



C-570-984
Administrative Review
POR: 8/6/2012 – 12/31/2013
Public Document
AD/CVD Office I

November 3, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for Final Results of
Countervailing Duty Administrative Review: Drawn Stainless
Steel Sinks from the People's Republic of China

Summary

The Department of Commerce (the Department) has analyzed the case briefs submitted by the Government of China (GOC) and respondent Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (Dongyuan), in the administrative review of the countervailing duty (CVD) order on drawn stainless sinks (sinks) from the People's Republic of China (PRC). The period of review (POR) is August 6, 2012, through December 31, 2013. As a result of this analysis, we have not made changes to the preliminary results. We recommend that you approve the positions described below.

A. Background

On May 7, 2015, the Department published the *Preliminary Results* of the administrative review of the CVD order on sinks from the PRC.¹ The GOC and Dongyuan submitted timely filed case briefs on June 18, 2015. No parties submitted rebuttal briefs.

On August 7, 2015, the Department extended the deadline for the final results of the administrative review to November 3, 2015.² The Department held a public hearing, limited to issues raised in the case briefs filed by the GOC and Dongyuan, on October 22, 2015.

¹ See *Drawn Stainless Steel Sinks From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission in Part, and Intent to Rescind the Review in Part; 2012-2013*, 80 FR 26226 (May 7, 2015) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Drawn Stainless Steel Sinks from the People's Republic of China: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review," (August 7, 2015).

As stated in the *Preliminary Results*, we requested Shunde Native Produce Import and Export Co., Ltd of Guangdong (Native Produce) to provide evidence of importation of subject merchandise during the POR.³ In response, Native Produce submitted a statement of no shipments and a withdrawal of its request for review.⁴ The request for the rescission of the review, however, was untimely, and therefore, we did not rescind the review of Native Produce in the *Preliminary Results*.

We have analyzed the comments in the case briefs submitted by the GOC and Dongyuan.

Comment 1: Whether Dongyuan's Stainless Steel Supplier is an Authority

Comment 2: The Department's Refusal to Meet with Counsel for Dongyuan

Comment 3: The Department's Refusal to Permit the GOC to Submit Factual Information After the Preliminary Results

Comment 4: Whether the Stainless Steel Coil Industry in China is Distorted by Government Presence in the Market

Comment 5: Whether Working Capital Loans are a Part of the Policy Lending Program

B. Scope of the Order

The merchandise covered by the order is drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this order if they are included within the sales price of the drawn stainless steel sinks. For purposes of this scope definition, the term "drawn" refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the order. Drawn stainless steel sinks are covered by the scope of the order whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the order are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as "zero radius" or "near zero radius" sinks.

³ See Letter from the Department, "Countervailing Duty (CVD) Administrative Review: Drawn Stainless Steel Sinks from the People's Republic of China" (August 4, 2014).

⁴ See Letter from Native Produce, "Drawn Stainless Steel Sinks from the People's Republic of China No Shipments and Review Rescission" (August 8, 2014).

The products covered by this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under statistical reporting numbers 7324.10.0000 and 7324.10.00.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

C. Partial Rescission of the Administrative Review

As explained above, we received a timely filed no-shipment certification from Native Produce. We have not received information to date from CBP to contradict this company's claim of no sales, shipments, or entries of subject merchandise to the United States during the POR. Because this company filed its no-shipment certification and CBP has not provided information to contradict the company's claim, we are rescinding the administrative review of this company, pursuant to 19 CFR 351.213(d)(3).

D. Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available," subject to section 782(d) of the Act, if necessary information is not on the record or if 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 applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Application of Adverse Facts Available (AFA) and Facts Available (FA)

A. GOC – Provision of Electricity for Less Than Adequate Remuneration (LTAR)

In the *Sinks From the PRC Investigation*, we determined that this program confers a countervailable subsidy.⁵ Specifically, we stated that the GOC failed to provide the requested provincial price proposals for the applicable tariff schedules that were in effect during the period of investigation (POI) in each province in which a mandatory respondent and any reported cross-owned company was located, and to explain how those price proposals were created.⁶ We also asked the GOC to explain how increases in labor costs, capital expenses, and transmission and distribution costs are factored into the price proposals, and how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff

⁵ See *Drawn Stainless Steel Sinks From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) (*Sinks From the PRC Investigation*) and accompanying Issues and Decision Memorandum.

⁶ *Id.*, at 14-15.

end-user categories.⁷ The GOC responded by stating that it was unable to provide the price proposals because they were working documents for the National Development and Reform Commission's (NDRC) review.⁸ Therefore, as AFA, pursuant to sections 776(a) and (b) of the Act, we determined that the GOC's provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act and was specific within the meaning of section 771(5A) of the Act.⁹

As discussed below under the section "Programs Found To Be Countervailable," in this administrative review, we continued to investigate the provision of electricity for LTAR by the GOC. In this review, we again asked the GOC to provide the original provincial price proposals for applicable tariff schedules that were in effect during 2012 and 2013 in each province in which a mandatory respondent or any reported "cross-owned" company was located.¹⁰ Instead of providing the requested documents, the GOC stated that "the proposals of this kind are drafted by the provincial governments and submitted to the NDRC. They are working documents for the NDRC's review only. The GOC is therefore unable to provide them with this response."¹¹ In response to our questions regarding how electricity cost increases are reflected in retail price increases, the GOC explained how price increases should theoretically be formulated but did not explain the actual process that led to the price increases.¹² As such, in our first supplemental questionnaire to the GOC, we stated:

{t}he Department's initial questionnaire of August 8, 2014, requested that you provide answers to certain questions concerning the provision of Electricity for LTAR. After reviewing the GOC's response . . . , we find that the GOC did not completely answer certain questions, did not submit the requested documents, or provided theoretical responses that did not address certain questions. For example, you did not provide the provincial price proposals submitted to the National Development and Reform Commission (NDRC). Therefore, we are again asking the GOC to fully respond to the *Electricity Appendix* at Section II of the Department's initial questionnaire of August 8, 2014.

Please directly address each part of the questions. Please do not provide theoretical replies or general references to the "Paper on China's Electricity System." For questions which you are unable to answer, please provide a narrative description, and supporting documentation, which describe your efforts for obtaining the requested information.¹³

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See Letter from the Department to the GOC, Dongyuan, and Superte, "Drawn Stainless Steel Sinks from the People's Republic of China: Countervailing Duty Questionnaire" (August 8, 2014) (initial questionnaire) at II-8 and the Electricity Appendix at II-24 and II-25.

¹¹ See Letter from the GOC, "GOC Initial CVD Questionnaire Response: First Administrative Review of the Countervailing Duty Order on Drawn Stainless Steel Sinks from China from the People's Republic of China (C-570-984)" (October 10, 2014) (GQR) at 42.

¹² See GQR at 44.

¹³ See Letter from the Department, "Administrative Review of the Countervailing Duty Order on Drawn Stainless Sinks from the People's Republic of China: 1st Supplemental Questionnaire" (December 11, 2014) (GSQ1) at 7.

The GOC responded by stating:

{t}he GOC believes its response to the Department’s questions ... are sufficient for purposes of this proceeding and reaffirms that the provincial price proposals submitted to the NDRC cannot be provided in this segment of the proceeding. However, the GOC provides ... data regarding GDP, GDP per capita, volumes of electricity production and consumption for all provinces, municipalities and autonomous regions which had a separate electricity tariff schedule during the POR. The GOC is submitting this information as it was taken into account and/or considered as background when considering differences in power suppliers and demand for different provincial areas and in determining differences in electricity prices in China.¹⁴

The requested price proposals are necessary because they are part of the GOC’s electricity price adjustment process and, thus, they are crucial to the Department’s analysis of how prices were set within the PRC during the POR.¹⁵ Absent this information, we are unable to rely on the information supplied by the GOC. Thus, the GOC has not provided a complete response to our requests for information regarding this program. Accordingly, we find that the GOC’s answers are inadequate and do not provide the necessary information required by the Department to analyze the provision of electricity in the PRC. The GOC did not provide the requested price proposal documents or explain how price increases were formulated. As a result, we must rely on the facts otherwise available, pursuant to sections 776(a)(1) and 776(a)(2)(A) of the Act.

We find that the GOC has failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information. While the GOC acknowledged the existence of the provincial price proposals, the GOC withheld them without explaining why it could not submit such documents on the record of this proceeding, particularly as the Department permits parties to submit information under protective order for limited disclosure if it is business proprietary in nature.¹⁶ Moreover, while the GOC provided data for all provinces, municipalities and autonomous regions, as discussed above, this information is not germane to an analysis of how and why the prices of the tariff schedules in effect during the POR were drafted and implemented. The GOC also did not ask for additional time to gather and provide such information, nor did the GOC provide any other documents that would have answered the Department’s questions. Therefore, the GOC failed to cooperate by not acting to the best of its ability and an adverse inference under section 776(b) of the Act is warranted in the application of facts available. Without the requested information, we cannot make a finding with respect to financial contribution or specificity because, *e.g.*, the details required to analyze the GOC’s electricity price adjustment process are contained in the missing price proposals.¹⁷ Because

¹⁴ See Letter from the GOC, “GOC First Supplemental Response: First Administrative Review of the Countervailing Duty Order on Drawn Stainless Steel Sinks from China from the People’s Republic of China (C-570-984)” (January 12, 2015) (GSQR1) at 27.

¹⁵ See, *e.g.*, *Certain Magnesia Carbon Bricks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010) and accompanying Issues and Decision Memorandum (dated July 26, 2010) at Comment 8, wherein the Department quoted the GOC as reporting that these price proposals “are part of the price setting process within China for electricity.”

¹⁶ See, *e.g.*, 19 CFR 351.306.

¹⁷ See *Sinks From the PRC Investigation* and accompanying Issues and Decision Memorandum at “GOC – Provision of Electricity for LTAR.”

these details, as described above, are contained in the provincial price proposals that the GOC failed to provide despite repeated requests, 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.

B. GOC – Government Authorities Under Provision of Stainless Steel Coil for LTAR

In the *Sinks From the PRC Investigation*, we determined that this program confers a countervailable subsidy.¹⁸ Thus, in the initial questionnaire,¹⁹ we asked the GOC to provide information regarding specific companies that produced the stainless steel coil that Dongyuan purchased during the POR. Specifically, we sought information from the GOC that would allow us to analyze whether these producers of stainless steel coil are “authorities” within the meaning of section 771(5)(B) of the Act.

For each producer from which Dongyuan purchased stainless steel coil during 2012 or 2013 and that the GOC claimed was not majority government-owned, we requested information about that producer related to, among other factors, ownership, management, and corporate governance.²⁰ In its initial response, the GOC provided some, but not all of the requested information.²¹ Thus, in the GSQ1, we asked:

- The Input Producer Appendix included {the initial questionnaire} requested that for all input producers that are not majority Government-owned and that produced the stainless steel coil purchased by the respondent companies during 2012 or 2013, please provide the original Chinese and full translations of the following: Full corporate name of the company and address (please include the address where the company is registered and the address of each facility. Identify the address of the facility(ies) where the input product is produced); Articles of Incorporation; Capital Verification Reports; Articles of Groupings; Company by-laws; Annual Report(s) pertaining to 2013 and 2012, and the two preceding years; Articles of Association; Business group registration; Business license(s); Tax Registration documents.

While the GOC provided some of this information in the GQR, your response was incomplete. **For all input producers that are not majority Government-owned, please now submit all above-requested information for the companies which produced stainless steel coil Dongyuan purchased during 2012 and 2013.** For documents already on the record, please reference the requisite exhibits and/or pages of the GQR.

- Your responses to the “**B. Key Decisions**” and “**D. Key Persons**”²² sections of the Input Producer Appendix in the GQR²³ were incomplete and insufficient. For example:

¹⁸ *Id.*, at “Stainless Steel Coils for LTAR.”

¹⁹ See Initial Questionnaire at II-2 through II-7 and the Input Producer Appendix.

