sup>83</sup> Thus, the highest possible benefit for these 11 income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the 11 programs combine to provide a 25 percent benefit). Consistent with past practice, the 25 percent AFA rate does not apply to the import tariff and VAT exemption programs because such programs may not affect the tax rate.<sup>84</sup>

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<sup>81</sup> See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof 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 70971, 70975 (November 24, 2008) (unchanged in Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 29180 (June 19, 2009) and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences"); see also Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18521 (April 4, 2011) (Aluminum Extrusions from the PRC), and accompanying IDM (Aluminum Extrusions IDM) at "Application of Adverse Inferences: Non-Cooperative Companies."

<sup>82</sup> Id.; see also, e.g., Thermal Paper from the PRC, and Thermal Paper IDM at "Selection of the Adverse Facts Available Rate."

<sup>83</sup> See Petition, Volume III at 80.

<sup>84</sup> See e.g., Aluminum Extrusions from the PRC, and Aluminum Extrusions IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

For all programs other than those previously mentioned, we are applying, where available, the highest subsidy rate calculated for the same or similar program in a PRC CVD investigation or administrative review. For this preliminary determination, we are able to match based on program name, descriptions, and treatment of the benefit, the following programs to the same programs from other PRC CVD proceedings:

- Policy Loans<sup>85</sup>
- Funds for Outward Expansion of Industries in Guangdong Province<sup>86</sup>

We are able to match based on program type and treatment of the benefit the following programs to similar programs from other PRC CVD proceedings:

- Directed Credit<sup>87</sup>
- Treasury Bond Loans or Grants<sup>88</sup>
- Development of Famous Brands and China World Top Brands Programs<sup>89</sup>
- Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands<sup>90</sup>
- Provincial Fund for Fiscal and Technological Innovation<sup>91</sup>
- State Specific Fund for Promoting Key Industries and Innovation Technologies<sup>92</sup>
- Shandong Province' s Special Fund for the Establishment of Key Enterprise Technology Centers<sup>93</sup>
- Grants for Antidumping Investigations<sup>94</sup>
- Shandong Province's Award Fund for Industrialization of Key Energy-Saving Technology<sup>95</sup>
- Shandong Province's Environmental Protection Industry Research and Development (R&D) Funds<sup>96</sup>
- Shandong Province's Construction Fund for Promotion of Key Industries<sup>97</sup>

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<sup>85</sup> See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 75 FR 70201 (November 17, 2010) (Coated Paper Investigation Amended Final), and accompanying Ministerial Error Memorandum (MEM) at "Revised Net Subsidy Rate for the Gold Companies." This document is proprietary in nature. However, the public version states the revised subsidy rates which include, infra, the policy lending rate (Policy Loans to Coated Paper Producers and Related Pulp Producers from State-Owned Commercial Banks and Government Policy Banks program).

<sup>86</sup> See Thermal Paper from the PRC, and Thermal Paper IDM at "J. Funds for Outward Expansion of Industries in Guangdong Province."

<sup>87</sup> See Coated Paper Investigation Amended Final at "Preferential Lending to the Coated Paper Industry."

<sup>88</sup> See Coated Paper Investigation Amended Final and accompanying MEM at "Revised Net Subsidy Rate for the Gold Companies" (Policy Loans to Coated Paper Producers and Related Pulp Producers from State-Owned Commercial Banks and Government Policy Banks program).

<sup>89</sup> See Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 75978 (December 26, 2012), and IDM at "8. Support Funds for Construction of Project Infrastructure Provided by Administration Commission of LETDZ."

<sup>90</sup> Id.

<sup>91</sup> Id.

<sup>92</sup> Id.

<sup>93</sup> Id.

<sup>94</sup> Id.

<sup>95</sup> Id.

<sup>96</sup> Id.

- Waste Water Treatment Subsidies<sup>98</sup>
- Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises<sup>99</sup>
- Technology to Improve Trade R&D Fund<sup>100</sup>
- Direct Government Grants to Hebei Iron & Steel<sup>101, 102</sup>
- Land-Use Rights Extension<sup>103</sup>
- VAT Rebates on Foreign Invested Enterprise (FIE) Purchases of Chinese-Made Equipment<sup>104</sup>
- VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program<sup>105</sup>

Accordingly, we preliminarily determine the AFA countervailable subsidy rate for Hebei Iron & Steel to be 81.36 percent ad valorem.<sup>106</sup>

### C. Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>107</sup> The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.<sup>108</sup>

The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.<sup>109</sup>

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<sup>97</sup> Id.

<sup>98</sup> Id.

<sup>99</sup> Id.

<sup>100</sup> Id.

<sup>101</sup> Id.

<sup>102</sup> We did not include in our AFA rate analysis those grant programs alleged in the petition which were based on the financial statements of companies other than Hebei Iron & Steel, i.e., Direct Government Grants to Angang Steel, Baosteel, Nanjing Iron & Steel Co., Ltd. (NISCO), Jiangsu Shagang Group, and Wuhan Iron and Steel Co., Ltd. (WISCO).

<sup>103</sup> See Drawn Stainless Steel Sinks From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 13017 (February 26, 2013), and accompanying IDM at “E. Land-Use Rights Extension - Superte.”

<sup>104</sup> See Coated Paper Investigation Amended Final at “Value Added-Tax and Tariff Exemptions on Imported Equipment.”

<sup>105</sup> Id.

<sup>106</sup> See Section XIII.D below.

<sup>107</sup> See SAA, at 870.

<sup>108</sup> Id.

<sup>109</sup> Id., at 869-870.

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>110</sup> In the absence of record evidence concerning the alleged programs, the Department reviewed the information concerning PRC subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this case. The Department has corroborated the rates it selected to use as AFA to the extent practicable for this preliminary determination.

#### D. Application of AFA: Provision of Electricity for LTAR

The GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act. In both the Department's original questionnaire and the May 23, 2014, supplemental questionnaire, the Department asked the GOC to provide, for each province in which a respondent is located, a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no provincial-specific information in response to these questions in its initial questionnaire response.<sup>111</sup> The Department reiterated these questions in a supplemental questionnaire and the GOC did not provide the requested information in its supplemental questionnaire response and asserted its belief that the requested information was irrelevant.<sup>112</sup> As such, we preliminarily determine that, without the missing information, we cannot make a finding with respect to financial contribution or specificity because, for example, the details required to analyze the GOC's electricity price adjustment process are contained in the provincial price proposals, which were not submitted. Because these details are contained in the provincial price proposals, those proposals are necessary for determining whether the GOC provides a financial contribution that is specific under this program.

Consequently, we preliminarily determine that the GOC withheld necessary information that was requested of it and, thus, that the Department must rely on facts otherwise available in making our preliminary determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. In this regard, the GOC did not explain why it was unable

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<sup>110</sup> See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996).

<sup>111</sup> See GIQR1 at 59.

