

continue to suspend liquidation of entries, but to collect no cash deposits of estimated countervailing duties for AMS Belgium on all shipments of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 2, 2009.

**Ronald K. Lorentzen,**  
Acting Assistant Secretary for Import Administration.

## APPENDIX

### List of Comments and Issues in the Decision Memorandum

Comment 1: Error in the Department's Draft Liquidation Instructions

Comment 2: Department's Authority to Investigate IWT Program

[FR Doc. E9-26940 Filed 11-6-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 1649]

### Expansion of Foreign-Trade Zone 123, Denver, CO

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City and County of Denver, grantee of Foreign-Trade Zone No. 123, submitted an application to the Board for authority to expand FTZ 123

to include the jet fuel storage and distribution facilities at the Denver International Airport, within the Denver Customs and Border Protection port of entry (FTZ Docket 73-2008, filed 12/24/2008);

Whereas, notice inviting public comment was given in the *Federal Register* (74 FR 2046, 1/14/2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 123 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 23rd day of October 2009.

**Ronald K. Lorentzen,**  
Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

**Andrew McGilvray,**  
Executive Secretary.  
[FR Doc. E9-26937 Filed 11-6-09; 8:45 am]  
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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-950]

### Wire Decking From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

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

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

**EFFECTIVE DATE:** November 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson or John Conniff, AD/CVD Operations, Office 3, Operations, Import Administration, U.S. Department

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

## SUPPLEMENTARY INFORMATION:

### Case History

On June 5, 2009, the Department received the petition filed in proper form by the petitioners.<sup>1</sup> This investigation was initiated on June 25, 2009. See *Wire Decking From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 31700 (July 2, 2009) (*Initiation Notice*), and accompanying Initiation Checklist.<sup>2</sup>

As explained in the *Initiation Notice*, the categories of the Harmonized Tariff Schedule of the United States (HTSUS) that include subject merchandise are very broad and include products other than those subject to this investigation. See 74 FR at 31704. Therefore, on June 26, 2009, the Department requested Quantity and Value (Q&V) information from the 83 companies that petitioners identified as potential producers/exporters of wire decking in the PRC. See Q&V Questionnaire (June 26, 2009); see also Petition for the Imposition of Antidumping and Countervailing Duties on Wire Decking from the People's Republic of China (June 5, 2009) (Petition) at Volume I, Exhibit 4, for the list of wire decking producers/exporters.<sup>3</sup> We received Q&V questionnaire responses from 10 producers/exporters of wire decking.

On July 16, 2009, we selected two Chinese producers/exporters of wire decking as mandatory respondents: Dalian Huameilong Metal Products Co., Ltd. (DHMP) and Dalian Eastfound Metal Products Co., Ltd. (Eastfound Metal) and its affiliate Dalian Eastfound Material Handling Products Co., Ltd. (Eastfound Material) (collectively, Eastfound). See Memorandum from the Team through Melissa G. Skinner, Director, AD/CVD Operations, Office 3, to John M. Andersen, Acting Deputy Assistant Secretary for AD/CVD Operations, regarding "Respondent Selection" (July 16, 2009). Also on July 16, 2009, we issued the initial countervailing duty (CVD) questionnaire to the Government of the People's Republic of China (the GOC) and the

<sup>1</sup> Petitioners are AWP Industries, Inc., ITC Manufacturing, Inc., J&L Wire Cloth, Inc., Nashville Wire Products Mfg., Co., Inc., and Wireway Husky Corporation.

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

<sup>3</sup> The Petition is a proprietary document for which the public version is on file in the CRU.

mandatory respondents. We received Eastfound Metal's, Eastfound Material's and DHMP's initial questionnaire responses on September 9, 2009. On September 10, 2009, we received the GOC's initial questionnaire response.

On August 13, 2009, the Department postponed the deadline for the preliminary determination by 65 days to no later than November 2, 2009. See *Wire Decking From the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 74 FR 40812 (August 13, 2009).

Regarding supplemental questionnaires, we issued to the GOC supplemental questionnaires on September 16, 18, and 22, 2009, and October 1, 14, and 22, 2009,<sup>4</sup> to which the GOC submitted responses on September 29, 2009, and October 5, 15, 21, and 26, 2009.

We issued supplemental questionnaires to Eastfound Metal on September 17, 2009, and October 14, 2009, and received responses on October 19, 2009, October 20, 2009,<sup>5</sup> and October 23, 2009. On September 23, 2009, we issued a supplemental questionnaire to Eastfound Material and the company submitted its response on October 15, 2009.

We issued supplemental questionnaires to DHMP on September 18, 2009 and October 15, 2009 and received responses on October 2, 2009 and October 22, 2009. Additionally, DHMP made submissions on September 14, 2009 and October 26, 2009.

#### Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to the most recently completed fiscal year. See 19 CFR 351.204(b)(2).

#### Scope of the Investigation

The scope of the investigation covers welded-wire rack decking, which is also known as, among other things, "pallet rack decking," "wire rack decking," "wire mesh decking," "bulk

storage shelving," or "welded-wire decking." Wire decking consists of wire mesh that is reinforced with structural supports and designed to be load bearing. The structural supports include sheet metal support channels, or other structural supports, that reinforce the wire mesh and that are welded or otherwise affixed to the wire mesh, regardless of whether the wire mesh and supports are assembled or unassembled and whether shipped as a kit or packaged separately. Wire decking is produced from carbon or alloy steel wire that has been welded into a mesh pattern. The wire may be galvanized or plated (e.g., chrome, zinc, or nickel coated), coated (e.g., with paint, epoxy, or plastic), or uncoated ("raw"). The wire may be drawn or rolled and may have a round, square or other profile. Wire decking is sold in a variety of wire gauges. The wire diameters used in the decking mesh are 0.105 inches or greater for round wire. For wire other than round wire, the distance between any two points on a cross-section of the wire is 0.105 inches or greater. Wire decking reinforced with structural supports is designed generally for industrial and other commercial storage rack systems.

Wire decking is produced to various profiles, including, but not limited to, a flat ("flush") profile, an upward curved back edge profile ("backstop") or downward curved edge profile ("waterfalls"), depending on the rack storage system. The wire decking may or may not be anchored to the rack storage system. The scope does not cover the metal rack storage system, comprised of metal uprights and cross beams, on which the wire decking is ultimately installed. Also excluded from the scope is wire mesh shelving that is not reinforced with structural supports and is designed for use without structural supports.

Wire decking enters the United States through several basket categories in the HTSUS. U.S. Customs and Border Protection (CBP) has issued a ruling (NY F84777) that wire decking is to be classified under HTSUS 9403.90.8040. Wire decking has also been entered under HTSUS 7217.10, 7217.20, 7326.20, 7326.90, 9403.20.0020, and 9403.20.0030. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the investigation is dispositive.

#### Scope Comments

In accordance with the *Preamble* to the Department's regulations (see *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19,

1997) (*Preamble*)), in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. The Department did not receive scope comments from any interested party.

#### Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On July 31, 2009, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of wire decking from the PRC. See *Wire Decking From China*, Investigation Nos. 701-TA-466 and 731-TA-1162 (Preliminary), 74 FR 38229 (July 31, 2009).

#### Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

On June 25, 2009, the Department initiated AD and CVD investigations of wire decking from the PRC. See *Wire Decking From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 74 FR 31691 (July 2, 2009) and also *Initiation Notice* (for the PRC CVD investigation). The AD and CVD investigations have the same scope with regard to the merchandise covered.

On October 28, 2009, the petitioners submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final determination in the companion AD investigation of wire decking from the PRC. Therefore, in accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final determination in the companion AD investigation of wire decking from the PRC. The final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued on or about March 20, 2010.

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

On October 25, 2007, the Department published *Coated Free Sheet Paper From the People's Republic of China: Final Affirmative Countervailing Duty*

<sup>4</sup> The GOC and Eastfound Metal coordinated with regard to the October 1, 2009, supplemental questionnaire. Eastfound Metal submitted a response to the questionnaire on October 19, 2009.

<sup>5</sup> On October 19, 2009, counsel for Eastfound Metal was instructed to re-file the company's supplemental questionnaire response dated October 13, 2009, because the submission contained a document not germane to this investigation. See Letter from Melissa G. Skinner, Director, AD/CVD Operations Office 3, to Gregory S. Menegaz of DeKieffer and Horgan, dated October 19, 2009. Mr. Menegaz re-filed Eastfound Metal's supplemental questionnaire response on October 20, 2009.

*Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decision Memorandum (CFS Decision Memorandum). In *CFS from the PRC*, the Department found that

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

See CFS Decision Memorandum at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in subsequent final determinations. See, e.g., *Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and accompanying Issues and Decision Memorandum (CWP Decision Memorandum) at Comment 1.

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

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

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 Facts Available: Provision of Zinc for Less Than Adequate Remuneration (LTAR)

The Department is investigating the extent to which firms, acting as government authorities, sold zinc to the mandatory respondents for LTAR. As discussed in further detail below in the "Provision of Zinc for LTAR" section, the Department sought information from the mandatory respondents and the GOC concerning the identity of the firms that produced the zinc ultimately purchased by the mandatory respondents during the POI. The Department specifically sought information that would enable it to determine whether the input suppliers acted as producers of the input or as trading companies (or non-producing suppliers) that resold the input that was produced by other firms. In the case of DHMP, information from the company and the GOC identified the name of the supplier(s) that sold the zinc to DHMP during the POI. However, DHMP and the GOC did not identify the firm(s) that actually produced the zinc that was sold to DHMP during the POI.<sup>6</sup> As explained below in the "Provision of Zinc for LTAR" program, the Department requires information concerning the producer(s) of the zinc purchased by DHMP in order to determine whether DHMP acquired zinc from a producer that acted as a government authority capable of providing a financial contribution as described under section 771(5)(D)(iv) of the Act. Thus, we find that the necessary information is not on the record.