²⁰ *Id.*, at II-19 through II-23.

²¹ See GQR at 20-40 and Exhibits 8 and 9, Exhibits 11 through 29, and Exhibits 32 through 34A.

²² These questions derived from the relevant sections of the Input Producer Appendix in the initial questionnaire.

QUESTION: Please identify any individual owners, members of the board of directors, or senior managers who were Government or {Chinese Communist Party (CCP)} officials during 2012 and 2013. Where an owner, member of the board of directors or manager of the input producer, or any owner at any level of ownership of such producer, has been identified as an official of any of the nine entities named in Section F, above, please provide the information requested below with respect to that entity. (Please note that these questions do not pertain to general membership in the CCP.)

ANSWER: The GOC has no way according to its regular record of businesses to identify any individual owners, members of the board of directors or senior managers who were Government or CCP officials during the POR...

The GOC then goes on to explain “The Company Law” in the PRC. This response is insufficient, as it does not answer the question posed by the Department. As such, please provide **complete** responses to the “**B. Key Decisions**” **and** “**D. Key Persons**” sections of the *Input Producer Appendix* as included in our {initial questionnaire}.²⁴

In response to the GSQ1, the GOC stated:

The GOC reaffirms that it has coordinated with Dongyuan to identify all of the company’s input producers, and the GOC has provided a complete response covering each and every input producer that is not majority Government-owned and from which Dongyuan purchased its stainless steel during the POR ...

More specifically, the GOC clarifies that, to the best of its knowledge, Dongyuan has only one input producer that is not majority Government-owned ...

The GOC has submitted all requested documents for this company, and its ultimate owners, to the extent they exist and are available to the GOC. Specifically, the GOC provided the company’s ownership chart ... its business registration ... the Articles of Association ... the capital verification report ... share transfer agreements ... and the amendment to the articles of association ...

The GOC clarifies that ... all the legal documents cited above and provided in the GQR pertain to and are valid for the POR ... and ... there are no separate legal documents entitled Articles of Incorporation, Articles of Groupings, Company by-laws, Annual Report(s) – including during the POR – or Business Group Registration for the companies identified above on record with the GOC.²⁵

In this review, the GOC provided only partial information regarding one of the producers from

²³ See GQR at 25-27 and 28-33.

²⁴ See GSQ1 at 5-6.

²⁵ See SQR1 at 22-23.

which Dongyuan purchased stainless steel coil during the POR.²⁶ Despite the two opportunities to provide this information about this producer, the GOC did not provide a complete response to our questions. Specifically, although the GOC identified the ultimate individual corporate owners of this producer, it failed to indicate whether its individual owners, members of the board of directors, or senior managers, were CCP officials during the POR. The GOC argued that our questions regarding the role of CCP officials in the management and operations of the stainless steel coil producers were not relevant.²⁷

As explained in detail at Comment 1, for the producer of stainless steel coil for which the GOC failed to identify whether the owners were CCP officials, we are finding that the producer is an “authority” within the meaning of section 771(5)(B) of the Act. As discussed below and in the *Preliminary Results*,²⁸ by stating that the requested information is not relevant, the GOC has placed itself in the position of the Department: however it is the prerogative of the Department, not the GOC, to determine what information is relevant to our investigations and administrative reviews.²⁹ Moreover, we consider information regarding the CCP’s involvement in the PRC’s economic and political structure to be relevant because public information suggests that the CCP exerts significant control over economic activities in the PRC.³⁰ The CCP’s role is described in more detail in the Public Bodies Memorandum and the CCP Memorandum.³¹ Regarding the GOC’s claim that Chinese law prohibits GOC officials from taking positions in private companies,³² we have previously found that this particular law does not apply to CCP officials.³³ Similarly, the GOC’s argument that CCP officials also cannot serve as employees in enterprises is contradicted by the Department’s discovery in another proceeding that company officials were simultaneously acting as “members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies.”³⁴ In addition, the GOC did not promptly notify the Department, in accordance with section 782(c) of the Act, that it was not able to submit the required information in the requested form and manner,

²⁶ See, generally, GQR, and GSQR1.

²⁷ See, e.g., GQR at 26-27 and 29-33.

²⁸ See PDM at 9-11.

²⁹ See, e.g., *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010); *NSK Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996); *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986).

³⁰ See Memorandum to the File, “Additional Documents for the Preliminary Results of Administrative Review” (April 30, 2015) (Additional Documents Memorandum).

³¹ See Additional Documents Memorandum at Appendix II (Memorandum to Paul Piquado, Assistant Secretary for Import Administration, “Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the Road Tires from the People’s Republic of China: An Analysis of Public Bodies in the People’s Republic of China in Accordance with the WTO Appellate Body’s Findings in WTO DS379” (May 18, 2012) (Public Bodies Memorandum)), and Appendix III (Memorandum to Paul Piquado, Assistant Secretary for Import Administration, “The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be ‘public bodies’ within the context of a countervailing duty investigation” (May 18, 2012) (CCP Memorandum)).

³² See GQR at 30-31.

³³ See, e.g., Additional Documents Memorandum at Appendix II (the Public Bodies Memorandum) at 36.

³⁴ See *Pre-Stressed Concrete Steel Wire Strand from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) (*PC Wire Strand from the PRC*) and accompanying Issues and Decision Memorandum at Comment 8 (“{i}n 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.”).

nor did it suggest any alternative forms for submitting this information. Further, the GOC did not provide any information regarding the efforts it undertook to obtain the information we requested about this stainless steel coil supplier.

Therefore, we find that the GOC has withheld necessary information that was requested of it and, as a result, the Department must rely on “facts otherwise available” in for purposes of these final results, pursuant to sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that the GOC has withheld information and significantly impeded this review, and that an adverse inference is warranted in the application of facts available under section 776(b) of the Act. Thus, as AFA, we are finding that the producer of stainless steel coil for which the GOC failed to identify whether the owners were CCP officials is an “authority” within the meaning of section 771(5)(B) of the Act.

C. Dongyuan – Provision of Stainless Steel Coil for LTAR

In the DQR-B, Dongyuan reported “unknown” for the name of the producer of certain purchases of stainless steel coil it made during 2012 and 2013.³⁵ In DSQ1, we stated:

Exhibit 10 of the D{QR} does not include names of the producer for some of Dongyuan’s purchases during 2012 and 2013. Please resubmit this chart, with an updated electronic Excel version, including identification of all producers.³⁶

In its response, Dongyuan stated:

As these trading company suppliers are not the usual sources of Dongyuan’s purchases, Dongyuan does not know for certain who produced the steel that it purchased from those suppliers. Dongyuan therefore reported “unknown” for the identity of the producers in the QR. As the situation has not changed since the submission of its QR, Dongyuan could not revise the table to include the identification of the producers for these purchases.³⁷

Therefore, in the DSQ3, we asked:

Did Dongyuan receive mill certificates accompanying the purchases of stainless steel coil from trading company suppliers?

If so, please provide all of the mill certificates that Dongyuan received with regard to the purchases from trading companies reported in DQR-B Exhibit 10.

If these purchases did not come with mill certificates, then please provide any information

³⁵ See Letter from Dongyuan, “Drawn Stainless Steel Sinks from the People’s Republic of China: CVD Questionnaire Section III Response” (October 10, 2014) (DQR-B) at Exhibit 10.

³⁶ See Letter from the Department, “Administrative Review of the Countervailing Duty Order on Drawn Stainless Steel Sinks from the People’s Republic of China: 1st Supplement Questionnaire” (December 16, 2014) (DSQ1) at 5.

³⁷ See Letter from Dongyuan, “Drawn Stainless Steel Sinks from the People’s Republic of China: Supplemental Questionnaire Response” (December 30, 2014) (DSQR1) at 9.

that accompanied these purchases.³⁸

In its response, Dongyuan stated:

Dongyuan did not receive mill certificates accompanying its purchases of stainless steel coil from the trading company suppliers ... All of the information accompanying these purchases has already been submitted in Exhibit 10 of {the DQR}.³⁹

Based on the above, because Dongyuan was unable to identify the producer(s) of the stainless steel coil that it purchased from trading companies, the GOC was not able to provide a response to the Input Producer Appendix for those producers.⁴⁰ We find that the necessary information for these unidentified producers is not on the record. As such, we have no information that would enable us to determine that these producers are not “authorities” within the meaning of 771(5)(B) of the Act. Therefore, pursuant to section 776(a)(1) of the Act, as FA in this review, we find that the stainless steel coil supplied to Dongyuan by trading companies produced by unidentified suppliers is produced by “authorities” at the same ratio⁴¹ as cold-rolled sheet and strip was produced by state-owned enterprises (SOEs) during the POR.⁴² Therefore, we find that this portion of the stainless steel coil supplied by “unknown” enterprises constitutes a financial contribution in the form of the government provision of a good under section 771(5)(D)(iii) of the Act and that Dongyuan received a benefit to the extent that the price it paid for stainless steel coil produced by these producers was for LTAR.⁴³ Our use of FA in this regard is consistent with the Department’s practice.⁴⁴

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information to select among facts available, 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 of the Act concerning the subject merchandise.”⁴⁵ It is the Department’s practice to consider information to be corroborated if it has probative value.⁴⁶ In analyzing whether information has

³⁸ See Letter from the Department, “Administrative Review of the Countervailing Duty Order on Drawn Stainless Steel Sinks from the People’s Republic of China: Third Supplement Questionnaire” (April 9, 2015) (DSQ3) at 3.

³⁹ See Letter from Dongyuan, “Drawn Stainless Steel Sinks from the People’s Republic of China: Dongyuan Response to Third Supplemental Questionnaire” (April 16, 2015) (DSQR3) at 1.

⁴⁰ *Id.*

⁴¹ This information is business proprietary information. See Letter from the GOC, “GOC Third Supplemental Response: First Administrative Review of the Countervailing Duty Order on Drawn Stainless Steel Sinks from China from the People’s Republic of China (C-570-984)” (April 16, 2015) (GSQR3) at Exhibit SGQ-1.

⁴² See below at “*Provision of Stainless Steel Coil for LTAR*” for more details.

⁴³ See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

⁴⁴ See *Aluminum Extrusions from the PRC 1st Administrative Review* and accompanying Issues and Decision Memorandum at “*Provision of Primary Aluminum for LTAR.*”

⁴⁵ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994), at 870.

⁴⁶ *Id.*

probative value, it is the Department's practice to examine the reliability and relevance of the information to be used.⁴⁷ However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.⁴⁸

For purposes of this final determination, our findings regarding the financial contribution and specificity elements of the electricity for LTAR program and the financial contribution of the provision of stainless steel coil for LTAR program, are based on an adverse inference, under section 776(b) of the Act, arising from the failure of the GOC to provide requested necessary information pertaining to the access to, or the distribution of, subsidies. However, we are not relying upon "secondary information" in our application of AFA and, thus, the corroboration requirement of section 776(c) of the Act is not applicable.

The Department's reliance on facts available is limited to the GOC's failure to provide adequate responses to certain requests for information regarding financial contribution and specificity, and Dongyuan's failure to provide an adequate response to our requests for information regarding certain producers of stainless steel coil. With the exception of the "unknown" producers of stainless steel coil that we are examining under the LTAR program noted above, Dongyuan has responded to all information requests from the Department, and consistent with the Department's practice, we are relying on the information provided by Dongyuan in order to calculate a benefit for each program. For details on the calculation of the subsidy rate for the respondents, *see* below at "Analysis of Programs."

E. Subsidy Valuation Information

Allocation Period

The Average Useful Life (AUL) period in this proceeding, as described in 19 CFR 351.524(d)(2), is 12 years according to the IRS Tables at Table B-2: Table of Class Lives and Recovery Periods. No party in this proceeding has disputed this allocation period.

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 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

⁴⁷ *Id.*, at 869.

⁴⁸ *Id.*, at 869-870.