<sup>112</sup> See the GOC's June 6, 2014, submission (GSQR1) at 10-11.

to provide the requested information, nor did it ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we selected are derived from information from the record of the instant investigation and are the highest electricity rates on this record for the applicable rate and user categories.<sup>113</sup>

#### E. Application of AFA: Provision of Steel Billet for LTAR

As discussed below under the section "Programs Preliminarily Found to be Countervailable," the Department is investigating whether the GOC provided steel billets for LTAR. We asked the GOC to provide the information requested in the "Input Producer Appendix" to Section II of the CVD questionnaire with respect to a company that the GOC claimed is privately owned, and that produced steel billets purchased by Benxi Steel during the POI.<sup>114</sup> Specifically, we sought information from the GOC that would allow us to analyze whether the producer is an "authority" within the meaning of section 771(5)(B) of the Act.<sup>115</sup>

In its initial questionnaire response, the GOC provided a copy of the billet supplier's business registration summary, and asserted that the company is privately-owned, as indicated by the list of shareholding individuals on the document; but the GOC did not respond to the questions in the Input Producer Appendix, which requests information concerning the role played by the Chinese Communist Party (CCP) officials on the company's board of directors and in senior management during the POI.<sup>116</sup> We provided the GOC a second chance to submit this information in its response to our supplemental questionnaire; however, the GOC again declined to provide the requested information.<sup>117</sup>

Regarding the GOC's objections to our questions about the role of CCP officials in the management and operations of the input producer,<sup>118</sup> we observe that it is the prerogative of the Department, not the GOC, to determine what information is relevant to our investigations and administrative reviews.<sup>119</sup> Specifically, the Department considers information regarding the CCP's involvement in

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<sup>113</sup> See Preliminary Calculation Memorandum.

<sup>114</sup> See the GOC's May 12, 2014, initial questionnaire response (GIQR1) at 51.

<sup>115</sup> See Initial CVD Questionnaire at Section II, Input Producer Appendix.

<sup>116</sup> See the GIQR1 at Exhibit 24; see also Memorandum to the File from Reza Karamloo, Case Analyst, "Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Additional Information," dated June 30, 2014 (Additional Information Memo), at Attachment 1 and 2 (explaining the relevance of the CCP in determining whether particular enterprises should be considered "public bodies" for purposes of our financial contribution analysis).

<sup>117</sup> See the May 23, 2014, Letter to the GOC from Irene Darzenta Tzafolias and the GSQR1 at 7-10.

<sup>118</sup> See GSQR1 at 7-10.

<sup>119</sup> See NSK, Ltd. v. United States, 919 F. Supp. 442, 447 (CIT 1996) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); and Ansaldo Componenti, S.p.A. v. United States, 628 F. Supp. 198, 205 (CIT 1986) ("it is Commerce, not the respondent, that determines what information is to be provided").

the PRC's economic and political structure to be relevant because public information on the record of this investigation suggests that the CCP exerts significant control over activities in the PRC.<sup>120</sup> Because the GOC did not provide the information we requested regarding CCP involvement, the factual record in this investigation is similar to the factual record in prior CVD proceedings. Based on this information, and consistent with our prior determinations, the Department finds that "available information and record evidence indicates that the CCP meets the definition of the term 'government' for the limited purpose of applying the U.S. CVD law to China."<sup>121</sup> Additionally, publicly available information on the record of this investigation indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in the company's affairs.<sup>122</sup> With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, consistent with prior determinations, we find that this particular law does not pertain to CCP officials.<sup>123</sup> Moreover, despite the GOC's assertions that "...it is beyond the capacity of the GOC to access the information requested by the Department,"<sup>124</sup> we note that the GOC's responses in prior proceedings demonstrate that it is able to access the information requested by the Department.<sup>125</sup>

The GOC's failure to submit the requested information prevents us from ascertaining the extent of government involvement in the operations of the steel billet supplier during the POI. In selecting from among the facts available, we determined that an adverse inference is warranted, pursuant to section 776(b) of the Act. Accordingly, we are preliminarily making the adverse inference that the billet purchased by the respondent during the POI was provided by government authorities and, thus, provided a government financial contribution within the meaning of 771(5)(D)(iii) of the Act.

Furthermore, we requested aggregate production and consumption data with regard to the steel billet market in the PRC, which is pertinent to our determination of whether that market is sufficiently free of government involvement and, thus, free from any distortion in prices.<sup>126</sup> However, the GOC failed to provide the requested information.<sup>127</sup> Therefore, we determine that the GOC has failed to act to the best of its ability and, consequently, that an adverse inference is warranted in accordance with section 776(b) of the Act. With respect to the GOC's failure to provide requested information about the production and consumption of steel billets, as adverse facts available, we preliminarily determine that the GOC dominates the market in the PRC for this input. Accordingly, the market for this input is significantly distorted, and, hence, the use of an external benchmark is warranted.

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<sup>120</sup> See Additional Information Memo at Attachments 1 and 2.

<sup>121</sup> See Additional Information Memo, Attachment 1 at 33.

<sup>122</sup> See Additional Information Memo, Attachment 2 at 35-36.

<sup>123</sup> See Seamless Pipe, and Seamless Pipe IDM at 16.

<sup>124</sup> See GSQR1 at 10.

<sup>125</sup> See, e.g., High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 26738 (May 7, 2012), and accompanying IDM at 13; see also, Steel Wire Strand from the PRC, and Steel Wire Strand IDM at Comment 8 ("in the instant investigation, the information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies.").

<sup>126</sup> See Initial CVD Questionnaire at Section II.E., and May 23, 2014, Supplemental Questionnaire.

<sup>127</sup> See GIQR1 at 53-55 and GSQR1 at 10.

## F. Application of AFA: Preferential Loans for SOEs

The Department is examining whether SOEs receive preferential loans through state-owned commercial or policy banks. In our initial questionnaire to the GOC, we asked for information regarding this program. For example, we asked the GOC to provide any laws that address bank lending to SOEs. We also requested the total amount of new loans issued by SOCBs in the PRC in the years 2010-2013, as well as total amount of new loans issued by SOCBs to SOEs during those years. We asked the GOC to provide this information both for SOCBs as a group and for the “Big Four” SOCBs. Additionally, we requested this information for each of the banks with outstanding loans to Benxi Steel and its cross-owned companies during the POI.<sup>128</sup>

In its May 12, 2014, questionnaire response, the GOC argued that the requested information does not exist, stating that “{t}here is no law, regulation or policy that addresses bank lending to SOEs generally, or to SOEs that produce steel wire rod in particular.”<sup>129</sup> We requested the above information again in a supplemental questionnaire to the GOC.<sup>130</sup> In its response, the GOC stated that it “responded to each and every question pertaining to this program in the original questionnaire response submitted on May 12, 2014.”<sup>131</sup> The GOC also claimed that Chinese banks do not use SOE designations in their lending; therefore, it cannot provide the requested loan distribution breakouts according to this status.<sup>132</sup>

In the CVD investigation of OCTG from the PRC,<sup>133</sup> the Department also requested information regarding preferential loans for SOEs. In that case, we asked the GOC to provide 1) the total amount of loans made by each of the “Big Four” SOCBs between 2002 and 2008, and 2) how many of those loans were made to SOEs. The GOC was able to provide this information.<sup>134</sup> Thus, the GOC’s claim in this proceeding that SOCBs do not maintain loan information specific to SOEs contradicts its responses in earlier proceedings.

The statute identifies specificity as one of three necessary elements of a countervailable subsidy. We normally rely on information from the government to determine whether a program is specific. Although it was given two opportunities, the GOC’s responses left us without the necessary information to determine whether this program is specific to SOEs under section 771(5A) of the Act. We preliminarily find that the GOC withheld necessary information that was requested of it for this program within the meaning of section 776(a)(2)(A) of the Act. Accordingly, we are relying on “facts available.” Moreover, the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information, so we are applying an adverse inference in our use of facts available. Due to the GOC’s failure to provide information necessary for our determination

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<sup>128</sup> See Initial CVD Questionnaire.