In prior CVD cases involving the PRC, in instances in which the mandatory respondent and the GOC have failed to identify the firm that produced the input sold to the mandatory respondent during the POI, the Department has resorted to the use of facts available as described under sections 776(a)(1) and (2)(b) of the Act. See, e.g., *Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009) (*CWASPP from the PRC*), and accompanying Issues and Decision Memorandum (CWASPP Decision Memorandum) at "Provision of SSC for LTAR." In such instances, the Department has utilized aggregate production data provided by the GOC to estimate the amount of the input that is produced by state-owned enterprises. *Id.* In keeping with this approach, we have resorted to the use of facts

available under sections 776(a)(1) and (2) of the Act in order to determine the extent to which the zinc purchased by DHMP during the POI was produced by firms acting as government authorities capable of providing a financial contribution within the meaning of section 771(5)(D)(iv) of the Act.

The GOC provided the amount of zinc produced by state-owned enterprises (SOEs), collectives, private firms, and firms for which the ownership category was unknown. In the final determination of *LWRP from the PRC*, the Department affirmed its decision to treat collectives as government authorities. See *Light-Walled Rectangular Pipe and Tube From the 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 (LWRP Decision Memorandum) at Comment 5. We have adopted the same approach with regard to collectives in the instant investigation. Using this data, we calculated the share of zinc produced by government authorities to be approximately 67 percent.<sup>7</sup> Therefore, pursuant to sections 776(a)(1) and (2) of the Act, we are assuming that 67 percent of the zinc sold to DHMP during the POI was produced by government authorities capable of providing a financial contribution within the meaning of section 771(5)(D)(iv) of the Act.

#### Application of Adverse Inferences: Provision of Electricity for LTAR

On July 16, 2009, the Department issued its initial questionnaire to the GOC. In the questionnaire, the Department asked the GOC several questions regarding its alleged provision of electricity to the mandatory respondents for LTAR. See Department's Initial Questionnaire at Appendix 7 (July 16, 2009). The GOC failed to respond to those questions. See GOC's Initial Questionnaire Response at 27–30 (September 10, 2009). The Department issued a supplemental questionnaire in which it asked the GOC once again to submit the requested information concerning the provision of electricity for LTAR program. See Department's Second Supplemental Questionnaire at 2 (September 18, 2009). The GOC, however, again failed to provide the requested information with regard to several of the Department's questions on the provision

<sup>6</sup> Eastfound reported that it did not purchase zinc during the POI.

<sup>7</sup> In deriving this ratio, we did not include in our calculations the quantity of zinc produced by firms that the GOC categorized as unknown.

of electricity. *See* GOC's Second Supplemental Questionnaire Response at 1–2 (October 15, 2009).

Section 776(a)(2)(D) of the Act states that the Department shall use the facts otherwise available in reaching a determination if an interested party provides information that cannot be verified as provided by section 782(i) of the Act. In addition, section 776(a)(2)(A) of the Act states that the Department shall use facts available when a party withholds information that has been requested by the Department. Further, section 776(b) of the Act states that if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.

As summarized above, the GOC did not provide the information requested by the Department as it pertains to the provision of electricity for LTAR program. We preliminarily find that, in failing to provide the requested information, the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC and preliminarily determine that the GOC is providing a financial contribution that is specific within the meaning of section 771(5A)(D)(iv) of the Act. *See* "Provision of Electricity for LTAR" section below for a discussion of the program benefit.

#### **Application of Adverse Inferences: Non-Cooperative Companies**

In this investigation, 74 companies did not provide a response to the Department's Q&V questionnaire issued during the respondent selection process. These non-cooperative Q&V companies are listed below in the "Suspension of Liquidation" section. We confirmed that each of these companies received the Q&V questionnaire which was sent via either Federal Express or DHL.<sup>8</sup>

The 74 non-cooperative Q&V companies withheld requested information and significantly impeded this proceeding. Specifically, by not responding to requests for information concerning the quantity and value of their sales, they impeded the Department's ability to select the most appropriate respondents in this investigation. Thus, in reaching our preliminary determination, pursuant to

sections 776(a)(2)(A) and (C) of the Act, we are basing the CVD rate for the non-cooperative Q&V companies on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to the Department's Q&V questionnaires, these companies did not cooperate to the best of their ability in this investigation. Accordingly, we preliminarily find that an adverse inference is warranted to ensure that the non-cooperating Q&V companies will not obtain a more favorable result than had they fully complied with our request for information.

In deciding which facts to use as adverse facts available (AFA), section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding. *See, e.g., Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*LWS from the PRC*), and accompanying Issues and Decision Memorandum (LWS Decision Memorandum) at "Selection of the Adverse Facts Available."

In previous CVD investigations of products from the PRC, we adapted the practice to use the highest rate calculated for the same or similar program in other PRC CVD

investigations. *See id.* and *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in the *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum (Lawn Groomers Decision Memorandum) at "Application of Facts Available, Including the Application of Adverse Inferences"). For this preliminary determination, consistent with the Department's recent practice, we are computing a total AFA rate for the non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, we are applying the highest calculated rate for the identical program in this investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, we are using the highest non-*de minimis* rate calculated for the same or similar program in another PRC CVD investigation. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, we are applying the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies. *See, e.g., Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*LWTP from the PRC*), and accompanying Issues and Decision Memorandum (LWTP Decision Memorandum) at "Selection of the Adverse Facts Available Rate."

Further, where the GOC can demonstrate through complete, verifiable, positive evidence that non-cooperative Q&V companies (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department will not include those provincial programs in determining the countervailable subsidy rate for the non-cooperative Q&V companies. *See, e.g., Certain Kitchen*

<sup>8</sup> *See* Memorandum to the File regarding "Delivery of Quantity and Value Questionnaires via Federal Express and DHL" (July 16, 2009).

*Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Shelving from the PRC*), and accompanying Issues and Decision Memorandum (Shelving Decision Memorandum) at "Use of Facts Otherwise Available and Adverse Facts Available." In this investigation, the GOC has not provided any such information. Therefore, we are making the adverse inference that the non-cooperative Q&V companies had facilities and/or cross-owned affiliates that received subsidies under all of the sub-national programs on which the Department initiated.

For the income tax rate reduction or exemption programs, we are applying an adverse inference that the non-cooperative Q&V companies paid no income taxes during the POI. The six programs are: (1) Two Free, Three Half Tax Exemptions for FIEs, (2) Income Tax Exemptions for Export-Oriented FIEs, (3) Local Income Tax Exemption and Reduction Program for Productive FIEs, (4) Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises, (5) Income Tax Benefits for FIEs Based on Geographical Location, and (6) Income Tax Exemption for Investors in Designated Geographical Regions within Liaoning.

The standard income tax rate for corporations in the PRC is 30 percent, plus a 3 percent provincial income tax rate.<sup>9</sup> The highest possible benefit for all income tax reduction or exemption programs combined is 33 percent. Therefore, we are applying a CVD rate of 33 percent on an overall basis for these six income tax programs (*i.e.*, these six income tax programs combined provide a countervailable benefit of 33 percent). This 33 percent AFA rate does not apply to tax credit or tax refund programs. This approach is consistent with the Department's past practice. *See, e.g.*, CWP Decision Memorandum at 2, and LWTP Decision Memorandum at "Selection of the Adverse Facts Available Rate."

The 33 percent AFA rate does not apply to the following four income tax credit and rebate or accelerated depreciation programs because such programs may not affect the tax rate and, hence, the subsidy conferred, in the current year: (1) Income Tax Credit for Domestically-owned Companies Purchasing Domestically-produced Equipment, (2) Income Tax Exemption for Investment in Domestic

Technological Renovation,<sup>10</sup> (3) Preferential Income Tax Policy for Enterprises in the Northeast Region,<sup>11</sup> and (4) Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China.<sup>12</sup> Neither mandatory respondent used these programs, nor have we found greater than *de minimis* benefits for these direct tax programs in other CVD PRC proceedings. Therefore, we preliminarily determine to use the highest non-*de minimis* rate for any indirect tax program from a China CVD investigation. The rate we select is 1.51 percent, calculated for the "Value-Added Tax and Tariff Exemptions on Imported Equipment" program in *CFS from the PRC*. *See* CFS Decision Memorandum at 13–14.

We are also investigating VAT and tariff reduction programs. Eastfound used the Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries program and VAT Refunds for FIEs Purchasing Domestically-produced Equipment program and, therefore, we are using, as AFA, Eastfound's rates of 0.02 percent and 0.13 percent, respectively. For the other following VAT and tariff reduction programs, for which we do not have respondent program usage, we are applying the 1.51 percent rate calculated in *CFS from the PRC*: (1) VAT Deductions on Fixed Assets and (2) VAT Exemptions for Newly Purchased Equipment in Jinzhou District.

Neither respondent used any of the loan programs on which the Department initiated. Therefore, for the following loan programs, we preliminarily determine to apply the highest non-*de minimis* subsidy rate for any loan program in a prior China CVD investigation: (1) Honorable Enterprise Program,<sup>13</sup> (2) Preferential Loans for Key Projects and Technologies, (3)

Preferential Loans as Part of the Northeast Revitalization Program, and (4) Policy Loans for Firms Located in Industrial Zones in the City of Dalian in Liaoning Province. The highest non-*de minimis* subsidy rate is 8.31 percent calculated for the "Government Policy Lending Program," from *LWTP from the PRC*. *See* *Lightweight Thermal Paper From the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 FR 70958 (November 24, 2008) (*Amended LWTP from the PRC*).