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 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.⁴⁹

Dongyuan

Dongyuan responded to the Department's initial and supplemental questionnaires on behalf of itself, a producer and exporter of the subject merchandise during the POR.⁵⁰ Dongyuan, established in 2001, changed its name in 2009 and relocated to its current address in Xing Tan Town, Shunde, Foshan, Guangdong, China. Dongyuan reported three cross-owned affiliates: however, because, according to Dongyuan, these affiliates do not meet any of the four additional criteria, it did not submit questionnaire responses for them.⁵¹ Based on information on the record,⁵² we find that cross-ownership does not exist, in accordance with 19 CFR 351.525(b)(6)(vi), between Dongyuan and its three affiliates. Therefore, we are attributing subsidies received by Dongyuan to its own sales, in accordance with 19 CFR 351.525(b)(6)(i). Because the POR covers more than one calendar year, we attributed a subsidy received by Dongyuan to the total sales in the year in which Dongyuan received the subsidy (*i.e.*, for benefits received in 2012, we used as the denominator the 2012 sales; for benefits received in 2013, we used 2013 sales).

Benchmark Interest Rates

We are investigating loans that Dongyuan received from state owned commercial banks (SOCBs). Below we discuss the derivation of the benchmark interest rates for 2012 and 2013.

a. Interest Rate Benchmarks for Short-Term Renminbi (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 will rely on the actual experience of the firm in question in obtaining comparable commercial loans.⁵³ If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that the Department "may use a national average interest rate for comparable commercial loans."⁵⁴ Section 771(5)(E)(ii) of the Act also indicates that the benchmark should be a market-based rate.

⁴⁹ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁵⁰ See DQR-B at 3-5.

⁵¹ *Id.*, at 4-5.

⁵² *Id.*, at 3-8, Exhibits 1-7.

⁵³ See 19 CFR 351.505(a)(3)(i).

⁵⁴ See 19 CFR 351.505(a)(3)(ii).

For the reasons first explained in *CFS from the PRC*,⁵⁵ loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.⁵⁶ Because of this, any loans received by respondents from private Chinese or foreign-owned banks are unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based interest rate to use as a benchmark to measure the benefits from government-provided loans. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.⁵⁷

We first developed in *CFS from the PRC*,⁵⁸ and more recently updated in *Thermal Paper from the PRC*,⁵⁹ the methodology used to calculate the external benchmark. Under the 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*, using these different groupings of countries, we are able to capture the broad inverse relationship between income and interest rates. From 2001 through 2009, the PRC fell in the lower-middle income category.⁶⁰ Beginning in 2010, however, the PRC moved into the upper-middle income category.⁶¹ Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001 – 2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010 – 2013. As explained in *CFS from the PRC*, by pooling countries in this manner, we capture the broad inverse relationship between income and interest rates.

After identifying 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. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance

⁵⁵ 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 at Comment 10.

⁵⁶ See Additional Documents Memorandum at Appendix 1: "Memorandum from David Neubacher, International Trade Analyst, to the File, "Consultations with Government Agencies" (October 17, 2007) (Banking Memorandum)."

⁵⁷ See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*) and accompanying Issues and Decision Memorandum at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

⁵⁸ See *CFS from the PRC* and accompanying Issues and Decision Memorandum at Comment 10.

⁵⁹ 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 Issues and Decision Memorandum at 8-10.

⁶⁰ See World Bank Country Classification, <http://econ.worldbank.org/>; see also Memorandum to the File, "Drawn Stainless Sinks from the People's Republic of China: Administrative Review of the Countervailing Duty Order: Interest Rate Benchmark Memorandum" (April 30, 2015) (Interest Rate Benchmark Memorandum).

⁶¹ *Id.*

indicators.

In each year from 2001 through 2009, and 2011 through 2013, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.⁶² For 2010, however, the regression does not yield that outcome for the PRC's income group.⁶³ 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 through 2009 and 2011 through 2013. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries. Based on our experience for the 2001-2009 period, in which the average interest rate of the lower-middle income group did not differ significantly from the benchmark rate resulting from the regression for that group, use of the average interest rate for 2010 does not introduce a distortion into our calculations.⁶⁴

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 2010-2013, and "lower middle income" for 2001-2009.⁶⁵ First, we did not include those economies that the Department considered to be non-market economies for antidumping 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 the World Bank for inclusion in the 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.⁶⁶ Finally, for each year the Department calculated an inflation-adjusted short-term interest rate benchmark, we have also excluded any countries with aberrational or negative real interest rates for the year in question.⁶⁷

Because these rates are net of inflation, we adjusted the benchmark interest rates to include an inflation component before comparing them to the interest rates on loans issued to the company respondents by SOCBs.⁶⁸

b. Interest Rate Benchmarks for 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

⁶² *Id.*; see also Additional Documents Memo at Appendix I.

⁶³ See Interest Rate Benchmark Memorandum.

⁶⁴ See, e.g., *Aluminum Extrusions from the PRC 1st Administrative Review* and accompanying Issues and Decision Memorandum at "Provision of Primary Aluminum for LTAR."

⁶⁵ See Interest Rate Benchmark Memorandum.

⁶⁶ For example, in certain years Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L'Este reported dollar-denominated rates; therefore, such rates have been excluded.

⁶⁷ For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country's real interest rate was 34.95 percent and 37.25 percent, respectively. See Interest Rate Benchmark Memorandum.

⁶⁸ See Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates.

benchmark for long-term loans. To address this problem, the Department has 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.⁶⁹

In *Citric Acid from the PRC*, the Department revised this methodology 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 approximates the number of years of the term of the loan in question.⁷⁰ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁷¹

Foreign Currency-Denominated Loans

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is again following the methodology developed over a number of successive PRC investigations.⁷² For U.S. dollar short-term loans, the Department is using as a benchmark interest rate the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Likewise, for any loans denominated in other foreign currencies, we are using 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.⁷³

⁶⁹ See, e.g., *Light-Walled Rectangular Pipe and Tube From People’s Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*LWRP from the PRC*) and accompanying Issues and Decision Memorandum at 8.

⁷⁰ 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 Issues and Decision Memorandum at Comment 14.

⁷¹ See Interest Rate Benchmark Memorandum for the resulting inflation adjusted benchmark lending rates.

⁷² See *Crystalline Silicone 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 I from the PRC*) and accompanying Issues and Decision Memorandum at “Loan Benchmarks and Discount Rates for Allocating Non-Recurring Subsidies,”; see also *Utility Scale Wind Towers From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from the PRC*) and accompanying Issues and Decision Memorandum at “Benchmarks and Discount Rates.”

⁷³ See Interest Rate Benchmark Memorandum.

F. Analysis of Programs

Based on our analysis and the responses to our questionnaires and the issues raised in the case briefs, we determine the following:

I. Programs Determined To Be Countervailable

A. Provision of Electricity for LTAR

In *Sinks From the PRC Investigation*, we determined that this program conferred a countervailable subsidy.⁷⁴ No information was submitted on the record of this review to warrant reconsideration of this finding. As discussed in “Use of Facts Otherwise Available and Adverse Inferences,” we are basing our finding on the government’s provision of electricity, in part, on AFA. We find, as AFA, that the GOC’s provision of electricity is a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act, and that it is specific within the meaning of section 771(5A)(D) of the Act.

In a CVD proceeding, the Department requires information from both the government of the country whose merchandise is under investigation and from the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific.⁷⁵ However, where possible, the Department will rely on a respondent’s reported information to determine the existence and the amount of the benefit to the extent that such information is useable and verifiable.⁷⁶

Dongyuan reported that it purchased electricity from provincial utility companies.⁷⁷ To determine the existence and amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the company’s reported electricity consumption volumes and electricity rates. We compared the rates paid by the company for its electricity to the highest rates that it could have paid in the PRC during the POR. In accordance with 19 CFR 351.511(a)(2), we selected the highest non-seasonal provincial rates in the PRC for each applicable user category (*e.g.*, large industry), voltage class (*e.g.* 1-10kv), and basic fee (*e.g.*, transformer capacity).⁷⁸ Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a user category. The selected benchmark electricity rates reflect an adverse inference, because of the GOC’s failure to act to the best of its ability in providing requested information about the provision of electricity in this administrative review,

⁷⁴ See *Sinks From the PRC Investigation* at “GOC – Provision of Electricity for LTAR.”

⁷⁵ See, *e.g.*, *Hardwood and Decorative Plywood from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*; 2011 78 FR 58283 (September 23, 2013) and accompanying Issues and Decision Memorandum at Comment 3, “Provision of Electricity.”

⁷⁶ See DQR-B at 14-15 and Exhibits 11 and 12.

⁷⁷ *Id.*

⁷⁸ For more information on the respondents’ electricity usage categories and the benchmark rates we have used in the benefit calculations, see Memorandum to Dana Mermelstein, Program Manager, AD/CVD Operations, Office I, Enforcement and Compliance regarding, “Countervailing Duty Administrative Review of Drawn Stainless Steel Sinks from the People’s Republic of China: Preliminary Review Analysis for Guangdong Dongyuan Kitchenware Industrial Co., Ltd. (Dongyuan)” (April 30, 2015) (Dongyuan Preliminary Calculation Memorandum).

as discussed in “Use of Facts Otherwise Available and Adverse Inferences.” We calculated benchmark electricity payments by multiplying consumption volumes by the benchmark electricity rate corresponding to the user category, voltage class, and time period (*i.e.* peak, normal, and valley), where applicable. We then compared the calculated benchmark payments to the actual electricity payments made by the company during the POR. Where the benchmark payments exceeded the payments made by the company, a benefit was conferred. Based on this comparison, we find that electricity was provided for LTAR to Dongyuan.

To calculate the net subsidy rates for Dongyuan, for each year, 2012 and 2013, we summed the company’s benefits and divided the amount by its total sales for that year. On this basis, we determine countervailable subsidy rates of 1.28 percent *ad valorem* for 2012 and 0.87 percent *ad valorem* for 2013.⁷⁹

B. Provision of Stainless Steel Coil for LTAR

The Department examined the provision of stainless steel coil for LTAR to Dongyuan. In *Sinks From the PRC Investigation*, we determined that this program conferred a countervailable subsidy.⁸⁰ Dongyuan reported purchasing stainless steel coil during the POR from trading companies as well as directly from primary stainless steel coil producers.⁸¹ Dongyuan was able to identify the input producers from which it directly purchased stainless steel coil during the POR, but was not able to identify the producer(s) of the stainless steel coil that it purchased through trading companies.⁸² We asked Dongyuan to provide all mill certificates that accompanied its purchases from trading companies, but Dongyuan stated it did not receive mill certificates accompanying its purchases of stainless steel coil from the trading company suppliers.⁸³

As discussed above under “Use of Facts Otherwise Available and Adverse Inferences,” we are finding, as AFA, that the producer from which Dongyuan directly purchased stainless steel coil during the POR is an “authority” within the meaning of section 771(5)(B) of the Act because of the GOC’s lack of complete response to our questions. Additionally, because Dongyuan was unable to identify the producer(s) of the stainless steel coil that it purchased from trading companies, the GOC was not able to provide a response to the Input Producer Appendix for those purchases.⁸⁴ We find that the necessary information about these unidentified producers is not on the record. Thus, as discussed under “Use of Facts Otherwise Available and Adverse Inferences,” pursuant to section 776(a)(1) of the Act, based on FA, we find that a percentage of the stainless steel coil supplied to Dongyuan by trading companies produced by unidentified suppliers is produced by “authorities,” as that term is used in section 771(5)(B) of the Act, at the same ratio⁸⁵ that cold-rolled sheet and strip is produced by SOEs during the POR. Therefore, we find that this portion of the stainless steel coil supplied by these enterprises constitutes a financial

⁷⁹ *Id.*

⁸⁰ See *Sinks From the PRC Investigation* and accompanying Issues and Decision Memorandum at “Stainless Steel Coils for LTAR.”

⁸¹ See DQR-B at 12-15 and Exhibit 10; see also DSQR2 at 2; see also DSQR3 at 1.

⁸² See DQR-B at Exhibit 10; see also DSQR3 at 1.