<sup>129</sup> See GIQR1 at 63.

<sup>130</sup> See the Department’s May 23, 2014, supplemental questionnaire at 4.

<sup>131</sup> See the GSQR1 at 3-4.

<sup>132</sup> Id.

<sup>133</sup> See Countervailing Duty Investigation of Grain-Oriented Electrical Steel From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination, 79 FR 13617 (March 11, 2014) (GOES from the PRC), and accompanying DM (GOES DM) at 14; see also Certain Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination, 74 FR 64045 (December 7, 2009) (OCTG from the PRC).

<sup>134</sup> See Banking Memorandum at Attachment 1.

concerning Preferential Loans for SOEs, we are finding as AFA that this program is specific within the meaning of 771(5A) of the Act. We discuss this program further below under “Analysis of Programs.”

## **XII. CRITICAL CIRCUMSTANCES**

On June 4, 2014, the petitioners alleged that critical circumstances exist with respect to imports of steel wire rod from the PRC and submitted data extracted from official U.S. import statistics and Commerce Department Steel Import Monitoring Act licensing data in support of their allegation.<sup>135</sup> On June 5, 2014, the Department requested from Benxi Steel monthly shipment data of subject merchandise to the United States for the period October 2013 through May 2014.<sup>136</sup> On June 13, 2014, Benxi Steel submitted the requested data.<sup>137</sup>

In its critical circumstances allegation, the petitioners allege that there is a reasonable basis to believe that there are subsidies in this investigation which are inconsistent with the Subsidies and Countervailing Measures Agreement (SCM Agreement), including export subsidies and domestic substitution subsidies.<sup>138</sup> In particular, the petitioners cite to allegations including export subsidies, subsidies for inputs provided for LTAR, interest free or low interest loans, and direct government grants for which the Department initiated an investigation as evidence that the criteria are met.<sup>139</sup> The petitioners also claim that there have been massive imports of steel wire rod over a relatively short period.<sup>140</sup> The petitioners provided data which they contend demonstrate that imports of subject merchandise in the three months following the filing of the petition increased by more than 15 percent, as compared to the three month period before the filing of the petition, which is considered “massive” under 19 CFR 351.206(h)(2).<sup>141</sup>

Section 703(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and (B) there have been massive imports of the subject merchandise over a relatively short period. When determining whether an alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the Department limits its findings to those subsidies contingent on export performance or on the use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the Subsidies Agreement).<sup>142</sup> In determining whether imports of the subject merchandise have been “massive,” 19 CFR 351.206(h)(1) provides that the Department

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<sup>135</sup> See Letter to the Department from the petitioners, “Carbon and Certain Alloy Steel Wire Rod from People’s Republic of China – Critical Circumstances Allegation,” (June 4, 2014) (Critical Circumstances Allegation).

<sup>136</sup> See Letter to Benxi from the Department, “Antidumping and Countervailing Duty Investigations of Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Request for Shipment Quantity and Value Data,” (June 5, 2014).

<sup>137</sup> See Letter to the Department from Benxi Steel, “Benxi Steel Critical Circumstances Response – Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China,” (June 13, 2014).

<sup>138</sup> See section 703(e)(1)(A) of the Act; see also Critical Circumstances Allegation at 5.

<sup>139</sup> See Critical Circumstances Allegation, at 6.

<sup>140</sup> See section 703(e)(1)(B) of the Act; see also Critical Circumstances Allegation at 9.

<sup>141</sup> See Critical Circumstances Allegation at 10 and Attachment 1.

<sup>142</sup> See, e.g., Notice of Preliminary Negative Determination of Critical Circumstances: Certain New Pneumatic Off the-Road Tires From the People’s Republic of China, 73 FR 21588, 21589-90 (April 22, 2008) (unchanged in the final determination), and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod From Germany, 67 FR 55808, 55809 (August 30, 2002).

normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, the Department will not consider imports to be massive unless imports during the “relatively short period” (comparison period) increased by at least 15 percent compared to imports during an “immediately preceding period of comparable duration” (base period).<sup>143</sup> 19 CFR 351.206(i) defines “relatively short period” as normally being the period beginning on the date the proceeding commences (*i.e.*, the date the petition is filed) and ending at least three months later. For consideration of this allegation, we used a three-month base period (*i.e.*, November 2013 through January 2014) and a three-month comparison period (*i.e.*, February 2014 through April 2014).

### Benxi Steel

As discussed below, under “Analysis of Programs,” the Department finds that, during the POI, Benxi Steel received countervailable benefits under at least one program that is contingent upon export performance during the POR, *i.e.*, grants for antidumping investigations. Therefore, we preliminarily determine that there is a reasonable basis to believe or suspect that there is a program in this investigation which is inconsistent with the SCM Agreement. In determining whether there were massive imports from Benxi Steel, we analyzed Benxi Steel’s monthly shipment data for the period November 2013 through April 2014. These data indicate that there was not a massive increase in shipments of subject merchandise to the United States by Benxi Steel during the three-month period immediately following the filing of the petition on January 31, 2014.<sup>144</sup>

### Hebei Iron & Steel

Because Hebei Iron & Steel is not participating in this investigation, consistent with Department practice, we based our critical circumstances determination for Hebei Iron & Steel on AFA, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308(c).<sup>145</sup> As AFA, we preliminarily determine that Hebei Iron & Steel received countervailable benefits under programs that are contingent upon export performance. Also, as AFA, we preliminarily determine that imports of subject merchandise from Hebei Iron & Steel were massive over a relatively short period of time.

### All Other Exporters

With regard to whether imports of subject merchandise by the “all other” exporters of steel wire rod from the PRC were massive, we preliminarily determine that because there is evidence of the existence of countervailable subsidies that are inconsistent with the Subsidies Agreement, an analysis is warranted as to whether there was a massive increase in shipments by the “all other” companies, in accordance with section 703(e)(1)(B) of the Act and 19 CFR 351.206(h). Therefore, we analyzed, in accordance with 19 CFR 351.206(i), monthly shipment data for the period November 2013 through April 2014, using shipment data from the U.S. Census Bureau downloaded from the Global Trade Atlas, adjusted to remove shipments reported by the only

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<sup>143</sup> See 19 CFR 351.206(h)(2).

<sup>144</sup> See Department Memorandum, “Massive Imports Analysis,” (June 30, 2014) (Critical Circumstances Memorandum).

<sup>145</sup> See, *e.g.*, Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People’s Republic of China, 74 FR 2049, 2052–53 (January 14, 2009).

exporter actively participating in this investigation, Benxi Steel. The resulting data indicate that there was a massive increase in shipments, as defined by 19 CFR 351.206(h).<sup>146</sup>

As a result of an affirmative preliminary determination of critical circumstances, in accordance with section 703(e)(2)(A) of the Act, we are directing CBP to suspend liquidation, with regard to all exporters of steel wire rod, except Benxi Steel, of any unliquidated entries of subject merchandise from the PRC entered, or withdrawn from warehouse for consumption, 90 days prior to the date of publication of the preliminary determination in the Federal Register.