We also investigated on a number of grant programs. Neither respondent used the following grant programs: (1) Five Points, One Line Program, (2) Export Interest Subsidies, (3) State Key Technology Fund, (4) Subsidies for Development of Famous Export Brands and China Top Brands, (5) Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands, and (6) Exemption of Fees for Firms Located in Designated Geographical Areas in Dalian. In addition, the Department has not calculated an above *de minimis* rates for any of these programs in prior investigations, and, moreover, all previously calculated rates for grant programs from prior China CVD investigations have been *de minimis*. Therefore, for each of these grant programs, we preliminarily determine to use the highest calculated subsidy rate for any program otherwise listed, which could have been used by the non-cooperative Q&V companies. We preliminarily determine that this rate is 44.91 percent for the "Provision of HRS for LTAR" program from *CWP from the PRC*. *See* *Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 FR 42545 (July 22, 2008) (*Amended CWP from the PRC*).

Finally, there are several provision of a good or service for LTAR programs, which we are investigating. For the Provision of Wire Rod for LTAR, we are using the rate of 1.21 percent calculated for Eastfound (*see* program section below). For the Provision of HRS for LTAR, we are using the rate of 0.26 percent calculated for Eastfound (*see* program section below). For the Provision of Zinc for LTAR, though we have respondent use of this program, DHMP's rate is 0.00 percent. Therefore, we are using, as the AFA rate, the 44.91 percent calculated for the "Provision of HRS for LTAR" program from *Amended CWP from the PRC*.

<sup>9</sup> *See* GOC's supplemental questionnaire response at 9 (October 15, 2009).

<sup>10</sup> Program provides a tax credit to enterprises for a certain portion of investment in any domestically-produced equipment that relates to technology updates. *See* Initiation Checklist at 15.

<sup>11</sup> Program reduces the depreciation life of fixed assets by up to 40 percent for tax purposes and shortens the period of amortization of intangible assets by up to 40 percent for tax purposes. *See* Initiation Checklist at 15.

<sup>12</sup> Petitioner alleged that this program forgives tax liabilities owed by companies in the northeast region of China. *See* Initiation Checklist at 16.

<sup>13</sup> In its September 29, 2009, supplemental questionnaire response, the GOC reported that the Honorable Enterprise Program was terminated and provided termination legislation (*see* page 1 and Exhibit 1). The GOC also reported that it has not enacted a successor program. We require more information regarding the GOC's claim that the program has been terminated and will continue to examine the GOC's claim of program termination.

Regarding the Provision of Electricity for LTAR,<sup>14</sup> for reasons discussed in the program section below, we preliminarily determine to use, as AFA, the rate of 0.07 percent, which was calculated for the program "Provision of Electricity for LTAR in Zhanjiang Zone" in *LWTP from the PRC*.

For the Provision of Land for LTAR for Firms Located in Designated Geographical Areas in Dalian, we are using the rate of 1.46 percent calculated for DHMP (see program section below). Regarding the Provision of Water for LTAR for Firms Located in Designated Geographical Areas in Dalian, which neither respondent used, the Department has not calculated a rate for this type of program in a prior CVD PRC investigation. Therefore, we have preliminarily determined to use the highest non-*de minimis* rate calculated for a provision of a good or service at LTAR program for which the non-cooperative Q&V companies could have benefitted. We preliminarily determine that this rate is 44.91 percent for the "Provision of HRS for LTAR" program from *Amended CWP from the PRC*.

For further explanation of the derivation of the AFA rates, see Memorandum to the File, regarding "Preliminary Determination of Adverse Facts Available Rate" (November 2, 2009) (AFA Memorandum). Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See, e.g., SAA, at 870, 1994 U.S.C.C.A.N. at 4199. The Department considers information to be corroborated if it has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *Id.* at 869.

With regard to the reliability aspect of corroboration, we note that these rates were calculated in recent final CVD determinations. Further, the calculated rates were based upon verified information about the same or similar programs. Moreover, no information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Finally, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it. See *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

In the absence of record evidence concerning these programs due to the decision of the non-cooperative Q&V companies to not participate in the investigation, we have reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs of this case. For the programs for which there is no program-type match, we have selected the highest calculated subsidy rate for any PRC program from which the non-cooperative Q&V companies could receive a benefit to use as AFA. The relevance of these rates is that it is an actual calculated CVD rate for a PRC program from which the non-cooperative Q&V companies could actually receive a benefit. Further, these rates were calculated for periods close to the POI in the instant case. Moreover, the failure of these companies to respond to requests for information by the Department has "resulted in an egregious lack of evidence on the record to suggest an alternative rate." See *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. supp. 2d 1339, 1348 (CIT 2005). Due to the lack of participation by the non-cooperative Q&V companies and the resulting lack of record information concerning their use of the programs under investigation, the Department has corroborated the

rates it selected to use as AFA to the extent practicable.

On this basis, we preliminarily determine the AFA countervailable subsidy rate for the non-cooperative Q&V companies to be 437.73 percent *ad valorem*. See AFA Memorandum.

#### **Application of All Others Rate to Companies Not Selected as Mandatory Respondents**

In addition to DHMP and Eastfound, we received responses to the Q&V questionnaire from the following eight companies: Brynick Enterprises Limited;<sup>15</sup> C-F Industries LLC; Dalian Xingbo Metal Products Co., Ltd.; Dandong Riqian Logistics Equipment Co., Ltd.; Globsea Co., Ltd.; Nanjing Topsun Racking Manufacturing Co., Ltd.; Ningbo Xinguang Rack Co., Ltd.; and Tianjin Jiali Machine Co., Ltd. See Memorandum to the File regarding "Q&V Cooperative Companies" (November 2, 2009). Though these eight companies were not chosen as mandatory respondents, they did cooperate fully with the Department's request for quantity and value information. We, therefore, are applying the all others rate to them.<sup>16</sup>

#### **Subsidies Valuation Information Allocation Period**

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 12 years. No interested party has claimed that the AUL of 12 years is unreasonable.

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

<sup>15</sup> Also known as, Ningbo Brynick Enterprises Limited.

<sup>16</sup> We are also applying the all others rate to Yangzhou Hynet Imp and Exp Corp. because the Department inadvertently failed to send to the company a Q&V questionnaire. See Memorandum to the File regarding "Yangzhou Hynet Imp and Exp Corp." (November 2, 2009).

<sup>14</sup> Our preliminary findings regarding the federal provision of electricity for LTAR encompasses the program "Provision of Electricity for LTAR for Firms Located in Designated Geographical Areas in Dalian," which is listed in the *Initiation Notice* and accompanying Initiation Checklist.



the year of receipt rather than allocated over the AUL 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 the Department to 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 this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600–604 (CIT 2001).

#### Eastfound

Eastfound Metal and Eastfound Material are affiliated companies that produce and export the subject merchandise. These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of high levels of common ownership. Therefore, pursuant to 19 CFR 351.525(b)(6)(ii), we are attributing the subsidies received by Eastfound Metal and Eastfound Material to the combined sales of the companies, excluding the sales between them.

Eastfound Metal and Eastfound Material reported other affiliated parties; however, both companies reported that these other affiliates do not produce the subject merchandise and do not provide inputs. Therefore, because these other affiliates do not produce subject merchandise or otherwise fall within the situations outlined in 19 CFR 351.525(b)(6)(iii)-(v),

we are not including these companies in our subsidy calculations.

#### DHMP

In its questionnaire response, DHMP indicated that it is the sole producer of subject merchandise. It also indicated that it is owned by a parent company. We sent a CVD questionnaire to the parent company of DHMP. The parent company supplied its response on September 9, 2009. Based on the information in the response, we preliminarily determine that the parent company did not produce subject merchandise or supply DHMP with an input that is primarily dedicated to the production of subject merchandise during the POI. Furthermore, based on the questionnaire response of the parent company, we preliminarily determine that it had no sales revenue during the POI and did not use any of the alleged subsidy programs. Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are attributing subsidies found to have been received by DHMP solely to the sales of DHMP.

#### Benchmarks and Discount Rates

Although the Department is not calculating subsidy rates for any loans in this investigation, the benchmark interest rate is used to compute the discount rate that we are using to allocate benefits over time. Therefore, we discuss the derivation of the benchmark rates below.

*Benchmark for Short-Term RMB Denominated Loans:* Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. *See* 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national interest rate for comparable commercial loans." *See* 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. However, for the reasons explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. *See* CFS Decision Memorandum at Comment 10. Because of this, any loans received by respondents from private

Chinese or foreign-owned banks would be 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 benchmark interest rate. 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. *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 (Softwood Lumber Decision Memorandum) at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC* and more recently updated in *LWTP from the PRC*. *See* CFS Decision Memorandum at Comment 10; *see also* LWTP Decision Memorandum at "Benchmarks and Discount Rates." This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to the PRC, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to the state-imposed distortions in the banking sector discussed above.

Following the methodology developed in *CFS from the PRC*, we first determined which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries as of July 2007. As explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund and are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported

in the IFS for the countries identified as “low middle income” by the World Bank. First, we did not include those economies that the Department considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L’Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.

**Benchmark for Long-Term RMB Denominated Loans:** The lending rates reported in the IFS represent short- and medium-term lending, and there are no sufficient publicly available long-term interest rate data upon which to base a robust long-term benchmark. 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. See LWRP Decision Memorandum at “Discount Rates.” In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. 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 (*Citric Acid Decision Memorandum*) at Comment 14.