⁸³ See DSQR3 at 1.

⁸⁴ *Id.*

⁸⁵ This information is business proprietary information. See GSQR3 at Exhibit SGQ-1.

contribution in the form of the government provision of a good under section 771(5)(D)(iii) of the Act and that Dongyuan received a benefit to the extent that the price it paid for stainless steel coil produced by these producers represents less than adequate remuneration.⁸⁶

Regarding the specificity of stainless steel coil provided for LTAR, in the *Sinks From the PRC Investigation*, we found that the GOC was providing stainless steel coil to a limited number of industries or enterprises. Thus, the subsidy is specific pursuant to section 771(5A)(D)(iii) of the Act.⁸⁷ Because no new information has been provided on the record of this review that would cause us to reach a different determination from the *Sinks From the PRC Investigation*, we affirm our finding regarding specificity as stated in the *Sinks From the PRC Investigation*.

Finally, to determine the benefit, the Department identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services at 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference:

- (i) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one);
- (ii) world market prices that would be available to purchasers in the country under investigation (tier two); or
- (iii) an assessment of whether the government price is consistent with market principles (tier three).

As provided in 19 CFR 351.511(a)(2)(i), the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.⁸⁸ This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.⁸⁹

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving PRC buyers and sellers that can be used to determine whether the GOC authorities sold stainless steel coil to the respondent for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country may be considered significantly distorted and may not be an appropriate basis of comparison for determining whether there is a benefit.⁹⁰

⁸⁶ See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

⁸⁷ See *Sinks from the PRC Investigation* and accompanying Issues and Decision Memorandum at “Stainless Steel Coils for LTAR.”

⁸⁸ See *Softwood Lumber from Canada* and accompanying Issues and Decision Memorandum at “Market-Based Benchmark.”

⁸⁹ *Id.*

⁹⁰ See *Countervailing Duties*; Final Rule, 63 FR at 65377.

The GOC reported that the National Bureau of Statistics of China does not maintain official statistics on stainless steel coil, but does maintain statistics on cold-rolled sheet and strip as a general category that covers stainless steel products.⁹¹ Thus, upon our request, in the GSQR3, the GOC provided information on the total volume for 2012 and 2013 of cold-rolled sheet and strip produced in the PRC by companies in which the GOC maintains a controlling ownership or management interest, as well as by those companies which are privately-held or foreign-invested enterprises.⁹² These data, when combined, show the total volume of domestic production of cold-rolled sheet and strip for 2012 and 2013.

Using these data, we determined the amount of cold-rolled coil sheet and strip produced by SOEs during the POR as a percentage of domestic production. Thus, as FA in this review, we find that the cold-rolled sheet and strip supplied to Dongyuan by trading companies produced by unidentified suppliers is produced by government authorities at the same percentage of cold-rolled sheet and strip produced by SOEs during the POR.⁹³ Our use of FA in this regard is consistent with the Department's practice.⁹⁴

In the *Preliminary Results*, we found that the government's involvement in the stainless steel coil market to be predominant and distortive.⁹⁵ Consequently, we found the use of domestic producer prices in the PRC to be inappropriate for deriving a benchmark because such a benchmark would reflect the distortions from the government's involvement. As discussed in further detail at Comment 4, we continue to find that the GOC's involvement in the stainless steel coil industry to be distortive. As such, prices stemming from private transactions within the PRC cannot give rise to a price that is sufficiently free from the effects of the GOC's presence and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

Given that we have determined that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price available to producers of subject merchandise in the PRC. Dongyuan provided benchmark information that included information regarding steel prices outside the POR, steel price information that represents the "lowest transaction values identified" in regions that may also include the PRC, and information on ocean freight related to aluminum extrusions.⁹⁶ The Department placed on the record pricing data for stainless steel coil from Global Trade Information Services, Inc. (GTIS), along with information regarding ocean freight for steel products, to be used in the benchmark calculation. Consistent with our practice, we have not relied on prices outside the POR, prices that may include PRC exports, or prices that represent an

⁹¹ See GQR at 33-34; see also GSQR3.

⁹² *Id.*, at Exhibit SGQ-1.

⁹³ In other words, as FA, we assume that the cold-rolled coil sheet and strip purchased by domestic trading companies during the POR was produced by SOEs is equal to the ratio of production by SOEs to total production during the POR, as indicated by the aggregate data supplied in the GSQR3.

⁹⁴ See *Aluminum Extrusions from the PRC 1st Administrative Review* and accompanying Issues and Decision Memorandum at "Provision of Primary Aluminum for LTAR."

⁹⁵ See PDM at 21.

⁹⁶ See Letter from Dongyuan, "Drawn Stainless Steel Sinks from the People's Republic of China: Benchmarks – First Round" (December 8, 2014) (Dongyuan Benchmark Submission).

average of low transaction values.⁹⁷ Concerning the GTIS price data, the Department has relied on pricing data from industry publications in prior CVD proceedings involving the PRC.⁹⁸ We continue to find the GTIS pricing data on the record sufficiently reliable and representative for use in the benchmark calculation.

The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Accordingly, we calculated a weighted average of the GTIS prices for each month. Regarding delivery charges, we have added to the monthly average benchmark prices amounts for ocean freight and inland freight charges that would be incurred to deliver stainless steel coil from the port to the company's facilities.⁹⁹ We have also added the applicable VAT and import duties, at the rates reported by the GOC.¹⁰⁰ Our benchmark calculations are fully described in Dongyuan Preliminary Calculation Memorandum.¹⁰¹

For the portion of Dongyuan's purchases that we determined constituted a financial contribution, we compared the monthly benchmark prices to Dongyuan's actual purchase prices for stainless steel coil, including taxes and delivery charges, as appropriate.¹⁰² Because the benchmark prices exceed prices paid by Dongyuan for stainless steel coil, we find that the GOC's provision of stainless steel coil for LTAR provides a benefit, in accordance with 19 CFR 351.511(a). To calculate the net subsidy rate for Dongyuan for this domestic subsidy, as described under 19 CFR 351.525(b)(3), for each year, 2012 and 2013, we summed the benefits from all purchases of stainless steel coil and we divided the yearly benefit by the company's sales in that year. On this basis, we determine countervailable subsidy rates of 2.42 percent *ad valorem* for 2012 and 8.81 percent *ad valorem* for 2013.¹⁰³

⁹⁷ See, e.g., *Sinks from the PRC Investigation and accompanying Issues and Decision Memorandum* at "Stainless Steel Coil for LTAR;" see also *High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) and accompanying Issues and Decision Memorandum at "Provision of Seamless Tube Steel for LTAR."

⁹⁸ See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmation Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (CWP from the PRC) and accompanying Issues and Decision Memorandum at "Hot-Rolled Steel for Less than Adequate Remuneration;" see also *53-Foot Domestic Dry Containers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 21209 (April 17, 2015) and accompanying Issues and Decision Memorandum at "Provision of Hot-Rolled Sheet and Plate for LTAR."

⁹⁹ See Dongyuan Preliminary Calculation Memorandum at "Calculation of Ad Valorem Rates for Countervailable Programs."

¹⁰⁰ *Id.*; see also GQR at 36.

¹⁰¹ See Dongyuan Preliminary Calculation Memorandum at "Calculation of Ad Valorem Rates for Countervailable Programs."

¹⁰² *Id.*

¹⁰³ *Id.*

C. Policy Lending to the Stainless Steel Sinks Industry

In *Sinks From the PRC Investigation*, we determined that this program conferred a countervailable subsidy. Specifically, we stated that, because the GOC did not provide the *Pearl River Delta Plan*, we determined that the GOC withheld necessary information that was requested of it and, thus, we relied on “facts otherwise available” in making our final determination under sections 776(a)(1) and 776(a)(2)(A) of the Act. Additionally, we stated that the GOC failed to cooperate by not acting to the best of its ability to comply with our request to make the GOC officials responsible for the *Pearl River Delta Plan* available at verification in order to allow the Department to verify the GOC’s statement that none of the loans to the respondents were issued pursuant to policy loan programs and that the respondent did not benefit from any policy loan program under section 776(a)(2)(D) of the Act.¹⁰⁴ Consequently, we determined that an adverse inference was warranted in the application of facts available under section 776(b) of the Act. As AFA, we found that policy lending was directed to the stainless steel sinks industry through the implementation of the *Pearl River Delta Plan* and that the direction to support “stainless steel products” and “small hardware” includes stainless steel sinks, thus, making the program specific within the meaning of section 771(5A)(D)(i) of the Act.¹⁰⁵ Due to our determination on the basis of AFA in *Sinks From the PRC Investigation*, we continued, in this review, to investigate policy lending by the GOC to the stainless steel sinks industry.

When examining a loan program, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals.¹⁰⁶ Where such plans or policy directives exist, it is our practice to find that a policy lending program exists that is specific to the named industry (or producers that fall under that industry).¹⁰⁷ Once that finding is made, we rely upon the analysis undertaken in *CFS from the PRC* to further conclude that national and local government control over the SOCBs renders the loans a financial contribution, as provided for in Section 771(5)(D)(i) of the Act.

In this review, we requested,¹⁰⁸ and the GOC provided, the *Pearl River Delta Plan*,¹⁰⁹ the *Guidelines of Foshan City on Industrial Structure Adjustment*,¹¹⁰ and both the *11th* and *12th Five-Year Plans of Foshan City*.¹¹¹ The preamble to the *Pearl River Delta Plan* states that “each cit{y} in the pearl river delta ... shall carry out the strategy requirements” of the plan,¹¹² and indicates that its focus is on nine cities in Guangdong province, including, *inter alia*, Foshan,¹¹³

¹⁰⁴ See *Sinks From the PRC Investigation* and accompanying Issues and Decision Memorandum at 13.

¹⁰⁵ *Id.*

¹⁰⁶ See *Citric Acid from the PRC* and accompanying Issues and Decision Memorandum at Comment 14.

¹⁰⁷ See *CFS from the PRC* and accompanying Issues and Decision Memorandum at Comment 5; see also *Thermal Paper from the PRC* and accompanying Issues and Decision Memorandum at “Government Policy Lending Program.”

¹⁰⁸ See GSQ1 at 3.

¹⁰⁹ See GSQR1 at Exhibit SQ-1.

¹¹⁰ *Id.*, at Exhibit SQ-2.

¹¹¹ *Id.*, at Exhibits SQ-3 and SQ-4.

¹¹² *Id.*, at Exhibit SQ-1, under “Preamble” at para. three.

¹¹³ *Id.*, under “Preamble” at para. four.

the city in which Dongyuan is located.¹¹⁴ The *Pearl River Delta Plan* states the province’s intent to “{b}uild and form an agglomeration development layout, with{in the} cit{y} of Foshan ... focusing on the manufacturing of aluminum extrusions, stainless steel products, small hardware, and containers...”¹¹⁵ Finally, the plan ends with the statement that “{e}ach government of Pearl River Delta shall quickly organize and formulate the local industrial development plan respectively or the concrete proposals of the implementation of the plan hereof.”¹¹⁶

The *Guidelines of Foshan City on Industrial Structure Adjustment*,¹¹⁷ which was drafted shortly after the *Pearl River Delta Plan*,¹¹⁸ implements the scientific development concept discussed in the *Pearl River Delta Plan*’s preamble.¹¹⁹ The *Guidelines of Foshan City on Industrial Structure Adjustment* details the efforts the Foshan city government intends to carry out in order to “{i}nsist on the industrial system development led by pillar industries” including “new metal materials ... stainless steel” through the “strengthen{ing of} financial supports,” such as “{p}referential supports in terms of foreign exchange, finance and other economic levers.”¹²⁰ Additionally, the *11th Five-Year Plan of Foshan City* includes a plan to “optimize, uplift and develop...stainless steel”¹²¹ and the *12th Five-Year Plan of Foshan City* intends to “reform and upgrade the specialized markets ofstainless steel”.¹²²

The GOC reported that in February 2010, the China Banking Regulatory Commission (CBRC) promulgated the *Interim Measures for the Administration of Working Capital Loans (Working Capital Interim Measures)*, which “specified practical guidance on the issuance of working capital loans, as opposed to ‘fixed asset loans.’”¹²³ The GOC contrasts these *Working Capital Interim Measures* with the *Interim Measures for the Administration of Fixed Asset Loans (Fixed Asset Interim Measures)* issued by the CBRC in July 2009, in that the *Fixed Asset Interim Measures* state that “industrial policies are required to be considered when a bank issues a credit loan to a borrower for use in fixed assets formation (*i.e.*, fixed asset loans).”¹²⁴ The GOC also reports that, more recently, the *Leverage Ratio Rules for Commercial Banks (Leverage Rules)* took effect on January 1, 2012, to “ensure that commercial banks have sufficient capital to guard against the exposure of its business to the overdevelopment of financial derivatives or assets.”¹²⁵ Additionally, the GOC reports that during the POR, on January 1, 2013, the *Capital Rules for Commercial Banks (Capital Rules)* took effect; these rules require banks “to ensure they have sufficient capital (measured as capital adequacy ratio, *i.e.*, that of capital against risk-weighted

¹¹⁴ See DQR-B at 6.