### **XIII. ANALYSIS OF PROGRAMS**

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

#### **A. Programs Preliminarily Determined to Be Countervailable**

##### **1. Preferential Loans to SOEs<sup>147</sup>**

As explained above under “Use of Facts Otherwise Available and Adverse Inferences,” we requested information related to this program from the GOC twice. The GOC failed to provide adequate responses to our questions both times. As a result, necessary information is not on the record. In cases where an interested party withholds information that has been requested or where there is not enough information on the record for us to determine whether a program is specific, we use facts otherwise available.<sup>148</sup> Furthermore, an adverse inference is warranted where a party fails to cooperate by not acting to the best of its ability to comply with a request for information from the Department.<sup>149</sup> Therefore, as discussed, we determine, as AFA, that this program is specific to SOEs.

We also determine that loans from SOCBs to SOEs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. They provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans that the recipients could actually obtain on the market.<sup>150</sup> To calculate the benefit under the preferential loans for SOEs program, we used the benchmarks described under “Benchmark and Discount Rates” section above.<sup>151</sup> We divided the interest savings during the POI by the sales of the responding Benxi Steel companies during the POI, as described above in the “Attribution of Subsidies” section.

On this basis, we determine preliminarily that Benxi Steel received a countervailable subsidy of 4.92 percent ad valorem.

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<sup>146</sup> See Critical Circumstances Memorandum.

<sup>147</sup> Benxi Steel reported that “Beiyong Steel and its affiliates are SOEs because the {u}ltimate shareholder is the state.” See BIQR3 at 41.

<sup>148</sup> See sections 776(a)(1) and 776(a)(2)(A) of the Act.

<sup>149</sup> See section 776(b) of the Act.

<sup>150</sup> See section 771(5)(E)(ii) of the Act.

<sup>151</sup> See 19 CFR 351.505(c).

## 2. Preferential Loans, Policy Loans, and Directed Credit to the Steel Wire Rod Industry

The petitioners allege that the PRC directly subsidizes its steel wire rod industry through preferential loans, policy loans, and directed credit.<sup>152</sup> However, because we examined all loans under the Preferential Loans to SOEs program above, we are not examining loans separately under this program.

## 3. Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands

The “Brand-name products recognition and protection measures of Liaoning Province” was established on March 31, 2003 for the purpose of developing the brand of the product and promoting competitiveness and quality.<sup>153</sup> This program is administered by Brand Strategy Promotion Committee of Liaoning Province, the secretariat of which is set up within Liaoning Bureau of Quality and Technical Supervision.<sup>154</sup> This program was limited to enterprises located in Liaoning Province.<sup>155</sup> The GOC reported that one of the mandatory respondents, Beiying Group, utilized this program between December 11, 2001 and the end of the POI.<sup>156</sup> According to the GOC, assistance under the program was provided to the respondent pursuant to Regulation for the Recognition and Protection of the Liaoning Brand.<sup>157</sup> Benxi Steel reports that Beiying Group participated in this program during the POI and has conceded to the countervailable and non-recurring nature of this program.<sup>158</sup>

We preliminarily determine that the grant received by Beiying Group under this program constitutes a financial contribution and a benefit in the amount of the grant provided under sections 771(5)(D)(i) and 771(5)(E) of the Act and 19 CFR 351.504(a). In prior investigations, we determined that regardless of the local implementation opinions, the GOC measures for administration of the program require applicants to submit export ratios and information concerning the extent to which their products meet international quality standards.<sup>159</sup> Therefore, consistent with these prior determinations regarding grants under the famous brands program, we determine that the grant provided to Beiying Group under the famous brands program is contingent on export activity and is, thus, specific pursuant to section 771(5A)(B) of the Act, as an export subsidy.

Grants are normally treated as non-recurring subsidies under 19 CFR 351.524(c). To calculate the benefit, we divided the amount approved by Beiying Group’s sales in the year of approval. Pursuant to 19 CFR 351.524(b)(2), grants of less than 0.5 percent of relevant sales in the year of approval will

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<sup>152</sup> See petition at Volume III, page 21.

<sup>153</sup> GIQR1 at 6-7, and Exhibit 4.

<sup>154</sup> GIQR1 at 7.

<sup>155</sup> GIQR1 at 11.

<sup>156</sup> *Id.* at 7.

<sup>157</sup> GIQR1 at 8.

<sup>158</sup> BIQR3 at 14.

<sup>159</sup> See, e.g., Aluminum Extrusions from the PRC, and Aluminum Extrusions IDM at “GOC and Sub-Central Government Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands”; see also Steel Wire Strand from the PRC, and Steel Wire Strand IDM at “Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level.”

be expensed to the year of receipt. Beiying Group's benefit under this program was less than 0.5 percent of relevant sales in the year of approval.<sup>160</sup> Therefore, we have expensed the benefit resulting from this program to the year of receipt (i.e., the POI). However, the calculation of the subsidy from this grant results in a rate that is less than 0.005 percent, and, as such, does not have an impact on Benxi Steel's overall subsidy rate.<sup>161</sup> Consistent with our past practice, we did not include this program in our net subsidy rate calculations for Benxi Steel.

#### 4. Grants for Antidumping Investigations

According to Benxi Steel, Beiying I&E participated in this program during the POI.<sup>162</sup> To apply for this grant, Beiying I&E filed a written application with the Benxi Municipal Finance Bureau and the Benxi Municipal Bureau of Foreign Trade and Economic Cooperation.<sup>163</sup> Although Benxi Steel reports that Beiying I&E has not retained the application documents, it maintains that neither the application nor the approval specified the merchandise for which assistance was to be provided.<sup>164</sup> Moreover, in its response, Benxi Steel states that it is not aware of any eligibility requirements other than the requirement of a foreign antidumping investigation.<sup>165</sup> According to Benxi Steel, Beiying I&E received funds from this program on October 30, 2013.<sup>166</sup> In its response, the GOC notes that this program requires the government's express authorization.<sup>167</sup> The GOC also confirms the fact that Beiying I&E utilized this program between December 11, 2001 and the end of the POI.<sup>168</sup> The GOC does not challenge the countervailability of this program.<sup>169</sup>

We preliminarily determine that the grant received by Beiying I&E under this program constitutes a financial contribution and a benefit in the amount of the grant provided under sections 771(5)(D)(i) and 771(5)(E) of the Act, and 19 CFR 351.504(a), respectively.

The Department has previously determined that in awarding such grants, the GOC considers whether the applicant made export sales and cooperated in foreign antidumping investigations.<sup>170</sup> Accordingly, we determine that the grant provided to Beiying I&E under the "antidumping investigations" program is contingent on export activity and is, thus, specific pursuant to section 771(5A)(B) of the Act, as an export subsidy.

Grants are normally treated as non-recurring subsidies under 19 CFR 351.524(c). To calculate the benefit, we divided the amount approved by Beiying I&E's sales in the year of approval. Pursuant to 19 CFR 351.524(b)(2), grants of less than 0.5 percent of relevant sales in the year of approval will be expensed to the year of receipt. Beiying I&E's benefit under this program was less than 0.5

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<sup>160</sup> See Preliminary Calculation Memorandum.

<sup>161</sup> See Preliminary Calculation Memorandum.

<sup>162</sup> BIQR3 at 15.