**Discount Rates:** Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided the subsidy.

## Analysis of Programs

### I. Programs Preliminarily Determined To Be Countervailable

#### A. Provision of Wire Rod for LTAR

The Department is investigating whether producers and suppliers, acting as Chinese government authorities, sold wire rod to the mandatory respondents for LTAR. DHMP and Eastfound reported obtaining wire rod during the POI from trading companies as well as directly from wire rod producers.

In *Tires from the PRC*, the Department determined that majority government ownership of an input producer is sufficient to qualify it as an “authority.” See *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*Tires from the PRC*), and accompanying Issues and Decision Memorandum (*Tires Decision Memorandum*) at “Government Provision of Rubber for Less than Adequate Remuneration.” Based on the record in the instant investigation, we preliminarily determine that wire rod producers, which supplied respondents, and that are majority-government owned are “authorities.” See Memorandum to the File regarding “Preliminary Calculations for Eastfound” (November 2, 2009) (*Eastfound Preliminary Calculations*). As a result, we determine that wire rod supplied by companies deemed to be government authorities constitute(s) a financial contribution to Eastfound in the form of a governmental provision of a good and that the respondents received a benefit to the extent that the price they paid for wire rod produced by these suppliers was for LTAR. See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.<sup>17</sup>

In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an “authority” within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input was sold for LTAR. See CWP Decision Memorandum at “Hot-Rolled Steel for Less than Adequate Remuneration;” Shelving Decision Memorandum at “Provision of Wire Rod for Less than Adequate Remuneration;” and CWASPP Decision Memorandum at

“Provision of SSC for LTAR.” Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC together identify the producers from whom the trading companies acquired the wire rod that was subsequently sold to respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities.

In response to these requests, DHMP and Eastfound were able to identify the firms that produced the wire rod that was ultimately sold to them. We have used the information concerning the ownership status of the wire rod suppliers to determine whether DHMP and Eastfound purchased wire rod that was produced by government authorities. In the case of DHMP, we preliminarily determine that none of the wire rod it purchased was produced by firms acting as government authorities. Therefore, we have not conducted a subsidy analysis for DHMP’s purchases of wire rod during the POI. Regarding Eastfound, we preliminarily determine that it purchased a certain quantity of wire rod that was produced by government authorities during the POI. Therefore, we preliminarily determine, with regard to wire rod produced by these firms, that Eastfound received a financial contribution within the meaning of section 771(5)(D)(iv) of the Act.

Having addressed the issue of financial contribution, we must next analyze whether the sale of wire rod to Eastfound by suppliers designated as government authorities conferred a benefit within the meaning of section 771(5)(iv) of the Act. The Department’s regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected

<sup>17</sup> Regarding DHMP, we preliminarily determine that none of the wire rod it acquired during the POI was produced by government authorities.



to reflect most closely the prevailing market conditions of the purchaser under investigation. See Softwood Lumber Decision Memorandum at "Market-Based Benchmark."

Beginning with tier-one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *CVD Preamble*:

Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See *Preamble to Countervailing Duty Regulations*, 63 FR 65377, (November 25, 1998) (*CVD Preamble*). The *CVD Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

In the instant investigation, the GOC reported the total wire rod production by state-owned entities during the POI. The number of these state-owned entities (SOEs and COEs) accounted for approximately the same percentage of the wire rod production in the PRC as was recently found in *Shelving and Racks from the PRC*, in which the Department determined that the GOC had direct ownership or control of wire rod production. See *Shelving and Racks Decision Memorandum*, at Comment 4. Because the GOC has not provided any information that would lead the Department to reconsider the determination in *Shelving and Racks from the PRC*, we find that the substantial market share held by SOEs shows that the government plays a predominant role in this market. See *Shelving and Racks Decision Memorandum* at 15. The government's predominant position is further demonstrated by the low level of imports, which accounted for only one percent of the volume of wire rod available in the Chinese market during the POI. See GOC's September 10, 2009, questionnaire response at 11. Because the share of imports of wire rod into the PRC is small relative to Chinese domestic production of wire rod, it would be inappropriate to use import values to calculate a benchmark. This is consistent with the Department's approach discussed in *LWRP Decision Memorandum*, at Comment 7.

In addition to the government's predominant role in the market, we found in *Shelving and Racks from the PRC* that the 10 percent export tariff and export licensing requirement instituted

by the GOC contributed to the distortion of the domestic market in the PRC for wire rod. Such export restraints can discourage exports and increase the supply of wire rod in the domestic market, with the result that domestic prices are lower than they would otherwise be. See *Shelving and Racks Decision Memorandum* at 15. Consequently, we determine that there are no appropriate tier one benchmark prices available for wire rod.

We examined whether the record contained data that could be used as a tier-two wire rod benchmark under 19 CFR 351.511(a)(2)(ii). The Department has on the record of the investigation prices for wire rod (industrial quality, low carbon), as sourced from the American Metals Market (AMA). See Petitioners' Benchmark Comments at Exhibit 1. The benchmark prices are reported on a monthly basis in U.S. dollars per metric ton (MT). No other interested party submitted tier-two wire rod prices on the record of this investigation.

Therefore, for purposes of the preliminary determination, we find that the data from AMA should be used to derive a tier-two, world market price for wire rod that would be available to purchasers of wire rod in the PRC. We note that the Department has relied on pricing data from industry publications in recent CVD proceedings involving the PRC. See, e.g., CWP Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration" and LWRP Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration." Further, we find that, for purposes of the preliminary determination, there is no basis to conclude that prices from the AMA are any less reliable or representative than data from other trade industry publications used by the Department in prior CVD proceedings involving the PRC.

To determine whether wire rod suppliers, acting as government authorities, sold wire rod to respondents for LTAR, we compared the prices that Eastfound paid to the suppliers to our wire rod benchmark price. We conducted our comparison on a monthly basis. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by Eastfound for its purchases of wire rod.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including

delivery charges and import duties. Regarding delivery charges, at this time we lack information concerning delivery charges and, therefore, have not adjusted the benchmark in this regard, but will continue to seek the relevant information. However, we have added import duties, as reported by the GOC, and the VAT applicable to imports of wire rod into the PRC. With respect to the three percent insurance charge on imports noted by the petitioner, consistent with *Shelving from the PRC*, while the Department will consider in future determinations the propriety of including insurance as a delivery charge, the existing record of this investigation does not support such an adjustment. See *Shelving from the PRC Decision Memorandum* at Comment 9.

Comparing the benchmark unit prices to the unit prices paid by Eastfound for wire rod, we preliminarily determine that wire rod was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a). We calculated the total benefit by multiplying the unit benefit by the quantity of wire rod purchased.

Finally, with respect to specificity, the third subsidy element specified under the Act, the GOC has provided information on end uses for wire rod. See GOC's Initial Questionnaire Response at 14 (September 10, 2009). The GOC stated that the consumption of wire rod occurs across a broad range of industries. *Id.* While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. See section 771(5A)(D)(iii)(I) of the Act; see also LWRP Decision Memorandum at Comment 7, and *Shelving Decision Memorandum* at "Provision of Wire Rod from Less Than Adequate Remuneration."

We preliminarily find that the GOC's provision of wire rod for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). Therefore, to calculate the net subsidy rate, we divided the benefit by a denominator comprised of total sales. On this basis, we calculated a total net subsidy rate of 1.21 percent *ad valorem* for Eastfound.

### *B. Provision of Hot-Rolled Steel for LTAR*

The Department is investigating whether producers and suppliers, acting as Chinese government authorities, sold HRS to the mandatory respondents for LTAR. DHMP and Eastfound reported purchasing HRS during the POI from trading companies as well as directly from HRS producers.

As explained above, in *Tires from the PRC*, the Department determined that majority government ownership of an input producer is sufficient to qualify the producer as an “authority.” See *Tires Decision Memorandum* at “Government Provision of Rubber for Less Than Adequate Remuneration.” Based on the record of this investigation, we preliminarily determine that HRS producers that supply respondents and that are majority-government owned are “authorities.” See *Eastfound Preliminary Calculations*. As a result, we preliminarily determine that HRS supplied by companies deemed to be government authorities constitute a financial contribution to respondents in the form of a governmental provision of a good and that the respondents received a subsidy to the extent that the price they paid for HRS produced by these suppliers was sold for LTAR. See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an “authority” within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input was sold for LTAR. See *CWP Decision Memorandum* at “Hot-Rolled Steel for Less Than Adequate Remuneration,” *Shelving Decision Memorandum* at “Provision of HRS for Less Than Adequate Remuneration,” and *CWASPP Decision Memorandum* at “Provision of SSC for LTAR.” Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC together identify the producers from whom the trading companies acquired the HRS that was subsequently sold to respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities.

In response to these requests, DHMP and Eastfound were able to identify the firms that produced the HRS that was ultimately sold to them. We have used

the information concerning the ownership status of the HRS suppliers to determine whether DHMP and Eastfound purchased HRS that was produced by government authorities. In the case of DHMP, we preliminarily determine that none of the HRS it purchased was produced by firms acting as government authorities. Therefore, we have not conducted a subsidy analysis for DHMP’s purchases of HRS during the POI. Regarding Eastfound, we preliminarily determine that it purchased a certain quantity of HRS that was produced by government authorities during the POI. Therefore, we preliminarily determine, with regard to HRS produced by these firms, that Eastfound received a financial contribution within the meaning of section 771(5)(D)(iv) of the Act.