¹¹⁵ See GSQR1 at Exhibit SQ-1, under “IV. Industry Spatial Layouts,” “ii. Layouts of Key Industries,” “4. Advantaged Traditional Industry Location,” at “(5) Metal Products.”

¹¹⁶ See GSQR1 at Exhibit SQ-1, under “V. Safeguard Measures,” at “v. Strengthen the Organization and Implementation.”

¹¹⁷ *Id.*, at Exhibit SQ-2.

¹¹⁸ The *Pearl River Delta Plan* is dated July 30, 2010. The *Guidelines of Foshan City on Industrial Structure Adjustment* is dated August 13, 2010. See GSQR1 at Exhibits SQ-1 and SQ-2.

¹¹⁹ See GSQR1 at Exhibit SQ-1 at “Preamble” and Exhibit SQ-2.

¹²⁰ *Id.*, at Exhibit SQ-2.

¹²¹ *Id.*, at Exhibit SQ-3.

¹²² *Id.*, at Exhibit SQ-4.

¹²³ *Id.*, at 7-8 and Exhibit 2.

¹²⁴ *Id.*, at 8 and Exhibit 3.

¹²⁵ *Id.*, at 8 and Exhibit 5.

assets) to prevent against individual and systematic risks.”¹²⁶ The GOC, thereby, contends that the *Working Capital Interim Measures*, *Fixed Asset Interim Measures*, *Leverage Rules*, and *Capital Rules*, substantiate the premise that industrial policies play no role in the business or administration of banking in the PRC.¹²⁷ Additionally, the GOC contends that commercial banks, rural credit cooperatives, and other banking financial institutions established in the PRC upon the CBRC’s approval are required to keep their operation of working capital loans in conformity with the *Working Capital Interim Measures*.¹²⁸

After considering comments concerning the nature of this program,¹²⁹ we find that there is a program of preferential policy lending specific to the stainless steel sinks industry. Specifically, we find that the lending is *de jure* specific under section 771(5A)(D)(i) of the Act because of the GOC’s policy, as illustrated in the *Pearl River Delta Plan* and the *Guidelines of Foshan City on Industrial Structure Adjustment* and the five year plans, to provide support to, among others, producers of stainless steel products.¹³⁰ The GOC has provided a list of products that it considers to be stainless steel products, which includes sinks.¹³¹ Therefore, we find that stainless steel sinks fall under stainless steel products. Further, we find that, because the GOC has placed an emphasis on the development of the stainless steel industry, and has issued government directives to give effect to this emphasis, loans from SOCBs and policy banks in the PRC constitute a direct financial contribution from the GOC under section 771(5)(D)(i) of the Act. We also find the GOC’s claims based on the *Working Capital Interim Measures*, *Fixed Asset Interim Measures*, *Leverage Rules*, and *Capital Rules*, not to be a consideration regarding the loans made to Dongyuan in this review. This is because we find that SOCBs are “authorities” within the meaning of section 771(5)(B) of the Act and, thus, consistent with Department practice, loans from these SOCBs constitute financial contributions, pursuant to section 771(5)(D)(i) of the Act.¹³²

The bank from which Dongyuan reported receiving loans that were outstanding during the POR was reorganized from a rural credit cooperative into a shareholding company in December 2009.¹³³ In *Aluminum Extrusions from the PRC 1st Administrative Review*,¹³⁴ and reiterated in *Tetra from the PRC*,¹³⁵ we stated that the banking system in the PRC continues to be affected by the legacy of government policy objectives, which continue to undermine the ability of the big four SOCBs and the rest of the domestic banking sector to act on a commercial basis, and allow continued government involvement in the allocation of credit in pursuit of those objectives. We reach the same finding here, consistent with our findings in *CFS from the PRC* that SOCBs

¹²⁶ *Id.*, at 8 and Exhibit 4.

¹²⁷ *Id.*, at 8.

¹²⁸ *Id.*, referencing Exhibit 3.

¹²⁹ See Comment 5 below.

¹³⁰ See GSQR1 at Exhibits SQ-1, SQ-2 and SQ-3.

¹³¹ See GQR at Exhibit 40A.

¹³² See, e.g., *Tires From the PRC* and accompanying Issues and Decision Memorandum at Comment E.2; see also Additional Documents Memorandum at Public Bodies Memorandum.

¹³³ See GQR at 11.

¹³⁴ See *Aluminum Extrusions from the PRC 1st Administrative Review* and accompanying Issues and Decision Memorandum at Comments 6 and 7.

¹³⁵ See *Tetra from the PRC* and accompanying Issues and Decision Memorandum at Comment 1.

outside the “Big Four” SOCBs are public authorities within the meaning of section 771(5)(B) of the Act.¹³⁶

We find that preferential loans from SOCBs constitute financial contributions from “authorities” within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act. We continue to find that the GOC’s predominant role in the banking industry market renders domestic loan interest rates unusable as benchmarks. Dongyuan reported having received such loans and provided information regarding the loans that were outstanding during the POR.¹³⁷ To determine whether a benefit was conferred under section 771(5)(E)(ii) of the Act, we compared the amount of interest paid during the POR on these loans to the amount of interest that the company would have paid on comparable loans.¹³⁸ In conducting this comparison, we used the interest rate benchmarks described in the “Interest Rate Benchmarks” section above. On this basis, we calculated a countervailable subsidy of 0.20 percent *ad valorem* for 2012 and 0.15 percent *ad valorem* for 2013.¹³⁹

D. Technology Award from Xingtian Bureau of Economy

Dongyuan reported that it was approved for, and received, a grant from the Technology Award from the Xingtian Bureau of Economy Program in 2012.¹⁴⁰ The GOC states this program was established in 2003 to “encourage enterprises and technical staffs to carry out technology innovation, so as to further promote the progress of science and technology of the town.”¹⁴¹ The GOC also states that a company designated as a “Privately-owned Science and Technology enterprise” by the provincial government and based in Xingtian Town is provided an award of 10,000 CNY.¹⁴²

We determine that the technology award from the Xingtian Bureau of Economy that Dongyuan received is a countervailable subsidy. The grant is a financial contribution pursuant to section 771(5)(D)(i) of the Act and provides a benefit in the amount of the grant provided, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a). We find that grants from this program are specific as a matter of law to certain enterprises, namely those involved in technical innovation projects, which comply with the direction of industrial development in the Xingtian Municipality, pursuant to section 771(5A)(D)(i) of the Act.

In accordance with 19 CFR 351.524(c), we are treating this one-time grant as a non-recurring subsidy, and we performed the “0.5 percent test” described in 19 CFR 351.524(b)(2). We divided the total amount of the grant by Dongyuan’s total sales in the year of receipt.¹⁴³ Because the resulting percentage is less than 0.5 percent, we are allocating the grant to the year of receipt, 2012. To determine Dongyuan’s subsidy rate from the grant, we divided the amount of the grant

¹³⁶ See Additional Documents Memorandum at Appendix I: Banking Memorandum.

¹³⁷ See DQR-B at 12-14 and Exhibit 10.

¹³⁸ See 19 CFR 351.505(a).

¹³⁹ See Dongyuan Preliminary Calculation Memorandum.

¹⁴⁰ See DQR-B at 20-22 and Appendix 6.

¹⁴¹ See GSQR1 at 14.

¹⁴² *Id.*, at 17.

¹⁴³ Where the company was unable to report the date/year of approval of the grant, we used the date/year of receipt of the grant for the yearly sales denominator used in the 0.5 percent test.

by Dongyuan's total sales for 2012. On this basis, we determine the countervailable subsidy rate of 0.1 percent *ad valorem* for 2012.¹⁴⁴

II. Programs Determined To Be Not Used By Respondent or Not To Provide Benefits During The POR

A. Grant Programs Identified in Responses

Dongyuan and the GOC reported that Dongyuan received various grants in 2009, 2010, 2011, 2012, and 2013.¹⁴⁵ We find that these grants represent less than 0.5 percent of Dongyuan's export or total sales, as applicable, in the years in which they were approved. Therefore, we have allocated these grants to the years of receipt, in accordance with 19 CFR 351.524(b)(2), which are prior to the POR, and we determine that these grants provide no benefits to Dongyuan during the POR.¹⁴⁶

These programs are as follows:

1. Canton Fair Refund
2. Patent Subsidy
3. Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
4. Export Rebate for Mechanic, Electronic, and High-tech Products
5. Special Funds for Development of Foreign Trade (Foshan City)
6. Special Funds of Guangdong Province for International Market Expansion

We also determine that Dongyuan did not use the following programs:

1. Export Subsidies Characterized as "VAT Rebates"
2. Special Funds for Development of Foreign Trade (Foshan City)
3. Special Funds of Guangdong Province for Development of Foreign Trade
4. Support Funds of Guangdong Province of Export Rebate for Mechanic, Electronic and High-tech Products
5. Special Funds of Shunde District for International Market Expansion
6. Subsidy to Attend Domestic Fair in Shanghai
7. Subsidy to Attend Overseas Fair
8. Interest Discount for Export Goods
9. Technology and Trade Specific Fund of Guangdong Province
10. International Market Development Fund for Export Companies
11. The State Key Technology Renovation Fund
12. "Famous Brands" Awards
13. Grants to Cover Legal Fees in Trade Remedy Cases
14. Special Fund for Energy Saving Technology Reform

¹⁴⁴ See Dongyuan Preliminary Calculation Memorandum.

¹⁴⁵ See DQR-B at 20-12, Appendix 1-8, Exhibits 4,13-22; and see DSQR1 at 2-9, Appendix S1-S8, Exhibits S1-S5, S7-S19.

¹⁴⁶ See Dongyuan Preliminary Calculation Memorandum.