<sup>163</sup> *Id.* at 16.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* at 18 and Exhibit A.2.

<sup>167</sup> GSQR1 at 6.

<sup>168</sup> GIQR1 at 17.

<sup>169</sup> GSQR1 at 4.

<sup>170</sup> See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review, 76 FR 77206 (December 12, 2011), and accompanying IDM at 22.

percent of relevant sales in the year of approval.<sup>171</sup> Therefore, we have expensed the benefit resulting from this program to the year of receipt (i.e., the POI). However, the calculation of the subsidy from this grant results in a rate that is less than 0.005 percent, and, as such, does not have an impact on Benxi Steel's overall subsidy rate.<sup>172</sup> Consistent with our past practice, we did not include this program in our net subsidy rate calculations for Benxi Steel.

## 5. Waste Water Treatment Subsidies

This program was established on November 23, 2007, to encourage production facilities to upgrade their waste water management systems to decrease pollution and their environmental impact.<sup>173</sup> Eligibility is conditioned on the existence of a construction project for the prevention and treatment of waste water pollution.<sup>174</sup> The GOC states that this program requires the government's express authorization or approval.<sup>175</sup> The GOC provides no further information, and maintains that the program is the subject of the GOC's continued research and consultations with local and provincial authorities.<sup>176</sup> According to Benxi Steel, Beitai Group and Bengang Group participated in this program during the AUL.<sup>177</sup> As parent companies, Beitai Group and Bengang Group applied for and received grants under this program from the respective provincial authorities, and then forwarded the amount in part, or in full, to their subsidiaries.<sup>178</sup>

We preliminarily determine that the grants received by Beitai Group and Bengang Group under this program constitute a financial contribution under section 771(5)(D)(i) of the Act, and a benefit in the amount of the grant provided under section 771(5)(E) of the Act and 19 CFR 351.504(a). However, we require additional information in order to make a determination with respect to specificity under 771(5A) of the Act. Accordingly we intend to request additional information from the GOC to be considered in a post-preliminary analysis.

## 6. The Provision of Steel Billet for LTAR

Benxi Steel reported that Beiyong Group purchased steel billets during the POI.<sup>179</sup> As discussed above in the "Use of Facts Otherwise Available and Adverse Inferences" section, we are basing our determination regarding the provision of steel billets for LTAR in part on AFA. Consequently, we preliminarily determine that steel billet purchased by the respondent during the POI constitutes a government-provided good and a financial contribution under section 771(5)(D)(iii) of the Act. Further, based on the GOC's response that steel billet is typically used to produce steel wire rod and seamless tube products,<sup>180</sup> we preliminarily determine that this provision was specific to the steel wire rod industry, which includes the respondent, as a predominant user of the good within the meaning of 771(5A)(D)(iii)(II).

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<sup>171</sup> See Preliminary Calculation Memorandum.

<sup>172</sup> Id.

<sup>173</sup> GIQR1 at 19.

<sup>174</sup> Id. at 22-23.

<sup>175</sup> Id. at 27.

<sup>176</sup> Id. at 19.

<sup>177</sup> Id. at 19-21; see also BIQR4 at 13-17.

<sup>178</sup> Id.

<sup>179</sup> See BIQR3 at 36-38.

<sup>180</sup> See GIQR1 at 55.

To determine whether a financial contribution in the form of a good provided for LTAR confers a benefit within the meaning of 771(5)(E)(iv), the Department follows the benchmarking criteria under 19 CFR 351.511(a)(2), which sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for the government-provided good or service. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation. This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

To identify an appropriate market-based benchmark for measuring the adequacy of remuneration for the steel billets purchased by the respondent, we first considered whether we could compare the purchase price to a market-determined price for steel billet resulting from actual transactions in the PRC, in accordance with 19 CFR 351.511(a)(2)(i). As discussed above in the “Use of Facts Otherwise Available and Adverse Inferences” section, although we requested aggregate data with regard to the steel billet market in the PRC, the GOC failed to provide this information, which is pertinent to our determination of whether that market is sufficiently free from government involvement, and thus, free from any distortion in prices. Further, the GOC submitted information indicating that export tariffs were levied against steel billet during the POI.<sup>181</sup> Export tariffs can increase the domestic quantity of goods subject to the tariffs that is available in the PRC with the result that they suppress domestic prices. Moreover, the GOC submitted data indicating that domestic production of steel billets accounted for 99.93 percent of total steel billet supply during the POI.<sup>182</sup> In light of these factors, we find it reasonable to conclude that actual transaction prices in the PRC are significantly distorted as a result of the government’s involvement in the market.<sup>183</sup> Consequently, we preliminarily determine that actual transaction prices in the PRC may not be used as a viable tier-one benchmark.<sup>184</sup>

Finding no useable tier one benchmarks for our analysis, we next examined whether there were world market prices on the record suitable for use under tier two of the hierarchy. Under 19 CFR 351.511(a)(2)(ii), we compare the price paid for the government-provided good with a world market price where it is reasonable to conclude that such a price is available to purchasers in the country in question, which in this case, is the PRC. The petitioner and Benxi Steel placed on the record world market prices for steel billet from Global Trade Atlas and Steel Business Briefing, respectively.<sup>185</sup> We find that these prices would be reasonably available to purchasers in the PRC and, thus, they are useable as tier two prices for comparing the prices paid for steel billet by the

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<sup>181</sup> See GIQR1 at 54.

<sup>182</sup> *Id.* at 52.

<sup>183</sup> See CVD Preamble at 65337.

<sup>184</sup> *Id.*; see also 19 CFR 351.511(a)(2)(ii).

<sup>185</sup> See Letter from Nucor Corporation, “Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Submission of Factual Information – Benchmark Data” (June 2, 2014) (Nucor Benchmark Letter); see also Letter from Benxi Steel, “Benxi Steel Benchmark Submission – CVD Investigation of Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China” (June 2, 2014).

respondent.

Where there is more than one commercially available world market price, 19 CFR 351.511(a)(2)(ii) stipulates that we average such prices to the extent practicable, making due allowance for factors affecting comparability. Accordingly, we calculated simple monthly averages of the two world market price series placed on the record to derive the tier two benchmarks with which we compared the steel billet prices paid by the respondent during the POI.<sup>186</sup>

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we included the freight charges that would be incurred to deliver steel billet to the respondent's plants. We also added the VAT and import duties applicable to imports of steel billet into the PRC. We compared these prices to the respondents' actual purchase prices, including any taxes and delivery charges incurred to deliver the product to the respondent's plants.<sup>187</sup>

Comparing these adjusted benchmark prices to the prices paid by the respondent for its steel billet purchases, we measured a benefit to the extent that the price paid by the respondent was less than the benchmark price. We divided this difference by the Beiyong Group's consolidated sales in 2013, as described above in the "Attribution of Subsidies" section. On this basis, we preliminarily determine that Benxi Steel received a countervailable subsidy of 0.09 percent ad valorem under this program.<sup>188</sup>

## 7. The Provision of Electricity for LTAR

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are basing part of our determination regarding the GOC's provision of electricity on AFA. Therefore, we determine that the GOC's provision of electricity confers a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act, and is specific under section 771(5A)(D) of the Act.