Having addressed the issue of financial contribution, we must next analyze whether the sale of HRS to the mandatory respondents by suppliers designated as government authorities conferred a benefit within the meaning of section 771(5)(iv) of the Act. The Department’s regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. See *Softwood Lumber Decision Memorandum* at “Market-Based Benchmark.”

Beginning with tier-one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *CVD Preamble*:

Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government’s involvement in the market, we will resort to the next alternative {tier two} in the

hierarchy.

See 63 FR at 65377. The *CVD Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

As instructed, the GOC provided the percentage of HRS production accounted for by SOEs during the POI. The GOC further reported the portion of HRS produced by “collectives.” In the final determination of *LWRP from the PRC*, the Department affirmed its decision to treat collectives as government authorities. See *LWRP Decision Memorandum* at Comment 5. Based on this aggregate data, we preliminarily determine that government authorities accounted for a majority of the HRS produced during the POI. Based on these data, we preliminarily determine that domestic prices for HRS cannot serve as a viable tier-one benchmark as described under 19 CFR 351.511(a)(2)(i). Consequently, as there are no other available tier-one benchmark prices, we have turned to tier-two, i.e., world market prices available to purchasers in the PRC.

We examined whether the record contained data that could be used as a tier-two HRS benchmark under 19 CFR 351.511(a)(2)(ii). The Department has on the record of the investigation prices for HRS, as sourced from the Steel Benchmark Report. See *Petitioners’ Benchmark Comments* at Exhibit 2. The benchmark prices are reported on a monthly basis in U.S. dollars per metric ton (MT). No other interested party submitted tier-two HRS prices on the record of this investigation.

Therefore, for purposes of the preliminary determination, we find that the data from the Steel Benchmark Report should be used to derive a tier-two, world market price for HRS that would be available to purchasers of HRS in the PRC. We note that the Department has relied on pricing data from industry publications in recent CVD proceedings involving the PRC. See, e.g., *CWP Decision Memorandum* at “Hot-Rolled Steel for Less Than Adequate Remuneration,” and *LWRP Decision Memorandum* at “Hot-Rolled Steel for Less Than Adequate Remuneration.” Further, we find that, for purposes of the preliminary determination, there is no basis to conclude that prices from the Steel Benchmark Report are any less reliable or representative than data from other trade industry publications used by the Department in prior CVD proceedings involving the PRC.

To determine whether HRS suppliers, acting as government authorities, sold HRS to Eastfound for LTAR, we

compared the prices the respondents paid to the suppliers to our HRS benchmark price. We conducted our comparison on a monthly basis. The Steel Benchmark Report provides multiple prices for each month of the POI. Therefore, to arrive at a single monthly benchmark HRS price, we simply averaged the prices for each month. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by Eastfound for its purchases of HRS.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, at this time we lack information concerning delivery charges and, therefore, have not adjusted the benchmark in this regard, but will continue to seek the relevant information. With respect to the three percent insurance charge on imports noted by the petitioner, consistent with *Shelving from the PRC*, while the Department will consider in future determinations the propriety of including insurance as a delivery charge, the existing record of this investigation does not support such an adjustment. See *Shelving from the PRC* Decision Memorandum at Comment 9.

Comparing the benchmark unit prices to the unit prices paid by Eastfound for HRS, we preliminarily determine that HRS was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a). We calculated the total benefit by multiplying the unit benefit by the quantity of HRS purchased.

Finally, with respect to specificity, in prior cases involving the provision of HRS for LTAR, the Department has found that the program is specific under section 771(5A)(D)(iii)(I) of the Act because the industries that utilize HRS are limited. See LWRP Decision Memorandum at Comment 7, and *Shelving* Decision Memorandum at “Provision of HRS from Less Than Adequate Remuneration.” We preliminarily determine that there is no information on the record at this time to warrant reconsideration of the Department’s prior findings in this regard.

We preliminarily find that the GOC’s provision of HRS for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). Therefore, to

calculate the net subsidy rate, we divided the benefit by a denominator comprised of total sales. On this basis, we calculated a total net subsidy rate of 0.26 percent *ad valorem* for Eastfound.

#### C. Provision of Land for LTAR

As explained in the Initiation Checklist,<sup>18</sup> the Department is investigating whether the City of Dalian sells land for LTAR to firms located in the municipality’s Huayuankou Industrial Zone. In the initial questionnaire, the Department asked the respondents to report their purchase of land located in Dalian’s designated industrial zones.

Though Eastfound Metal and Eastfound Material reported that they are not located at any development zone or special area in Dalian,<sup>19</sup> each company responded to the Department’s questions on the “Provision of Land for LTAR for Firms Located in Designated Geographical Areas in the City of Dalian in Liaoning Province.” Therefore, for purposes of this preliminary determination, we find that the respondents are located in a designated zone.

Eastfound Metal reported that it obtained its land-use rights in May 2000,<sup>20</sup> which is prior to the date (*i.e.*, December 11, 2001) from which the Department will identify and measure subsidies in the PRC for purposes of this investigation. Eastfound Material reported that it acquired two parcels of land (Land A and Land B) located in Jinzhou District within the City of Dalian from local government authorities. There is conflicting information on the record as to whether Eastfound Material had an additional land transaction. We will seek additional information regarding a possible third land purchase.

Eastfound Material’s purchase of Land A occurred in 2008 and the purchase of Land B in 2006. Regarding Land B, Eastfound Material reported that it purchased this land from Beihai Village in Jinzhou District, and paid a price determined through a mutual agreement with Beihai Village.<sup>21</sup>

Regarding Land A, Eastfound Material stated that it purchased Land A from Dalian Municipal Bureau of Land Resource and Housing Management (Dalian Municipal Bureau). Unlike Land

B, however, Eastfound Material reported that it purchased Land A through a “public listing” process which has elements of an auction where the land authorities issue a “notice of public listing” and all parties who are interested in the land use right of this land are free to participate in the public listing competition.<sup>22</sup> We note that the notice for public listing includes 10 serial numbers of land (Land A included) for sale, and all of the land are designated for construction purposes and are designated to be used for “storage” or used by “industry.”<sup>23</sup> With respect to Land A, the “Public Listing Notice” further designates that “the nature of the land use” for Land A is “metal products industry.”<sup>24</sup> Moreover, information supplied by the Eastfound Material indicates that while there were multiple companies participating in the public listing process in the notice which includes 10 parcels of land, Eastfound Material was the only company participating in the public listing for Land A. As a result, Eastfound Material was the sole bidder of Land A.

The Department has previously determined that the provision of land-use rights constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act. See LWS Decision Memorandum at Comment 8; see also *Citric Acid* Decision Memorandum at “Provision of Land in the AEDZ for LTAR.”

The Department also found that when the land is in an industrial park located within the seller’s (*e.g.*, county’s or municipality’s) jurisdiction, the provision of the land-use rights is regionally specific under section 771(5A)(D)(iv) of the Act. See, *e.g.*, LWS Decision Memorandum at Comment 9. In the instant investigation, both Land A and Land B are designated areas within the area under the jurisdiction of the City of Dalian as described under section 771(5A)(D)(iv) of the Act. Further, in the case of Eastfound Material’s purchase of Land A, as noted above, the GOC limited firms that could respond to the public listing notice to those in the metal products industry. Thus, with regard to Land A, we preliminarily determine this program also meets the specificity criteria

<sup>22</sup> *Id.* at page 17 and Exhibits 8 and 9.

<sup>23</sup> See “Listing Transfer Announcement on the Use Right of the State-owned Land for Construction Purposes of Dalian Municipal Land and Resources Bureau and Housing Bureau Jinzhou Land and Resources Branch” No.4 Da Jin Guo Tu Gao Zi (2008) in Exhibit 8.

<sup>24</sup> See Eastfound Material’s supplemental response at Exhibit 9 (October 15, 2009) for the “Notice of Competitive Buying Of Land-Use Right Under Public Listing (Public Listing Notice).”

<sup>18</sup> See Initiation Checklist at 13.

<sup>19</sup> See Eastfound Metal’s supplemental questionnaire response at 1 (October 20, 2009) and Eastfound Material’s supplemental questionnaire response at 1 (October 15, 2009).

<sup>20</sup> See Eastfound Metal’s initial questionnaire response at III-17 (September 9, 2009).

<sup>21</sup> See Eastfound Material’s supplemental response at 22-23 (October 15, 2009 Response).

described under 771(5A)(D)(i) of the Act. Therefore, consistent with *LWS from the PRC*, we preliminarily determine that Eastfound Material's purchase of granted land—use rights located within the Jinzhou District in 2006 and 2008 gives rise to countervailable subsidies to the extent that the purchases conferred a benefit.

To determine whether the Eastfound Material received a benefit, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we looked to whether there are market-determined prices (referred to as tier-one prices in the LTAR regulation) within the country. *See* 19 CFR 351.511(a)(2)(i). In *LWS from the PRC*, the Department determined that “Chinese land prices are distorted by the significant government role in the market” and, hence, tier-one benchmarks do not exist. *See* LWS Decision Memorandum at Comment 10. The Department also found that tier-two benchmarks (world market prices that would be available to purchasers in China) are not appropriate. *Id.* at “Analysis of Programs – Government Provision of Land for Less Than Adequate Remuneration;” *see also* 19 CFR 351.511(a)(2)(ii). Therefore, the Department determined the adequacy of remuneration by reference to tier-three and found that the sale of land—use rights in China was not consistent with market principles because of the overwhelming presence of the government in the land—use rights market and the widespread and documented deviation from the authorized methods of pricing and allocating land. *See* LWS Decision Memorandum at Comment 10; *see also* 19 CFR 351.511(a)(2)(iii). We preliminarily determine that there is insufficient new information on the record of this investigation to warrant a change from the findings in *LWS from the PRC*.