15. The Clean Production Technology Fund
16. Grants for Listing Shares
17. Guangdong Province Science and Technology Bureau Project Fund (aka Guangdong Industry, Research, University Cooperating Fund)
18. Export Rebate for Mechanic, Electronic, and High-tech Products
19. Funds for Outward Expansion of Industries in Guangdong Province
20. Fund for Small and Medium Enterprises Bank-enterprise Cooperation Projects
21. Special Fund for Fostering Stable Growth of Foreign Trade
22. Local Government Deposits Into Bank Accounts
23. Treasury Bond Loans or Grants
24. Preferential Loans for SOEs
25. Provincial Tax Exemptions and Reductions for “Productive” FIEs
26. Tax Reductions for FIEs Purchasing Chinese-made Equipment
27. Tax Reductions for FIEs in Designated Geographic Locations
28. Tax Reductions for Technology- or Knowledge-intensive FIEs
29. Tax Reductions for FIEs that are also High or New Technology Enterprises
30. Tax Reductions for HNTes Involved in Designated Projects
31. Tax Offsets for Research and Development at FIEs
32. Tax Credits for Domestically Owned Companies Purchasing Chinese-made Equipment
33. Tax Reductions for Export-oriented FIEs
34. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises
35. Tax Reduction for High-tech Industries in Guangdong Province
36. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
37. VAT Rebates on FIE Purchases of Domestically Produced Equipment
38. City Tax and Surcharge Exemptions for FIEs
39. Exemptions from Administrative Charges for Companies in Industrial Zones
40. VAT and Import Duty Exemptions on Imported Material
41. VAT Rebates on Domestically Produced Equipment
42. Provision of Land to SOEs at LTAR
43. Exemptions from Land Development Fees
44. Land Purchase Grants
45. Grants to Hire Post-doctoral Workers
46. Financial Subsidies: Interest Subsidies, Preferential Loans, and Lowered Interest Rates
47. Tax Reductions or Exemptions
48. Shunde Intensive Industrial Zone Preferential Land Grants
49. Shunde Intensive Industrial Zone Tax Reductions
50. Shunde Intensive Industrial Zone Preferential Electricity Rates
51. Foshan City Grants to “Contract-Honoring and Promise-Keeping” Enterprises
52. Foshan City Financial Subsidies to “Contract-Honoring and Promise-Keeping” Enterprises
53. Export Assistance Grants
54. “Two New” Product Special Funds of Guangdong Province
55. Grant for Loan Interest (Zhongshan City)
56. Grant of Zongshan City for Enterprises’ Participation in Overseas Professional Exhibition

57. Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
58. Shunde Intensive Industrial Zone Administrative Fee Exemptions and Reductions
59. Two Free, Three Half Program for FIEs
60. Provision of Land for LTAR to Companies Located in Industrial or Other Economic Zones
61. Land-Use Rights Extension - Superte

G. Analysis of Comments

Comment 1: Whether Dongyuan's Stainless Steel Supplier is an Authority

Both the GOC and Dongyuan disagree with the Department's preliminary decision to treat one of Dongyuan's suppliers of stainless steel coil as an "authority." They observe that information on the record indicates that this supplier is controlled and majority owned by a foreign entity. Further, they note that the supplier's ownership structure and other key facts during the POR are unchanged from the POI, when the Department found the company not to be an authority. Both the GOC and Dongyuan argue that no explanation has been provided for why the Department has changed its finding regarding Dongyuan's supplier in this review.

The GOC and Dongyuan contend that the Department's determination is arbitrary and capricious because the GOC submitted for this review virtually the same factual information that it did during the investigation. The GOC and Dongyuan argue that the Department must treat identical factual scenarios the same.¹⁴⁷ The GOC claims that it did not respond to the questions in the Input Supplier Appendix regarding whether managers, owners or board of directors were CCP officials in either the original investigation or in this review, and argues that such questions are irrelevant for the supplier in question because it is owned and controlled by foreign entities. The GOC also argues that just as the Department does not revisit the countervailability of a program if there are no new facts, the Department should similarly decline to revisit whether a supplier is a government authority. The GOC further argues that AFA is unwarranted absent any factual or legal distinction between this review and the investigation.

The GOC refers to recent World Trade Organization (WTO) decisions related to determining government authority. Specifically, the GOC notes that the WTO Appellate Body has provided that "a public body may also include an entity controlled by the government ... such that the government may use the entity's resources as its own" and that an investigating authority must "avoid focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant."¹⁴⁸ Further, the GOC states that the Appellate Body has determined that government ownership alone is not sufficient to establish that a

¹⁴⁷ In support of this proposition, the GOC cites *Dongbu Steel Co., Ltd. v. United States*, 635 F.3d 1363, 1371 (Fed. Cir. 2011) (*Dongbu Steel vs United States*) ("an agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently") and the General Agreement On Tariffs and Trade 1994 (GATT) at Article X:3.

¹⁴⁸ The GOC cites *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS4366/AB/R (8 December 2014) at para. 4.19-20.

company is a public body, that a public body is “an entity that possesses, exercises, or is vested with governmental authority.”¹⁴⁹

Noting *Motor Vehicle vs. State Farm*,¹⁵⁰ *Consol. Bearings vs. United States*,¹⁵¹ *SKF USA Inc. vs. United States*,¹⁵² and *Anderson v. U.S. Sec’y of Agric.*,¹⁵³ Dongyuan argues that the Department has failed to provide a reasoned explanation for the change in treatment of this supplier despite identical facts. Additionally, Dongyuan argues that instead of applying AFA, the Department should rely on the information on the record to decide whether its stainless steel coil supplier is an authority. The company contends that there is enough information on the record to show foreign control of this stainless steel supplier and, thus, to show that this supplier is not an authority. Dongyuan argues that even applying AFA to all Chinese nationals in the company (the minority shareholder, one of the five directors, and one lower level deputy manager) and assuming they are all CCP officials, the CCP officials would be unable to control the board or the company’s daily operations. Dongyuan concludes that it is illogical to assume that a multinational company would submit to CCP control; thus, the Department should find that this supplier is not an “authority” within the meaning of section 771(5)(B) of the Act.

Department’s Position:

The Department disagrees with the GOC’s and Dongyuan’s arguments regarding the preliminary decision to treat the supplier in question as an authority. As noted above, the GOC failed to provide the necessary information regarding this supplier. As such, the Department is applying AFA, and continuing to find this producer of stainless steel coil to be authority within the meaning of section 771(5)(B) of the act.

In the initial questionnaire, we requested ownership information from the GOC about the companies that produced the stainless steel coil purchased by Dongyuan during the POR. Specifically, we instructed the GOC to answer all of the questions in the “Information Regarding Input Producers in the PRC” Appendix (Input Producer Appendix) for each producer that is not majority owned by the government and to explain the role of the CCP officials in the management and operations of these stainless steel coil producers.¹⁵⁴ We requested information

¹⁴⁹ See *United States – Countervailing Measures on Certain Products from China*, WT/DS437/AB/R (December 8, 2014) (*U.S. CV Measures on Chinese Products*) at para 4.28-29.

¹⁵⁰ See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (*Motor Vehicle vs. State Farm*) (providing that an agency decision would be arbitrary and capricious “if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise”).

¹⁵¹ See *Consol. Bearing Co. v. United States*, 348 F. 3d 997, 1007 (Fed. Cir. 2003) (*Consol. Bearings vs. United States*) (provided that the Department acts arbitrarily and capriciously when it “consistently follow[s] a contrary practice in similar circumstances and provide[s] no reasonable explanation for the change in practice”).

¹⁵² See *SKF USA Inc. v. United States*, 263 F.3d 1369, 1382 (Fed Cir. 2001) (providing that an agency “must cogently explain why it has exercised its discretion in a given manner”).

¹⁵³ See *Anderson v. U.S. Sec’y of Agric.*, 462 F. Supp. 2d 1333, 1339 (2006) (“A principle justification for the administrative state is that in areas of limitless factual variations, like cases will be treated alike.” (internal citation, quotation marks, and brackets omitted)).

¹⁵⁴ See Initial Questionnaire at Input Producer Appendix.

about CCP involvement with these producers based on information in the CCP Memorandum¹⁵⁵ and the Public Bodies Memorandum.¹⁵⁶ Specifically, in these documents, the Department concluded that the CCP exerts considerable influence over economic activities in the PRC.¹⁵⁷ The Department has previously determined 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.”¹⁵⁸ Further, in contrast to the GOC’s assertion that these questions regarding CCP officials are not relevant because the producer in question is foreign owned and controlled, publicly available information 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.¹⁵⁹ While these documents were not on the record of the investigation in this case, they were on the record of this review and, consequently, the Department requested information regarding the role of CCP officials as it has done in subsequent proceedings.¹⁶⁰

Despite the importance of the information requested in the Input Producer Appendix, the GOC did not provide the information and argued that the information was not relevant.¹⁶¹ By stating that the requested information was not relevant, the GOC reached a conclusion that is the Department’s to reach; only the Department can determine what is relevant to its analysis in any investigation or administrative review.¹⁶² In addition and as discussed above, the CCP Memorandum¹⁶³ and the Public Bodies Memorandum¹⁶⁴ support the Department’s determination that CCP membership is relevant to private companies in the PRC including foreign-owned companies. Furthermore, by not providing the requested information because of its conclusion

¹⁵⁵ See Additional Documents Memorandum at CCP Memorandum.

¹⁵⁶ See Additional Documents Memorandum at Public Bodies Memorandum.

¹⁵⁷ *Id.*, at CCP Memorandum and Public Bodies Memorandum.

¹⁵⁸ *Id.*, at CCP Memorandum at 33.

¹⁵⁹ *Id.*, at Public Bodies Memorandum at 35-36 and sources cited therein.

¹⁶⁰ 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) (*Aluminum Extrusions from the PRC 1st Administrative Review*) and accompanying Issues and Decision Memorandum at 22-26; see also *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) (*Tetra from the PRC*) and accompanying Issues and Decision Memorandum at 14-15.

¹⁶¹ See GQR at 26-27 and 29-33.

¹⁶² See *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (stating that “[i]t is Commerce, not the respondent, that determines what information is to be provided”). The Court in *Ansaldo* criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department’s decision, and for claiming that submitting such information would be “an unreasonable and unnecessary burden on the company.” *Id.*; see also *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010) (stating that “[r]egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it [in] the event that Commerce reached a different conclusion” and that “Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin”); *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.’”); *Nachi-Fujikoshi Corp. v. United States*, 890 F. Supp. 1106, 1111 (CIT 1995) (“Respondents have the burden of creating an adequate record to assist Commerce’s determinations.”).

¹⁶³ See CCP Memorandum.

¹⁶⁴ See Public Bodies Memorandum.

that the information was not necessary, the GOC has been substantially non-responsive. The GOC would have the Department reach its determination on the role of the CCP based solely on the unsupported, conclusory statements of the GOC. We determine that this constitutes a failure to cooperate to the best of the GOC's ability, and we find that an adverse inference is warranted in the application of facts available.¹⁶⁵ In turn, as AFA, we continue to find this producer of stainless steel coil to be an authority within the meaning of section 771(5)(B) of the act.¹⁶⁶ This determination is consistent with the Department's practice.¹⁶⁷

The GOC argues that the WTO instructs the Department to define a "public body" using more information than "government ownership" alone. As an initial matter, the WTO decisions to which the GOC cites have no direct and automatic effect under U.S. law.¹⁶⁸ In addition, we find that the GOC's argument misstates the Department's analysis with respect to the input supplier, which was not based on government ownership. We asked questions regarding CCP membership based on the analysis and evidence discussed in the CCP Memorandum and the Public Bodies Memorandum to which the GOC did not respond. Therefore, because the GOC withheld necessary information and failed to cooperate to the best of its ability as discussed above, the Department based its determination on AFA and we find the producer to be an authority.

Both the GOC and Dongyuan argue that the record of this review contains the same factual scenarios and identical situations for this producer that the Department examined in the investigation and, therefore, the Department is able to conclude that the supplier is not an authority. Citing *Motor Vehicle vs State Farm*, *Consol Bearings vs United States* and *SKF USA Inc. vs. United States*, Dongyuan states that the Department is obligated to provide a reasoned explanation for the change in treatment of this supplier despite identical facts. As an initial matter, the Department investigates whether a producer is an authority in each segment of a proceeding based on the record facts of that individual segment, regardless of whether the producer under consideration has been found previously to be, or not to be, an authority.¹⁶⁹ This does not represent a policy change, and it is consistent with the Department's longstanding practice that has been upheld in court.¹⁷⁰

Further, the assertion that the facts in both proceedings are identical is not accurate: therefore, the reference to *Dongbu Steel vs United States* by the GOC and Dongyuan is misplaced. As noted above, the Department has placed information on the record concerning the role of the

¹⁶⁵ See section 776(b) of the Act.

¹⁶⁶ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (providing that that a party fails to cooperate to the best of its ability when information is not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.").

¹⁶⁷ See, e.g., *Aluminum Extrusions from the PRC 1st Administrative Review*; see also *Tetra from the PRC*.