Benxi Steel reported that Bengang Group, Beiyong Group, Benxi Group, Benxi Real Estate, and Benxi Metallurgy<sup>189</sup> purchased electricity from a government electricity supplier.<sup>190</sup> To determine the existence and amount of any benefit from this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the companies' reported information with respect to the amounts of electricity used, and the rates the companies paid for that electricity, during the POI. We compared the rates paid by the companies for their electricity to the highest rates that they could have paid in the PRC during the POI.

To calculate the electricity benchmark, in accordance with 19 CFR 351.511(a)(2), we selected the highest non-seasonal provincial rates in the PRC for each user category (e.g., "large industry,"

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<sup>186</sup> See the Preliminary Calculation Memorandum.

<sup>187</sup> Id.

<sup>188</sup> Id.

<sup>189</sup> Benxi Metallurgy's electricity was supplied by Bengang Steel Plate. See BSQR1 at 22.

<sup>190</sup> See BIQR3 at 38 and BSQR1 at 21-22.

“general industry and commerce”) and voltage class of the respondents (e.g., 1-10kv), as well as the respondents’ “base charge” (either maximum demand or transformer capacity) where applicable, as provided in the electricity tariff schedules submitted by the GOC.<sup>191</sup> This benchmark reflects an adverse inference, which we drew as a result of the GOC’s failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation, as discussed above.<sup>192</sup> We calculated benchmark electricity costs by multiplying the monthly kilowatt hours (kWh) consumed by each company by the benchmark rate corresponding to the voltage class and time period category (e.g., peak, normal, and off peak). We then calculated the total benefit during the POI for each company by summing the difference between the benchmark cost and the amount paid by each company.<sup>193</sup>

To calculate the net subsidy rate attributable to Benxi Steel, we divided the benefit by total sales as described in the “Subsidies Valuation” section above. On this basis, we determine preliminarily a countervailable subsidy rate of 4.94 percent ad valorem.<sup>194</sup>

## 8. The Provision of Land-Use to SOEs for LTAR

The Department has previously determined that allocated land-use rights are provided at LTAR by the GOC to SOEs.<sup>195</sup> As noted above, Benxi Steel and its affiliates are SOEs.<sup>196</sup>

As discussed in OTR Tires from the PRC, there are two main types of land-use rights in the PRC: “granted” (sometimes referred to as “conveyed”) and “allocated.” The GOC transfers allocated land-use rights to state owned entities only for a nominal one-time charge and annual fee. These allocated land-use rights may not expire, may not be leased or mortgaged, and can be transferred (or shared for commercial purposes) legally only if they are first converted to granted land-use rights.<sup>197</sup> Granted land-use rights can be purchased by private entities directly from the government on the “primary market” or from other granted land-use rights holders on the “secondary” market.

In its response, the GOC adds that in some instances, as with Benxi Steel, the government may take allocated land used by the SOE and formalize the land as the government’s capital contribution.<sup>198</sup> This land, termed “authorized management” or “authorized operation,” is only permitted to be transferred between subsidiaries.<sup>199</sup> Unlike allocated land, however, an authorized management land use right has a set term of 50 years.<sup>200</sup>

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<sup>191</sup> See GIQR1 at Exhibit 37.

<sup>192</sup> See “Application of AFA: Provision of Electricity for LTAR” section of this memorandum.

<sup>193</sup> For more information on the respondent’s electricity usage categories and the benchmark rates we have used in the benefit calculations, see the Preliminary Calculation Memorandum.

<sup>194</sup> See Preliminary Calculation Memorandum.

<sup>195</sup> See, e.g., Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) (OTR Tires from the PRC), and the accompanying IDM (OTR Tires IDM) at 20.

<sup>196</sup> BIQR3 at 41.

<sup>197</sup> See Nucor Benchmark Letter at Exhibit 8 (Ho, Samuel P.S., and Lin, George C.S., “Emerging Land Markets in Rural and Urban China: Policies and Practices” (The China Quarterly, 2003), 687-88).

<sup>198</sup> GIQR1 at 66.

<sup>199</sup> Id.

<sup>200</sup> BIQR3 at 51.

The GOC reports that Benxi Steel held all three types of land-use rights during the period covering December 11, 2001, through the end of the POI.<sup>201</sup> Benxi Steel confirms that Beitai Group, Beiying Group, Benxi Group, and Bengang Plate acquired land-use rights during the aforementioned time frame.<sup>202</sup> However, while all four companies held granted land-use rights, only Beitai Group held allocated land-use rights, and only Beiying Group held authorized operation land-use rights.<sup>203</sup> Because the acquisition of allocated and authorized operation land-use rights was contingent on SOE status, we preliminarily determine that the allocated and authorized operation land-use rights of Beitai Group and Beiying Group, provided after December 11, 2001, are specific to SOEs under section 771(5A)(D)(i) of the Act. We further determine that the GOC's provision of land-use rights is a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.

Finally, the Department determined that the provision of these rights provided a benefit pursuant to 19 CFR 351.511(a). Pursuant to section 771(5)(E)(iv) of the Act, a benefit is conferred when the government provides a good or service for LTAR. Section 771(5)(E) of the Act further states that "the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of sale." As stated previously, 19 CFR 351.511(a)(2) sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (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).

To determine whether Beitai Group and Beiying Group received a benefit, we analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we looked to whether there are market determined prices within the country.<sup>204</sup> In LWS from the PRC, the Department determined that "Chinese land prices are distorted by the significant government role in the market" and, hence, that usable tier one benchmarks do not exist.<sup>205</sup> The Department also found that tier two benchmarks (world market prices that would be available to purchasers in the PRC) are not appropriate.<sup>206</sup> Therefore, the Department determined the adequacy of remuneration by reference to tier three and found that the sale of land-use rights in the PRC was not consistent with market principles because of the overwhelming presence of the government in the land-use rights market, and the widespread and documented deviation from the authorized methods of pricing and allocating land.<sup>207</sup>

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<sup>201</sup> GIQR1 at 66.

<sup>202</sup> BIQR3 at 44-51; Benxi Steel Initial CVD Questionnaire Response Land Questions for Four Additional Cross-owned Companies, dated May 27, 2014 (BIQR5) at 2-4.

<sup>203</sup> See BIQR3 at Exhibit P.F.II.1.a; see also BIQR5 at Exhibit Add P.F.II.1.a; and Benxi Steel Second Supplemental Response Part 1 (Qs 1-4), dated June 12, 2014 (BSQR2) at Exhibit S2-1, and S2-3.

<sup>204</sup> See 19 CFR 351.511(a)(2)(i).

<sup>205</sup> See Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008) (LWS from the PRC), and accompanying IDM (LWS from the PRC IDM) at Comment 15; see also Additional Information Memo at Attachment 3.

<sup>206</sup> Id.; see also 19 CFR 351.511(a)(2)(ii).

<sup>207</sup> See LWS from the PRC IDM at 15 and Comment 10; see also 19 CFR 351.511(a)(2)(iii).

For these reasons, we are not able to use PRC or world market prices as a benchmark. Therefore, consistent with our decision in the OTR Tires from the PRC preliminary determination, we compared the prices that Beitai Group and Beiying Group paid for their allocated and authorized operation land-use rights with comparable market-based prices for land in a country at a comparable level of economic development that is reasonably proximate to the PRC.