With respect to Eastfound Material's claim that it purchased Land A through a public listing process that contains auction elements, we resort to the Department's regulations and past practice. Section 351.511(a)(2)(i) of the regulations states that the Department can use sales from a government-run auction in certain circumstances to determine whether a government-provided good or service is provided for LTAR, but only if the government sells a significant portion of the good or service through competitive bid procedures that are open to everyone. These circumstances are not present here. The Public Listing Notice clearly states that Land A can only be used for

“metal products industry.”<sup>25</sup> Therefore, the public listing process is only open to metal products industry. Thus, the overwhelming majority of the purchasers of this government good or service are explicitly excluded from this auction. As a result, Eastfound Material was the only bidder for Land A. Therefore, the bidding price set by the Land Authority in Jinzhou District cannot be used as benchmark prices under section 351.511(a)(2)(i) of the regulations. *See Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada (Lumber from Canada)*, 66 FR 43186 (August 17, 2001),<sup>26</sup> (unchanged in the final determination, *see Softwood Lumber from Canada*).

For these reasons, we are not able to use Chinese or world market prices as a benchmark. Therefore, we are preliminarily comparing the price that the Eastfound Material paid for its granted land—use rights with comparable market-based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of, China. Specifically, we are preliminarily comparing the prices Eastfound Material paid to Beihai Village in 2006, and to Dalian Municipal Bureau in 2008, to the respective Thailand prices in 2006 and 2008 for Thailand's certain industrial land in industrial estates, parks, and zones, consistent with *LWS from the PRC*. *See* LWS Decision Memorandum at “Analysis of Programs – Government

Provision of Land for Less Than Adequate Remuneration.”

To calculate the benefit, we computed the amounts that Eastfound Material would have paid for both of its granted land—use rights and subtracted the amounts Eastfound Material actually paid for both of its purchases, Land B in 2006 and Land A in 2008. Our comparison indicates that the prices Eastfound Material paid to the government authority in 2006 for Land B, and the price it paid for Land A in 2008 were less than our land benchmark prices for each respective year and, thus, Eastfound Material received a benefit under section 771(5)(E)(iv) of the Act. Next, in accordance with 19 CFR 351.524(b)(2), we examined whether the subsidy amount exceeded 0.5 percent of Eastfound's total consolidated sales in the years of purchase. Our analysis indicates that the subsidy amount exceeded the 0.5 percent threshold for both land purchases. Therefore, we used the discount rate described under the “Benchmarks and Discount Rates” section of this preliminary determination to allocate the benefit over the life of the land—use rights contracts, which is 50 years.

On this basis, we preliminarily determine the total net subsidy rate to be 0.56 percent for Eastfound.

DHMP reported that it is not located in the industrial zones designated by Dalian Municipality and did not benefit from this subsidy program. According to DHMP, it acquired the land rights in 2005 from Dalian Shagangzi village and does not own the land use rights, but rents the land. *See* DHMP's September 9, 2009, submission at 18–20.

Petitioners contested DHMP's statement on the location of its facility. In a submission to the Department petitioners stated that based on the company's website information that it is located within one of the designated preferential areas in Dalian that was alleged in the countervailing duty petition. *See* petitioners' October 22, 2009, submission at 2 and Exhibit 1. Furthermore, it advocated that because DHMP failed to act to the best of its ability to the Department's questionnaires, and because other publicly available information indicates that DHMP's facilities are located in a designated preferential area of Dalian, the Department should countervail the parcel of land, pursuant to sections 776(a)(2)(D) and 776(b) of the Act.

In an October 26, 2009, submission to the Department, DHMP argued that petitioners' submission did not contain a factual certification in addition to misstating the facts of the issue. *See* DHMP's October 26, 2009, submission.

<sup>25</sup> *See* Eastfound Material's supplemental questionnaire response at Exhibit 9, pages 1–2 (October 15, 2009).

<sup>26</sup> In *Softwood Lumber from Canada*, British Columbia provided stumpage prices set by government auction. The Department determined that the auction is only open to small businesses that are registered as small business forest enterprises. Thus, the overwhelming majority of the purchasers of this government good or service are explicitly excluded from this auction. Therefore, the auction prices submitted by British Columbia cannot be used as benchmark prices under section 351.511(a)(2)(i) of the CVD Regulations. Furthermore, the Department found that the provincial government provider constitutes a majority or substantial portion of the market, thus, there is a significant distortion in the private transaction prices for the good or service with that country's market. Thus, the Department determined that it cannot use the private transaction prices provided by the provincial governments. The Department determined that stumpage prices from the United States qualify as commercially available world market prices because it is reasonable to conclude that U.S. stumpage would be available to softwood lumber producers in Canada at the same prices available to U.S. lumber producers.

However, DHMP's response did not refute the central theme of petitioners' October 22, 2009, submission, that it is located in one of the designated preferential areas that was not reported in its questionnaire response. Because petitioners were able to document their assertion from DHMP's home page as opposed to DHMP's narrative description, the Department is preliminarily determining that DHMP's production facility is located within one of the designated preferential areas in Dalian that was alleged in the countervailing duty petition. See January 5, 2009, Countervailing Duty Petition, at Exhibit CVD-12.

To calculate the benefit, we computed the amounts that DHMP would have paid for its granted land-use rights and subtracted the amounts DHMP actually paid for its purchase in 2005. Our comparison indicates that the prices DHMP paid to the government authority in 2005 were less than our land benchmark prices for the year and, thus, that DHMP received a benefit under section 771(5)(E)(iv) of the Act. Next, in accordance with 19 CFR 351.524(b)(2), we examined whether the subsidy amount exceeded 0.5 percent of DHMP total consolidated sales in the year of purchase. Our analysis indicates that the subsidy amount exceeded the 0.5 percent threshold for the land purchase. Therefore, we used the discount rate described under the "Benchmarks and Discount Rates" section of this preliminary determination to allocate the benefit over the life of the land-use rights contract, which is 50 years.

On this basis, we preliminarily determine the total net subsidy rate to be 1.46 percent for the DHMP.

#### D. Provision of Electricity for LTAR<sup>27</sup>

For the reasons explained, *supra*, at "Adverse Facts Available," we are basing our determination regarding the government's provision of electricity programs on AFA. Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. In a CVD case, the Department requires information from both the government of the country whose merchandise is under the order and 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. For example in *CTL Plate from Korea*, the Department, relying on adverse inferences, determined that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of sections 771(5)(D)(i) and 771(5A)(D)(iii) of the Act, respectively. See *Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 11397, 11399 (March 7, 2006) (*Preliminary Results of CTL Plate from Korea*) (unchanged in the *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006) (*CTL Plate from Korea*). Similarly, in this instance, because the GOC failed to provide certain information concerning the Provision of Electricity for Less than Adequate Remuneration program, the Department, as AFA, determines that the program confers a financial contribution and is specific pursuant to sections 771(5)(D) and 771(5A) of the Act, respectively.

Where possible, the Department will normally rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. For example, in prior investigations including *LWTP from the PRC* and *Racks from the PRC*, the Department determined the existence and amount of the benefit attributable to the provision of electricity for LTAR by comparing the rates paid by the mandatory respondents for electricity to the higher, benchmark electricity rates. In this investigation, however, while respondents provided some information with respect to their electricity usage and payments, we do not have on the record information that could be meaningfully compared to the appropriate benchmarks. Therefore, we have determined that, for the purposes of this preliminary determination, the rate found for the provision of electricity for LTAR in the *LWTP from the PRC* of 0.07 percent *ad valorem* is appropriate. We find that this rate is both reliable and relevant as it was calculated in prior final CVD determination for a program of the same type.

On this basis, we calculated a net subsidy rate of 0.07 percent *ad valorem* for Eastfound Metal and Eastfound

Material and a net subsidy rate of 0.07 percent *ad valorem* for DHMP.

#### E. Two Free, Three Half Program

The Foreign Invested Enterprise and Foreign Enterprise Income Tax Law (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for FIEs in the PRC. The intent of this law is to attract foreign businesses to the PRC. According to Article 8 of the FIE Tax Law, FIEs which are "productive" and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed "productive" if they qualify under Article 72 of the Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises.

DHMP and Eastfound Material are "productive" FIEs and received benefits under this program during the POI. Eastfound Metal did not use this program during the POI.

We preliminarily determine that the exemption or reduction in the income tax paid by "productive" FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. See sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, "productive" FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. Our approach in this regard is consistent with the Department's practice. See *CFS from the PRC* and *Citric Acid from the PRC*.

To calculate the benefit, we treated the income tax savings enjoyed by DHMP and Eastfound Material as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POI by each company's total sales during that period.<sup>28</sup> To compute the amount of the tax savings, we compared the income tax rate that each respondent would have paid in absence of the program (for Eastfound Material, 24 percent, as described under "Income Tax Benefits for FIEs Based on Geographical Location"), with the income rate that each respondent

<sup>27</sup> Our preliminary findings regarding the federal provision of electricity for LTAR encompasses the program "Provision of Electricity for LTAR for Firms Located in Designated Geographical Areas in Dalian," which is listed in the *Initiation Notice* and accompanying Initiation Checklist.

<sup>28</sup> For Eastfound Material, we used as the denominator the combined total sales for Eastfound Material and Eastfound Metal.

actually paid (for Eastfound Material, 0 percent). On this basis, we preliminarily determine a countervailable subsidy of 0.63 percent *ad valorem* for Eastfound Material, and a countervailable subsidy of 0.49 percent *ad valorem* for DHMP.