¹⁶⁸ See, e.g., *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-1349 (Fed. Cir. 2005); *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007); and *NSK Ltd. v. United States*, 510 F.3d 1375, 1380 (Fed. Cir. 2007).

¹⁶⁹ "The record in each segment of a proceeding stands on its own..." See e.g. *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012) and accompanying Issues and Decision Memorandum at 29; see, also, *Welded Line Pipe From the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015).

¹⁷⁰ *Id.*

CCP in the PRC economy, specifically the CCP Memorandum and the Public Bodies Memorandum. This information was not on the record of the investigation. Based on the findings in these documents, in this review, the Department requested relevant information from the GOC which relates to the record of this review. As such, the factual evidence in this review is not identical to the factual information in the investigation. Based on record of this review, the Department requested necessary information regarding the role of the CCP and its influence on these suppliers, which the GOC refused to provide. Therefore, based on the reasoning stated above, the Department finds the argument that the fact patterns are identical in both proceedings to be false.

Finally, Dongyuan's argument that there is enough information on the record to conclude that this supplier is not an authority is not persuasive. As discussed in detail above, based on the public information in the CCP Memorandum and the Public Bodies Memorandum, the Department determined that, in this review, the Department required information regarding the role of the CCP officials for this supplier. However, the GOC did not provide the requested information and instead stated the information is not relevant to the investigation. Therefore, based on AFA, the Department finds that the supplier in question is an authority.

Comment 2: The Department's Refusal to Meet with Counsel for Dongyuan

On May 8, 2015, counsel for Dongyuan requested a meeting to discuss the Department's preliminary decision to treat the company's supplier as an "authority."¹⁷¹ Dongyuan claims that the Department's refusal to meet with counsel for the company to discuss the Department's determination regarding its stainless steel supplier was prejudicial. Dongyuan argues the Department's reason for refusing the request, specifically that disclosure meetings are held to discuss calculations, and that the methodology and underlying factual premise were disclosed in the *Preliminary Results*, is not in line with the goal of the regulations and such meetings, which is to foster a deeper understanding of the issues by all involved. Dongyuan claims that the methodology and reasoning provided in the *Preliminary Results* were not clear in light of past practice and, thus, the calculation was also unclear. Dongyuan argues that the Department was not under a particular time pressure in this case and the Department should have met to shed light on the specifics of its finding and how it affected the calculations.

Department's Position:

The Department disagrees with Dongyuan's claim that declining to meet with counsel for the company was prejudicial. In its letter requesting a meeting, Dongyuan's counsel stated the purpose of the meeting was to "discuss the underlying factual conclusions to the adverse inference."¹⁷² As stated in the Disclosure Meeting Request Memorandum,¹⁷³ the Department holds disclosure meetings to discuss the calculations of countervailing duty rates, which is also

¹⁷¹ See Letter from deKieffer & Horgan, PLLC, "Drawn Stainless Steel Sinks from the People's Republic of China: Request for Disclosure Meeting," (May 8, 2015) (Disclosure Meeting Request Letter).

¹⁷² See Disclosure Meeting Request Letter.

¹⁷³ See Memorandum to the File, "Drawn Stainless Steel Sinks from the People's Republic of China: Disclosure Meeting Request," (May 11, 2015) (Disclosure Meeting Request Memorandum).

made clear in the Department's regulations.¹⁷⁴ As such, the Department declined the request for a disclosure meeting because of the stated purpose; a disclosure meeting is not the appropriate mechanism to discuss underlying factual conclusions to an AFA determination. The Department also made clear in this segment that parties have the opportunity to present arguments regarding the *Preliminary Results* in a case brief or in a hearing¹⁷⁵ which is also made clear in the Department's regulations.¹⁷⁶ Dongyuan subsequently submitted a case brief and requested a hearing. The Department held a hearing on October 22, 2015, in which counsel for Dongyuan participated. Additionally, Dongyuan has stated that the Department's refusal to meet was not in line with the goals of the regulations and adds that preliminary calculations were unclear.¹⁷⁷ However, the company has not cited to any regulation that the Department has violated in this instance, nor has it provided any explanation as to how the preliminary calculations were unclear. For the reasons discussed above, the Department finds that the Department's decision not to meet with counsel for Dongyuan for a disclosure meeting was not prejudicial, and the company was provided adequate procedures to discuss underlying factual conclusions in the *Preliminary Results* through its case brief and the public hearing.

Comment 3: The Department's Refusal to Permit the GOC to Submit Factual Information After the Preliminary Results

The GOC argues that the Department should not have rejected the new factual information the GOC submitted on May 15, 2015. The GOC claims that, at the *Preliminary Results*, the Department placed new factual information on the record about government authority. The GOC also states that the Department made a factual error that would be corrected if it had been allowed to submit this factual information. As such, the GOC contends that it should have been provided an opportunity to respond to this new information. The GOC argues that it could not have been expected to submit questionnaire responses from the investigation in this administrative review and these responses, it claims, would have prevented the Department's "error." Instead of arbitrarily rejecting new factual information, the GOC contends that the Department should have provided the GOC the opportunity to correct this error, as provided for in 19 CFR 351.301(c)(4).

Department's Position:

We find that our rejection of the GOC's May 15, 2015, letter was appropriate because we found that the submission was actually an untimely attempt to respond to earlier requests by the Department with this new information. As noted in our rejection letter,¹⁷⁸ the factual information that the GOC attempted to submit on the record did not rebut, clarify, or correct factual information in the *Preliminary Results*. Instead, the submission was an attempt to provide new factual information that was originally requested by the Department in its initial

¹⁷⁴ See 19 CFR 351.224(b).

¹⁷⁵ The *Preliminary Results* lists details for two mechanisms, the submission of case briefs and the request of a hearing, for which parties may use to respond to the *Preliminary Results*.

¹⁷⁶ See 19 CFR 351.309(c) (discussing case briefs); 19 CFR 351.310 (discussing hearings).

¹⁷⁷ See Dongyuan Preliminary Calculation Memorandum.

¹⁷⁸ See Letter from the Department, "Administrative Review of the Countervailing Duty Order on Drawn Stainless Steel Sinks from the People's Republic of China: Factual Information in Response to the Preliminary Results," (May 18, 2015) (Rejection Letter).

questionnaire¹⁷⁹ and December 11, 2014, supplemental questionnaire.¹⁸⁰ The Department had granted the GOC extensions to respond to these questionnaires.¹⁸¹ In spite of being granted extensions, the GOC did not provide the full responses requested by the Department.¹⁸² Following the deadline to respond to the last supplemental questionnaire, the Department did not again request the GOC to provide this information. As such, the opportunity to provide the requested information had passed. Therefore, the Department rejected the GOC's letter, consistent with CFR 351.301(c)(1), because the information the GOC attempted to submit was untimely. Furthermore, the GOC's brief demonstrates that if the GOC had anticipated the outcome of the *Preliminary Results*, it would have provided the requested information.¹⁸³ This implies that the GOC recognizes that it failed to respond completely to the Department's requests for information.

The GOC has characterized the Department's Additional Documents Memorandum, issued concurrently with the *Preliminary Results*, as new factual information related to the Department's government authority analysis. The Department disagrees with the GOC's assessment. The memorandum included three documents: a "Consultation with Government Agencies" memorandum,¹⁸⁴ the Public Bodies Memorandum, and the CCP Memorandum. All three of these documents were cited in the *Preliminary Results* with regard to general market conditions in the PRC. The Department has relied on these documents, and the information contained in them, for several years in its conduct of PRC CVD proceedings; the most recent document is dated May 18, 2012. As such, the GOC is, and has been for several years, well aware of the information in these documents, as well as the Department's findings based on this information. The Department has relied on these documents in numerous other PRC CVD proceedings,¹⁸⁵ and in many of these proceedings, the documents have been placed on the record

¹⁷⁹ See Letter from the Department, "Drawn Stainless Steel Sinks from the People's Republic of China: Countervailing Duty Questionnaire" (August 8, 2014) at II-4 through II-7 and the Input Producer Appendix at II-19 through II-23.

¹⁸⁰ See Letter from the Department, "Administrative Review of the Countervailing Duty Order on Drawn Stainless Sinks from the People's Republic of China: 1st Supplemental Questionnaire" (December 11, 2014) at 5-7 (December 11, 2014 supplemental questionnaire).

¹⁸¹ See Letter from the Department, "Administrative Review of the Countervailing Duty Order on Drawn Stainless Sinks from the People's Republic of China: GOC Request for Extension to File Response to Initial CVD Questionnaire," (September 8, 2014) (GQR Extension Letter); see also Letter from the Department, "Administrative Review of the Countervailing Duty Order on Drawn Stainless Sinks from the People's Republic of China: Request for extension of time to respond to the Department's Supplemental Questionnaire," (December 23, 2014) (GSQR1 Extension Letter).

¹⁸² See Rejection Letter.

¹⁸³ See GOC Case Brief at page 6. "In addition, at the time the GOC submitted its questionnaire responses in this proceeding, it could not be anticipated that the Department would render the exact opposite conclusion on the same facts regarding [] ownership. Thus, the GOC could not be expected submit questionnaire responses from the investigation in this review to prevent the Department's error."

¹⁸⁴ See Additional Documents Memorandum at Appendix I: Memorandum from David Neubacher, International Trade Analyst, to the File, "Consultations with Government Agencies" (October 17, 2007) (Consultations with Government Agencies).

¹⁸⁵ See, e.g., *Boltless Steel Shelving Units Prepackaged for Sale From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 51775 (August 26, 2015) and accompanying Issues and Decision Memorandum at 8-9; see *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) and accompanying Issues and Decision Memorandum at 22; see *53-Foot Domestic Dry Containers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR

at the time of the *Preliminary Results*.¹⁸⁶ As such, the GOC's assertion that this is new factual information is misleading. Had the GOC wished to provide factual information related to these regularly-used documents, it could have availed itself of the opportunity to submit such comments 30 days prior to the *Preliminary Results*, in accordance with 19 CFR 351.301(c)(5).

Finally, the GOC has stated that the Department made a factual error in the *Preliminary Results*. However, it has not indicated what this factual error is. As such, the Department is unable to address this allegation to determine whether a factual error was made.

Comment 4: Whether the Stainless Steel Coil Industry in China is Distorted by Government Presence in the Market

The GOC asserts that the Department's finding of distortion in the cold-rolled sheet and strip market is unsupported by record evidence. As an initial matter, the GOC states that there is a strong preference to use tier one benchmarks. Moreover, the GOC argues, government presence in a market does not necessarily imply distortion, as indicated by the Preamble, which states that "... such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market."¹⁸⁷

The less-than-majority presence of the Chinese government in the cold-rolled sheet and strip industry is undisputed, the GOC argues. Therefore, the GOC argues, without a determination of majority presence, the Department must demonstrate that "certain circumstances" in the market exist to find distortion. The GOC argues that the Department did not refer to any additional record evidence to support its decision not to use a tier one benchmark. Further, the GOC notes that imports of stainless steel account for roughly nine percent of the market and, as such, there can be no significant distortion by the government with such large import volumes.

The GOC argues that there is no evidence that state-held corporations act in concert to set prices in the market. Further, the GOC contends that the different ownership structures of state-held producers, such as a publicly traded company where the government is the largest shareholder, or a company with many layers of ownership between the producer and the ultimate government owner, make price coordination "virtually impossible."

Further, the GOC argues that the WTO Appellate Body has directed the Department to consider whether in-country prices are market-determined when considering whether to use a tier one benchmark.¹⁸⁸ The GOC also states that in *U.S. CVD Measures on Indian Hot-Rolled Steel Products*, the Appellate Body held that the Department is required to examine conditions of competition and the characteristics of the market such as the structure of the relevant market,

21209 (April 17, 2015) and accompanying Issues and Decision Memorandum at 7; and, see also *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 78799 (December 31, 2014) and accompanying Issues and Decision Memorandum at 5..

¹⁸⁶ See, e.g., *Certain Uncoated Paper From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 36968 (June 29, 2015) and accompanying Preliminary Issues and Decision Memorandum at 17.