Specifically, we compared the price paid by Beitai Group and Beiying Group to leases of certain industrial land in industrial estates, parks, and zones in Thailand, consistent with LWS from the PRC, Solar Cells from the PRC, and GOES from the PRC.<sup>208</sup> Following the methodology from Solar Cells from the PRC and GOES from the PRC, we relied on publicly-available quarterly reports from C.B. Richard Ellis.<sup>209</sup> The quarterly reports include industrial land prices for plots in industrial estates, parks, and zones in the Philippines, Thailand, and other Asian countries.<sup>210</sup> Consistent with the Department's past practice, we are relying on a third-tier benchmark (*i.e.*, prices from Thailand) as the benchmark for the provision of land-use to SOEs for LTAR in this investigation. Where certain information was not available for the POI, but was available for the year prior to the POI, we applied an inflation adjustment to derive a proxy for the POI.

In order to calculate the total benefit for Benxi Steel, we individually examined each relevant land-use right acquired by Beitai Group and Beiying Group after December 11, 2001.<sup>211</sup> For each of these parcels, we multiplied the size (square meters) by the benchmark rate (adjusted to the year of acquisition). We then calculated the benefit for the examined parcel by summing the difference between the benchmark and the amount paid by each company. The resulting benefit for each parcel was then divided by the sales of the relevant company during the year of approval (*i.e.* year of acquisition). For each of the two parcels acquired by Beitai Group acquired after December 11, 2001, we found that the benefit was less than 0.5 percent of the company's relevant sales. Pursuant to 19 CFR 351.524(b)(2), we expensed the benefits resulting from this program to the years of approval. For each of the two parcels acquired by Beiying Group after December 11, 2001, we found that the benefit was greater than 0.5 percent of the company's relevant sales and that allocation was appropriate for these parcels. Accordingly, we allocated the benefit for each parcel across the term of 50 years using the standard allocation formula in 19 CFR 351.524(d) and the discount rates discussed above to determine the amount attributable to the POI. We then divided the POI benefits by the POI sales of Beiying Group, to calculate a rate for each parcel of land. The resulting individual rates were combined to calculate the total countervailable subsidy rate for Benxi Steel of 0.12 percent ad valorem.

## 9. VAT and Import Duty Exemptions for Use of Imported Equipment

This program was established on December 29, 1997, pursuant to the "Circular of the State Council on Adjusting Tax Policies on Imported Equipment (GUOFA (1997) No. 37), and seeks to encourage foreign investment and to introduce foreign advanced technology equipment and industry

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<sup>208</sup> See Solar Cells from the PRC, and Solar Cells IDM at 6; see also GOES from the PRC, and GOES DM at 26-27.

<sup>209</sup> See Nucor Benchmark Letter at Exhibit 8.

<sup>210</sup> Id.

<sup>211</sup> See Preliminary Calculation Memorandum.

technology upgrades.<sup>212</sup> Under this program, FIEs and domestic enterprises are authorized to receive exemptions from the VAT and tariffs on the purchase of imported equipment for self-use so long as (1) they are able to obtain a certificate for State-Encouraged Projects, and (2) the equipment does not fall into the Catalogs on Non-Duty-Exemptible Articles of Importation for either FIEs or domestic enterprises.<sup>213</sup> According to the GOC, this program is administered by the National Development and Reform Commission (NDRC) and the General Administration of Customs.<sup>214</sup>

Benxi Steel reported that Beiyong Group and Benxi Group received VAT and duty exemptions under this program between December 11, 2001 and the POI.<sup>215</sup> Benxi Steel does not challenge the countervailability of this program.<sup>216</sup> We preliminarily determine that the VAT and duty exemptions received under the program constitute a financial contribution in the form of revenue forgone by the GOC, which provides a benefit to the recipients in the amount of the VAT and tariff savings.<sup>217</sup>

We acknowledge that the pool of companies eligible for benefits is larger than FIEs because some domestic companies may also qualify for the exemptions. However, as explained above and in past CVD proceedings, the domestic enterprises must have government-approved projects which are in line with the current “Catalog of Key Industries, Products, and Technologies the Development of Which Is Encouraged by the State,” and must be approved by the State Council, NDRC, or another agency to which authority has been delegated. Therefore, we determine that the addition of certain domestic enterprises as eligible users does not broaden the reach or variety of users sufficiently to render the program non-specific. On this basis, we continue to find the program is specific under section 771(5A)(D)(iii)(I) of the Act. Our determination to countervail this program is consistent with the Department's treatment of this program in past CVD proceedings involving the PRC.<sup>218</sup>

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL.<sup>219</sup> Therefore, we are examining the VAT and tariff exemptions received by Beiyong Group and Benxi Group under this program during the POI and prior years.

To calculate the amount of VAT exempted under this program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is consistent with the Department's approach

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<sup>212</sup> The VAT portion of this program was abolished beginning January 1, 2009 pursuant to the Announcement of Ministry of Finance, General Administration of Customs and State Administration of Taxation on resumption of VAT on imported equipment and related goods. See GIQR1 at 35-36, and Exhibit 20.

<sup>213</sup> GIQR1 at 36 and 40-41.

<sup>214</sup> GIQR1 at 36.

<sup>215</sup> See BIQR3 at 34; see also BIQR4 at 28.

<sup>216</sup> See BIQR3 at 34.

<sup>217</sup> See sections 771(5)(D)(ii) and 771(5)(E) of the Act, as well as 19 CFR 351.510(a)(1).

<sup>218</sup> See Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 74 FR 56576, 56584 (November 2, 2009); see also CFS IDM at “VAT and Tariff Exemptions on Imported Equipment” and Comment 16; see also OTR Tires IDM at “VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment on Encouraged Industries.”

<sup>219</sup> See 19 CFR 351.524(c)(2)(iii); see also 19 CFR 351.524(d)(2).

in past cases.<sup>220</sup> Next, we summed the amount of duty and VAT exemptions received in each year. For each year, we divided the company's total exemptions by its corresponding sales for the year of import. Pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the year of receipt for those years in which the grant amount was less than 0.5 percent of the total sales of Beiying Group or Benxi Group. For the one year in which the grant amount for Benxi Group was greater than 0.5 percent of its sales, we allocated the benefit over the AUL using the methodology described under 19 CFR 351.524(d). We used the methodology described in the "Subsidies Valuation" section above to determine the amount attributable to the POI. We then divided the POI benefit by the POI sales of Benxi Group, to calculate the subsidy rate.

On this basis, we preliminarily determine that Benxi Steel received a countervailable subsidy of 0.23 percent ad valorem under this program<sup>221</sup>

#### 10. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program

The Department has previously determined this program to be countervailable.<sup>222</sup> According to the GOC, this program was established on September 14, 2004, pursuant to the Provision on Several Issues concerning Extending VAT Credit Scope in Northeast Region.<sup>223</sup> This program is administered by the State Administration of Taxation and its local branches.<sup>224</sup> Under this program, enterprises located in Heilongjiang province, Jilin Province, Liaoning Province and Dalian City that are mainly engaged in the equipment manufacturing, petrochemical, metallurgy, ship-building, automobile manufacturing and agro-product processing industries may deduct the VAT-out by the VAT-in accrued in the purchase of certain fixed-assets.<sup>225</sup> Applicant eligibility for this program, however, is not contingent upon export performance or potential.<sup>226</sup> In its responses, the GOC states that Beiying Group and its reported cross-owned affiliates Benxi Northern, Benxi Steel Rolling, Benxi Beifang, Benxi Beitai, Benxi Group, Beitai Ductile, and Beifang 2nd Rolling utilized this program between December 11, 2001 and the end of the POI.<sup>227</sup> While Benxi Steel has not challenged the countervailability of this program, it maintains that this program was terminated at the end of 2008.<sup>228</sup>

We have previously determined that VAT refunds provided under this program constitute recurring benefits pursuant to 19 CFR 351.524(c).<sup>229</sup> Benxi Steel reports that Beiying Group, Benxi Northern, Benxi Steel Rolling, Benxi Beifang, Benxi Beitai, Benxi Group, Beitai Ductile, and Beifang 2nd

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<sup>220</sup> See, e.g., CWP from the PRC and CWP IDM at Comment 8.