Further, the respondents reported that the GOC terminated the Two Free, Three Half Tax Exemption for FIEs on January 1, 2008. We will continue to examine their claims that this program has been terminated.

#### *F. Income Tax Benefits for FIEs Based on Geographical Location*

To promote economic development and attract foreign investment, “productive” FIEs located in coastal economic zones, special economic zones, or economic and technical development zones in the PRC receive preferential tax rates depending on the zone. This program was first enacted on June 15, 1988, pursuant to the Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Zones, as issued by the Ministry of Finance. The program was continued on July 1, 1991, pursuant to Article 30 of the FIE Tax Law. Pursuant to Article 7 of the FIE Tax Law, productive FIEs established in a coastal economic development zone, special economic zone, or economic technology development zone, receive preferential income tax rates of 15 or 24 percent, depending on the zones in which the companies are located, as opposed to the standard 30 percent income tax rate. The Department has previously found this program to be countervailable. *See, e.g., Citric Acid Decision Memorandum at “Reduced Income Tax Rates to FIEs Based on Location.”*

Eastfound Material reported that it received an income tax reduction under this program with respect to the tax return it filed during the POI. Neither DHMP nor Eastfound Metal used this program during the POI.

We preliminarily determine that the reduced income tax rate paid by “productive” FIEs under this program confers a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue foregone by the GOC and provides a benefit to the recipient in the amount of the tax savings within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act. We further preliminarily determine that the reduction afforded by this program is limited to enterprises located in designated geographical regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by

Eastfound Material as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company’s tax savings received during the POI by the total consolidated sales for Eastfound. To compute the amount of the tax savings, we compared the income tax rate that Eastfound Material would have paid in absence of the program (30 percent) with the preferential tax rate (24 percent). On this basis, we preliminarily calculated a total net subsidy rate of 0.16 percent *ad valorem* for Eastfound.

Further, respondents reported that the GOC terminated the Tax Benefits for FIEs Based on Geographic Location program on January 1, 2008. We will continue to examine their claims that this program has been terminated.

#### *G. Income Tax Exemption for Investors in Designated Geographical Regions within Liaoning*

Under Article 9 of the FIE Tax Law, the provincial governments, the autonomous regions, and the centrally governed municipalities have been delegated the authority to provide exemptions and reductions of local income tax for industries and projects for which foreign investment is encouraged. As such, the local governments establish the eligibility criteria and administer the application process for any local tax reductions or exemptions.

To promote economic development and attract foreign investment, the Jinzhou District of the City of Dalian, Liaoning Province exempts industries in the Jinzhou District from local income tax for seven years from the first profit-making year and extends that exemption for three more years for enterprises with projects encouraged by the Dalian Government. The Department has previously found income tax exemption programs that are limited to certain geographical regions to be countervailable. *See, e.g., Citric Acid Decision Memorandum at “Reduced Income Tax Rates to FIEs Based on Location.”*

Eastfound Material is located in Jinzhou District and enjoyed the exemption of local income tax rate of three percent during the POI. Eastfound Metal and DHMP did not use this program during the POI.

We preliminarily determine that the exempted income tax rate offered to FIEs in Jinzhou District under this program confers a countervailable subsidy. The exempted rate is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. *See section*

771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine preliminarily that the exemption afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Eastfound Material as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company’s tax savings received during the POI by the combined total sales of Eastfound during that period. To compute the amount of the tax savings, we compared the income tax rate Eastfound Material would have paid in the absence of the program (3 percent) with the rate it paid (0 percent).

On this basis, we preliminarily determine that Eastfound received a countervailable subsidy of 0.08 percent *ad valorem* under this program.

#### *H. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries*

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items. The National Development and Reform Commission (NDRC) and the General Administration of Customs are the government agencies responsible for administering this program. Qualified enterprises receive a certificate either from the NDRC or one of its provincial branches. To receive the exemptions, a qualified enterprise only has to present the certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. The Department has previously found this program to be countervailable. *See, e.g., Citric Acid Decision Memorandum at “VAT Rebate on Purchases by FIEs of Domestically Produced Equipment.”*

Eastfound Metal, an FIE, reported receiving VAT and tariff exemptions under this program for imported equipment. DHMP and Eastfound Material did not use this program.

We preliminarily determine that the VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue



forgone by the GOC and the exemptions provide a benefit to the recipients in the amount of the VAT and tariff savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further preliminarily determine that the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(iii)(I) of the Act because the program is limited to certain enterprises. As described above, only FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program. No information has been provided to demonstrate that the beneficiary companies are a non-specific group. As noted above under "Two Free/Three Half" program, the Department finds FIEs to be a specific group under section 771(5A)(D)(i) of the Act. The additional certain enterprises requiring approval by the NDRC does not render the program to be non-specific. This analysis is consistent with the Department's approach in prior CVD proceedings. See, e.g., CFS Decision Memorandum at Comment 16, and Tires Decision Memorandum at "VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment on Encouraged Industries."

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2). Therefore, we are examining the VAT and tariff exemptions that Eastfound Metal received under the program during the POI and prior years.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is consistent with the Department's approach in prior cases. See, e.g., *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (*Line Pipe from the*

*PRC*), and accompanying Issues and Decision Memorandum (Line Pipe Decision Memorandum) at Comment 8 ("... we agree with petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties"). Next, we summed the amount of duty and VAT exemptions received in each year. For each year, we then divided the total grant amount by the corresponding total sales for the year in question. For Eastfound Metal, the total amount of the VAT and tariff exemptions for each year approved was less than 0.5 percent for Eastfound's total sales for the respective year. Therefore, we do not reach the issue of whether Eastfound Metal's VAT and tariff exemptions were tied to the capital structure of capital assets of the firm. Instead, we expense the benefit to the year in which the benefit is received, consistent with 19 CFR 351.524(a). On this basis, we preliminarily determine the countervailable subsidy to be 0.02 percent *ad valorem* for Eastfound.

The GOC reported that pursuant to the Notice of Ministry of Finance, General Administration of Customs and General Bureau of State Taxation, No. 43 (2008) (Notice 43), dated December 25, 2008, the VAT exemption linked to imported equipment under this program has been terminated but the import tariff exemption has not been terminated. See GOC's Initial Questionnaire Response at 59–60 and Exhibit 29 (September 10, 2009). Article 1 of Notice 43 states that as of January 1, 2009, VAT on imported equipment for self-use in domestic and foreign investment projects as encouraged and stipulated in Circular 37 will be resumed and the custom duty exemption will remain in effect. Article 4 of Notice 43 provides for a transition period for the termination of the VAT exemption. Under Article 4, for a project which has a letter of confirmation prior to November 10, 2008, and the imported equipment has been declared with customs before June 30, 2009, VAT and tariff can be exempted. However, for imported equipment for which the import customs declaration is made on or after July 1, 2009, VAT will be collected. As such, the GOC stated the latest possible date for companies to claim or apply for a VAT exemption under this program was June 30, 2009. The GOC reported that there is no replacement VAT exemption program.

Under 19 CFR 351.526(a)(1) and (2), the Department may take a program-wide change to a subsidy program into account in establishing the cash deposit rate if it determines that subsequent to the POI, but before the preliminary determination, a program-wide change occurred and the Department is able to

measure the change in the amount of countervailable subsidies provided under the program in question. With regard to this program, we preliminarily determine that a program-wide change has not occurred and have not adjusted the cash deposit rate. Under 351.526(d)(1), the Department will only adjust the cash deposit rate of a terminated program if there are no residual benefits. This program provides benefits that may be allocated over the AUL and, therefore, residual benefits may continue to be bestowed under this program after the termination date. We will, however, continue to examine the GOC's claim of termination of the VAT exemption portion of this program.

#### *I. VAT Refunds for FIEs Purchasing Domestically-produced Equipment*

As outlined in GUOSHUIFA (1999) No. 171, Notice of the State Administration of Taxation Concerning the Trial Administrative Measures on Purchase of Domestically Produced Equipment by FIEs, the GOC refunds the VAT on purchases of certain domestic equipment to FIEs if the purchases are within the enterprise's investment amount and if the equipment falls under a tax-free category. Article 3 specifies that this program is limited to FIEs with completed tax registrations and with foreign investment in excess of 25 percent of the total investment in the enterprise. Article 4 defines the type of equipment eligible for the VAT exemption, which includes equipment falling under the Encouraged and Restricted B categories listed in the Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment (No. 37 (1997)) and equipment for projects listed in the Catalogue of Key Industries, Products and Technologies Encouraged for Development by the State. To receive the rebate, an FIE must meet the requirements above and, prior to the equipment purchase, bring its Registration Handbook for Purchase of Domestically Produced Equipment by FIEs as well as additional registration documents to the taxation administration for registration. After purchasing the equipment, FIEs must complete a Declaration Form for Tax Refund (or Exemption) of Exported Goods, and submit it with the registration documents to the tax administration. The Department has previously found this program to be countervailable. See, e.g., *Citric Acid Decision Memorandum at "VAT Rebate on Purchases by FIEs of Domestically Produced Equipment."*

Eastfound Metal and Eastfound Material reported receiving VAT

refunds on its purchases of domestically-produced equipment under this program. DHMP has not received VAT refunds under this program.

We preliminarily determine that the refund of the VAT paid on purchases of domestically-produced equipment by FIEs confers a countervailable subsidy. The rebates are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further preliminarily determine that the VAT rebates are contingent upon the use of domestic over imported goods and, hence, specific under section 771(5A)(C) of the Act.