¹⁸⁷ See the preamble of the CVD regulations at 63 FR 65348 (November 25, 1998) (*Preamble*).

¹⁸⁸ See *U.S. CVD Measures on Chinese Products* at para. 4.62.

including the nature of the entities operating in that market, their respective market shares, and entry barriers.¹⁸⁹

Finally, the GOC argues that circumstances in *Softwood Lumber from Canada*,¹⁹⁰ which the Department used, in-part, to support its preliminary finding, differ from circumstances in this administrative review. The GOC contends that in *Softwood Lumber from Canada*, in explaining its decision not to use a tier one benchmark, the Department relied on additional information to support its decision, including government control over the stumpage market and fees that were set based on economic policies rather than fair market prices.¹⁹¹ In this proceeding, the GOC contends that the Department has neither identified evidence to support its position nor explained why a less than majority government presence in the market distorts prices.

Department's Position:

For purposes of these final results, we are continuing to find distortion in the stainless steel coil industry due to government presence in the market. As discussed in the *Preliminary Results*, when identifying the appropriate benchmark for measuring a benefit in an LTAR program, the Department's preference, as the GOC correctly observes, is to use market prices from actual transactions within the country under investigation (*i.e.*, tier one benchmarks). As such, the Department's preference would be to use prices from private producers within the country if information on such prices is available. However, where we find that the government provides the majority, or a substantial portion of, the market for a good, prices for such goods in the country may be considered significantly distorted and may not be an appropriate basis of comparison for measuring the adequacy of remuneration.¹⁹² We find that the record indicates that the government provides at the least a substantial portion of the market for stainless steel coil – likely the majority – and that additional considerations evidence market distortion.

Based on the publicly summarized data provided in the public version of GSQR3, the government actually controlled more than 50 percent of the stainless steel coil production in 2012 and 2013. Specifically, the record indicates that during 2012 total production was 71,200,263 metric tons (MT), of which 35,000,000 MT (or 49.16 percent) was production from non-state held companies; in 2013 total production was 80,070,823 MT of which 40,000,000 MT (or 49.96 percent) was production by non-state holding corporations.¹⁹³ While the BPI data on the record shows a majority presence of non-state held production, the public summarized data shows that at minimum, roughly 45 percent of the steel production in the country is by state run producers.¹⁹⁴

¹⁸⁹ See *U.S. CVD Measures on Indian Hot-Rolled Steel Products* at para. 4.157.

¹⁹⁰ See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*) and accompanying Issues and Decision Memorandum at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

¹⁹¹ *Id.*

¹⁹² See *Countervailing Duties; Final Rule*, 63 FR at 65377.

¹⁹³ See GSQR3 (public version) at Exhibit SGQ-1. A comparison of this publicly summarized data to the BPI data shows that the public figures were within 10 percent of the actual figures as stipulated by section 351.304(c)(1).

¹⁹⁴ *Id.* (BPI versions)

Further, we find these numbers are likely to be conservative. The Department notes that in the GOC production figure table, the GOC has defined “non state-holding corporations” to include “private-holding corporations, FIE-holding corporations, among others.”¹⁹⁵ The Department has found companies that are FIEs can also be considered SOEs.¹⁹⁶ Further, the Department has raised concerns that the GOC may have understated government production figures in other PRC CVD proceedings. Most notably, in *Kitchen Racks from the PRC*, the Department noted concerns with regard to the GOC’s reporting of SOEs as FIEs.¹⁹⁷ As such, it is likely that the production data provided by the GOC treat as private entities some companies that the Department would consider to be SOEs.

Further, we find that the structure of the stainless steel market supports a finding of distortion. The GOC has indicated that, in 2013, there were more than 600 producers of cold-rolled sheet and strip.¹⁹⁸ The GOC has argued that given the various ownership structures and the layers between the producers and ultimate government owners, price coordination is “virtually impossible.” However, the Department disagrees with this assessment. As discussed above, record information shows that the GOC and the CCP exert considerable influence over activities in the PRC, including individual companies.¹⁹⁹ As such, the Department finds that the GOC has the ability to coordinate prices within across various companies in which it holds a significant or majority ownership. Thus, given the large number of producers in the market, and that approximately 45 to 50 percent of the market is controlled by the government, the GOC presence would be distortive of the prices charged by the non-state held companies that each account for a relatively small amount of production.

The GOC notes that imports represent approximately nine percent of the market, which demonstrates that the government-owned producers either do not have the capacity to satisfy domestic demand or do not have the pricing power to distort prices enough to prevent imports from gaining market share. The Department finds that, while these figures are not negligible, there is no evidence that they are significant enough (*i.e.*, there is high enough penetration in the market) to conclude that the imports influence prices in the country. Further, contrary to the GOC’s assertion that these imports may indicate that government-owned producers do not have the capacity to satisfy demand, exports of cold-rolled sheet and strip were significantly higher than imports,²⁰⁰ which is an indication that domestic production could satisfy domestic demand.

Referencing the WTO Appellate Body decision in *U.S. CVD Measures on Indian Hot-Rolled Steel Products*, the GOC contends that, absent a majority presence, the Department must

¹⁹⁵ *Id.*

¹⁹⁶ See *Certain New Pneumatic Off-the-Road Tires Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) and accompanying Issues and Decision Memorandum at page 69.

¹⁹⁷ See *Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Kitchen Racks from the PRC*) and accompanying Issues and Decision Memorandum at page 15. (“Thus, firms with GOC majority ownership may have been reported by the GOC as FIEs.”)

¹⁹⁸ See GSQR3 at Exhibit SGQ-1.

¹⁹⁹ See Additional Documents Memorandum at CCP Memorandum and Public Bodies Memorandum.

²⁰⁰ Specifically, in 2012, 15,625,925 MT of cold-rolled sheet and strip was exported, while 6,826,917 MTs were imported. In 2013, 16,048,407MT of cold-rolled sheet and strip was exported, while 6,793,591 MTs were imported.

demonstrate distortion in the market with specific unique facts regarding the relevant market, As an initial matter, this WTO decision has no direct and automatic effect under U.S. law.²⁰¹ Also, the Department agrees that an analysis of the market’s distortion is necessary and should be established on a case-by-case basis, according to the particular facts underlying each countervailing duty segment. As stated above, the Department requested necessary information from the GOC in this administrative review regarding its presence in the stainless steel industry in order to analyze whether the market is distorted. The GOC provided information regarding its involvement in the stainless steel coil market; the Department analyzed this information and determined, *inter alia*, that the GOC controlled more than 50 percent of stainless steel production in 2012 and 2013. In this way, the Department’s analysis of the information provided by the GOC, for the purposes of arriving at a proper benchmark, is based on the circumstances of this case, the characteristics of the market in question, and evidence on the record.

As stated above, the Department analyzed not only the raw data on the stainless steel market supplied by the GOC, the Department also considered the definitions used to categorize the information and other documents that discuss the nature of the GOC’s involvement in various markets. Based on a multifaceted analysis, explained in detail above, the Department concluded the stainless steel market was distorted during the POR due to the GOC’s control of more than 50 percent of stainless steel production during 2012 and 2013.

Citing to *Softwood Lumber from Canada*, the GOC further argues that the Department needs to consider additional market characteristics before deciding not to use a tier one benchmark. However, we disagree with the GOC’s argument. Given the large number of producers of cold-rolled sheet and strip in the country with the GOC controlling approximately half of this production, we have noted other circumstances that may cause distortion. Finally, the Department’s finding in this review is consistent with previous proceedings, including the underlying investigation in this case, where we found distortion with a substantial, but less than majority, market share plus concerns regarding government production figures being under reported.²⁰²

Comment 5: Whether Working Capital Loans are a Part of the Policy Lending Program

The GOC argues that the Department should not find policy lending to exist for the stainless sinks industry. The GOC observes that it is the Department’s practice, as explained in the *Preliminary Results*, in determining whether a policy lending program exists, to look for both government plans or policy directives that provide for the goal of developing an industry and a call for lending to support such a goal. The GOC claims that the Department’s preliminary analysis did not reference any record information indicating that lending to the industry is provided to “support objectives and goals.” The GOC contends that, while the Department identified a number of objectives and goals in the *Pearl River Delta Plan* to support its

²⁰¹ See, e.g., *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-1349 (Fed. Cir. 2005); *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007); and *NSK Ltd. v. United States*, 510 F.3d 1375, 1380 (Fed. Cir. 2007).

²⁰² See, e.g., *Sinks from PRC Investigation* and accompanying Issues and Decision Memorandum at Comment 9; see also *Kitchen Racks from PRC* and accompanying Issues and Decision Memorandum at 15.

preliminary finding, the Department did not identify a statement specifically calling for lending support.

Additionally, the GOC argues the Department has failed to cite any information on the record demonstrating that a financial contribution exists for this program. The GOC does not dispute that working capital loans and fixed asset loans can constitute financial contributions. Instead, the GOC argues that documents on the record show that this program is limited to certain types of loans. Specifically, it contends that, whereas state-owned commercial banks in the PRC are required to consider industrial policies when issuing loans for fixed assets, the consideration of industrial policies is not a listed requirement under the specific rules governing issuance of working capital loans. The GOC further argues that, although a Chinese bank's provision of fixed asset loans appears to be consistent with industrial policy objectives stated in the *Pearl River Delta Plan* or the *Guidelines of Foshan City on Industrial Structure Adjustment*, there is no evidence showing that issuing these loans can be classified under any of the industrial policy statements.

Department's Position

The Department agrees, in part, with the GOC that the *Pearl River Delta Plan* alone does not demonstrate the existence of a policy lending program. As discussed in the "Analysis of Programs" section above, for these final results, we find that the *Pearl River Delta Plan* and *Guidelines of Foshan City on Industrial Structure Adjustment* lay out objectives and goals for the development of the stainless steel industry and that the *Guidelines of Foshan City on Industrial Structure Adjustment* includes a call for lending to support these objectives and goals.²⁰³

However, the Department disagrees with the GOC's argument that SOCBs are required to consider industrial policies only when issuing loans for fixed assets and, thus, there is no basis to find that working capital loans constitute a financial contribution. First, our review of the *Guidelines of Foshan City on Industrial Structure Adjustment* shows that they do not specify that only certain types of loans obtained from SOCBs and policy banks in the PRC will be used as financial mechanisms which the government directs to further develop the stainless steel industry. Instead this GOC policy document contains statements such as: "Preferential supports in terms of foreign exchange, finance and other economic levers might be provided."²⁰⁴ Second, under the Department's long-standing practice, and pursuant to section 771(5)(C), "the administering authority is not required to consider the effect of the subsidy in determining whether a subsidy exists." As we stated above and in the *Preliminary Results* under the "Benchmark Rates" section, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.²⁰⁵ Although the GOC provided information on this record arguing that working capital loans are provided based on functioning market conditions, the Department determined that loans provided by SOCBs under this program, regardless of the type of loan, constitute financial contributions, pursuant to sections 771(5)(B)i and 771(5)(i) of the Act, because SOCBs are

²⁰³ See GSQR1 at Exhibit SQ-2.

²⁰⁴ *Id.*

²⁰⁵ See *CFS from the PRC* and accompanying Issues and Decision Memorandum at Comment 10; see also Additional Documents Memorandum at Appendix I: Banking Memorandum.

“authorities.”²⁰⁶

Because the *Guidelines of Foshan City on Industrial Structure Adjustment* do not expressly identify the types of loans SOCBs are to provide to companies in the stainless steel industry, and the Department continues to find SOCBs to be “authorities,” the Department continues to find the working capital loans Dongyuan obtained from SOCBs during the POR constitute a financial contribution pursuant to section 771(5)(D)(i) of the Act.

H. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If accepted, we will publish the final results of review in the *Federal Register*.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

3 NOVEMBER 2015
(Date)

²⁰⁶ See *Sinks From the PRC Investigation* and accompanying Issues and Decision Memorandum at 25.