<sup>221</sup> See Preliminary Calculation Memorandum.

<sup>222</sup> See CWP IDM at 21-22.

<sup>223</sup> See GIQR1 at 43-48; see also Letter from the GOC to the Department, "GOC Missing IQR Exhibits: Countervailing Duty Investigation Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China," dated May 13, 2014, at Exhibit 23.

<sup>224</sup> See GIQR1 at 44.

<sup>225</sup> Id. at 43-44.

<sup>226</sup> Id. at 47.

<sup>227</sup> Id. at 43; see also GIQR3 at 28.

<sup>228</sup> See BIQR3 at 35.

<sup>229</sup> See Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, 73 FR 52297, 52308 (September 9, 2008).

Rolling did not receive a benefit from this program during the POI.<sup>230</sup> Accordingly, we have not included this program in our net subsidy rate calculations for Benxi Steel.

B. Programs Preliminarily Determined To Not Be Used or Not To Confer a Measurable Benefit During the POI

1. Treasury Bond Loans or Grants
2. Development of Famous Brands and China World Top Brands Programs
3. Funds for Outward Expansion of Industries in Guangdong Province
4. Provincial Fund for Fiscal and Technological Innovation
5. State Specific Fund for Promoting Key Industries and Innovation Technologies
6. Shandong Province' s Special Fund for the Establishment of Key Enterprise Technology Centers
7. Shandong Province's Award Fund for Industrialization of Key Energy-Saving Technology
8. Shandong Province's Environmental Protection Industry R&D Funds
9. Shandong Province's Construction Fund for Promotion of Key Industries
10. Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
11. Technology to Improve Trade R&D Fund
12. Direct Government Grants to Angang Steel
13. Direct Government Grants to Baosteel
14. Direct Government Grants to Hebei Iron & Steel
15. Direct Government Grants to Nanjing Iron & Steel Co., Ltd. (NISCO)
16. Direct Government Grants to Jiangsu Shagang Group
17. Grants to Wuhan Iron and Steel Co., Ltd. (WISCO)
18. Land-Use Rights Extension
19. Income Tax Reductions Under Article 28 of the Enterprise Income Tax Law (EIT)
20. Tax Offsets for R&D Under the EIT
21. The Two Free/Three Half Program for FIEs
22. Income Tax Reductions for Export-Oriented FIEs
23. Income Tax Benefits for FIEs Based on Geographic Locations
24. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
25. Tax Offsets for R&D by FIEs
26. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
27. Preferential Tax Programs for FIEs Recognized as High and New Technology Enterprises (HNTEs)
28. Tax Benefits to Enterprises in the Northeast Region
29. Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
30. VAT Rebates on FIE Purchases of Chinese-Made Equipment
31. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program

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<sup>230</sup> See BIQR3 at Exhibit P.D.C.1; see also BIQR4 at Exhibit Add. P.D.C.1.

C. Additional Information to be Considered in the Post-Preliminary Analysis

On June 2 and 12, 2014, we issued supplemental questionnaires to the GOC and Benxi Steel requesting additional information with respect to several programs listed in Benxi Steel's financial statements.<sup>231</sup> We intend to include these programs in a post-preliminary analysis, as the supplemental questionnaire responses addressing them will not be received in time to be included in this preliminary determination. Furthermore as discussed above, we intend to obtain additional information from the GOC regarding the Waste Water Treatment Subsidy program to be considered in the post-preliminary analysis.

D. Preliminary AFA Rates Determined for Programs Used by Hebei Iron & Steel

As explained above, we are making the adverse inference that Hebei Iron & Steel received countervailable subsidies under each of the subsidy programs that the Department included in its initiation. Listed below are the AFA rates applicable to each program.

<b>Program</b>	<b>Subsidy Rate (%)</b>
Preferential Loans	4.92
Policy Loans	10.54
Directed Credit	10.54
Treasury Bond Loans or Grants	10.54
Development of Famous Brands and China World Top Brands Programs	0.55
Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands	0.55
Funds for Outward Expansion of Industries in Guangdong Province	0.08
Provincial Fund for Fiscal and Technological Innovation	0.55
State Specific Fund for Promoting Key Industries and Innovation Technologies	0.55
Shandong Province' s Special Fund for the Establishment of Key Enterprise Technology Centers	0.55
Grants for Antidumping Investigations	0.55
Shandong Province's Award Fund for Industrialization of Key Energy-Saving Technology	0.55
Shandong Province's Environmental Protection Industry R&D Funds	0.55
Shandong Province's Construction Fund for Promotion of Key Industries	0.55
Waste Water Treatment Subsidies	0.55
Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises	0.55
Technology to Improve Trade R&D Fund	0.55
Direct Government Grants to Hebei Iron & Steel	0.55
The Provision of Steel Billet for LTAR	0.09
The Provision of Electricity for LTAR	4.94
The Provision of Land-Use to SOEs for LTAR	0.12

<sup>231</sup> See Letters to Benxi Steel from the Department, dated June 2 and 12, 2014, and letters to the GOC from the Department, dated June 2 and 12, 2014.

Land-Use Rights Extension	0.19
Income Tax Reductions Under Article 28 of the EIT	25.00 <sup>232</sup>
Tax Offsets for R&D Under the EIT	0.00
The Two Free/Three Half Program for FIEs	0.00
Income Tax Reductions for Export-Oriented FIEs	0.00
Income Tax Benefits for FIEs Based on Geographic Locations	0.00
Local Income Tax Exemption and Reduction Programs for “Productive” FIEs	0.00
Tax Offsets for R&D by FIEs	0.00
Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises	0.00
Preferential Tax Programs for FIEs Recognized as HNTES	0.00
Tax Benefits to Enterprises in the Northeast Region	0.00
Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China	0.00
VAT and Import Duty Exemptions for Use of Imported Equipment	0.23
VAT Rebates on FIE Purchases of Chinese-Made Equipment	3.51
VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program	3.51
<b>Preliminary AFA Rate for Hebei Iron &amp; Steel</b>	<b>81.36</b>

#### **XIV. ITC NOTIFICATION**

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

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

#### **XV. DISCLOSURE AND PUBLIC COMMENT**

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.<sup>233</sup> Case briefs may be submitted to Enforcement and Compliance’s AD and CVD Centralized Electronic Service System (IA ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.<sup>234</sup>

<sup>232</sup> This rate applies to each of the tax programs, otherwise identified by a rate of “0.00”.

<sup>233</sup> See 19 CFR 351.224(b).

<sup>234</sup> See 19 CFR 351.309(d); see also 19 CFR 351.303 (for general filing requirements).