Normally, we treat exemptions from indirect taxes and import charges, such as VAT refunds, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

We requested that Eastfound Metal and Eastfound Material identify the equipment for which it received VAT rebates from 2001 through the POI. For 2005 and 2008, the total amount of the VAT rebates approved was less than 0.5 percent of Eastfound's total sales for each year. Therefore, we have expensed the benefit to the year in which it is received, *i.e.*, 2005 and 2008, respectively, which is consistent with 19 CFR 351.524(a).

For 2007, however, the total amount of VAT rebates exceeded 0.5 percent of Eastfound's total sales for that year. Based on the reported information, the VAT rebates were for capital equipment. Accordingly, we are treating the VAT refunds for this year as a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii). To calculate the countervailable subsidy for Eastfound, we used our standard methodology for non-recurring benefits. See 19 CFR 351.524(b) and the "Allocation Period" section of this notice. Specifically, we used the discount rate described above in the "Benchmarks and Discount Rates" section to calculate the amount of the benefit for the POI.

We then summed the benefits allocated and expensed to the POI and divided that amount by Eastfound's total consolidated sales for 2008. On this basis, we preliminarily determine

the countervailable subsidy to be 0.13 percent *ad valorem* for Eastfound.

As discussed above, pursuant to 19 CFR 351.526(a)(1) and (2), the Department may take a program-wide change to a subsidy program into account in establishing the cash deposit rate if it determines that subsequent to the POI, but before the preliminary determination, a program-wide change occurred and the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question.

The GOC reported that, pursuant to the Notice for Termination of Tax Refund for FIE Purchasing Domestically Produced Equipment, No. 176 (CS 2008), this program has been terminated. See GOC's Initial Questionnaire Response at 87 (September 10, 2009). The GOC stated that Article 1 of the regulation provides that since January 1, 2009, the policy of VAT refund for purchase of domestically-produced equipment by FIEs is terminated. *Id.* at Exhibit 35. Article II(2) provides for a transition period, provided that (1) the investment project received a letter of confirmation that the FIE project is in conformity with state industry policy before November 9, 2008, and it was registered with the tax authorities, and (2) the domestically-produced equipment was purchased and VAT invoice was issued and claims for VAT refund were filed with the tax authorities prior to June 30, 2009.

As such, the GOC stated that the last day for companies to apply for or claim benefits under the program is June 30, 2009, provided that the ratification and purchase of the equipment were made prior to that date. *Id.* at 87. The GOC, however, did not report the last date that a company could receive VAT refunds under this program. Under section 351.526(d), the Department will not adjust the cash deposit rate for a terminated program if residual benefits may continue to be bestowed under the program. Because benefits from this program may be allocated over the AUL, we preliminarily determine that residual benefits may continue to be bestowed under the program. Therefore, we have not adjusted the cash deposit rate.

#### *J. International Market Exploration Fund (SME Fund)*

The SME Fund, established under CQ(2000) No. 467, encourages the development of small and medium-sized enterprises (SMEs) by reducing the risk of operation for these enterprises in the international market. To qualify for the program, a company

needs to satisfy the criteria in CQ (2000), which provides that the SME should have export and import rights, exports of less than \$15,000,000, an accounting system, personnel with foreign trade skills, and a plan for exploring the international market.<sup>29</sup> The GOC reported that, for the mandatory respondents, the Dalian Foreign Economic and Trade Bureau and the Financial Bureau of Dalian are the authorities responsible for this program that provides one-time assistance for each approved application. Eastfound Metal and Eastfound Material reported receiving assistance under this program.

We preliminarily determine that the SME Fund provides countervailable subsidies within the meaning of section 771(5) of the Act. We preliminarily find that the grants constitute a financial contribution and benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We also preliminarily determine that this program is an export subsidy, under section 771(5A)(B) of the Act, because the program supports the international market activities of SMEs and is limited to enterprises that have exports of less than \$15,000,000.

According to the GOC, the SME Fund provides one-time assistance. Therefore, consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as "non-recurring." To measure the benefits of each grant that are allocable to the POI, we first conducted the "0.5 percent test" for each grant. See 19 CFR 351.524(b)(2). We divided the total amounts approved in each year by the relevant sales for those years. As a result, we found that all grants for Eastfound are less than 0.5 percent and expensed in the year of receipt. Therefore, for the POI, we have preliminarily calculated a total net subsidy rate of 0.01 percent *ad valorem* for Eastfound.

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

### *A. Provision of Zinc for LTAR*

The Department is investigating whether producers and suppliers, acting as Chinese government authorities, sold zinc to the mandatory respondents for LTAR. Eastfound reported that it did not purchase zinc during the POI. DHMP reported purchasing zinc during the POI from a trading company. In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the

<sup>29</sup> See GOC's fourth supplemental questionnaire response at 4 (October 5, 2009).

producer of the input is an “authority” within the meaning of section 771(5)(B) of the Act and the input was sold to the respondent for LTAR. *See* CWP Decision Memorandum at “Hot-Rolled Steel for Less Than Adequate Remuneration,” Shelving Decision Memorandum at “Provision of Wire Rod for Less Than Adequate Remuneration,” and CWASPP Decision Memorandum at “Provision of SSC for LTAR.” Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC together identify the producers from whom the trading companies acquired the zinc that was subsequently sold to DHMP during the POI and to provide information that would allow the Department to determine whether those producers were government authorities.

As explained above in the “Application of Facts Available: Provision of Zinc for LTAR” section, DHMP and the GOC did not identify the producer(s) of the zinc that was purchased by DHMP during the POI. Because DHMP and the GOC have not supplied the requested information, we find that the necessary information is not on the record and, as a result, we are resorting to the use of facts available within the meaning of sections 776(a)(1) and (2) of the Act.

In its response, the GOC provided information on the amount of zinc produced by SOEs and private producers in the PRC. Using these data, we derived the ratio of zinc produced by government authorities during the POI. Thus, pursuant to sections 776(a)(1) and (2) of the Act, we have resorted to the use of facts available with regard to zinc sold to DHMP. Specifically, we assumed that the percentage of zinc produced by government authorities is equal to the ratio of zinc produced by government authorities during the POI. On this basis, we find that a financial contribution, as described under section 771(5)(D)(iv) of the Act, was provided with regard to DHMP’s purchases of zinc during the POI.

With respect to specificity, one of the three subsidy elements specified under the Act, the GOC has provided information on end uses for zinc. *See* GOC’s Initial Questionnaire Response at 25 (September 10, 2009). The GOC further stated that the consumption of zinc occurs across a broad range of industries (e.g., galvanized steel products, alkaline batteries, various metal alloys, etc.). *Id.* While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of

the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. *See* section 771(5A)(D)(iii)(I) of the Act; *see also* LWRP Decision Memorandum at Comment 7, and Shelving Decision Memorandum at “Provision of Wire Rod from Less Than Adequate Remuneration.”

Having addressed the issue of financial contribution and specificity, we must next analyze whether the sale of zinc to DHMP by government authorities conferred a benefit within the meaning of section 771(5)(iv) of the Act. The Department’s regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. *See* *Softwood Lumber Decision Memorandum* at “Market-Based Benchmark.”

Beginning with tier-one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *CVD Preamble*:

Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government’s involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

*See CVD Preamble*, 63 FR at 65377. The *CVD Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. As explained above in the “Application of Facts Available: Provision of Zinc for LTAR” section, based on the aggregate data supplied by the GOC, we find for

purposes of the preliminary determination that government authorities accounted for approximately 67 percent of zinc production during the POI. Therefore, we preliminarily determine that domestic zinc prices are not viable tier-one prices as described under 19 CFR 351.511(a)(2)(i).

We next examined whether the record contained data that could be used as a tier-two zinc benchmark under 19 CFR 351.511(a)(2)(ii). The Department has on the record of the investigation prices for zinc, as sourced from the American Metals Market (AMA). *See* Petitioners’ Pre-Preliminary Determination Comments on Benchmarks at Exhibit 3 (October 19, 2009) (Petitioners’ Benchmark Comments). The benchmark prices are reported on a monthly basis in U.S. dollars per metric ton (MT). No other interested party submitted tier-two zinc prices on the record of this investigation.

Therefore, for purposes of the preliminary determination, we find that the data from AMA should be used to derive a tier-two, world market price for zinc that would be available to purchasers of zinc in the PRC. We note that the Department has relied on pricing data from industry publications in recent CVD proceedings involving the PRC. *See, e.g.,* CWP Decision Memorandum at “Hot-Rolled Steel for Less Than Adequate Remuneration,” and LWRP Decision Memorandum at “Hot-Rolled Steel for Less Than Adequate Remuneration.” Further, we find that, for purposes of this preliminary determination, there is no basis to conclude that prices from the AMA are any less reliable or representative than data from other trade industry publications used by the Department in prior CVD proceedings involving the PRC.

To determine whether zinc suppliers, acting as government authorities, sold zinc to DHMP for LTAR, we compared the prices DHMP paid to its suppliers to our zinc benchmark price. We conducted our comparison on a monthly basis. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by the DHMP for its purchases of zinc.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier-one or tier-two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, at this time we lack information concerning delivery charges and, therefore, have not

adjusted the benchmark in this regard, but will continue to seek the relevant information. However, we have added import duties, as reported by the GOC, and the VAT applicable to imports of zinc into the PRC. With respect to the three percent insurance charge on imports noted by the petitioner, consistent with *Shelving from the PRC*, while the Department will consider in future determinations the propriety of including insurance as a delivery charge, the existing record of this investigation does not support such an adjustment. See *Shelving from the PRC* Decision Memorandum at Comment 9.

Comparing the benchmark unit prices to the unit prices paid by DHMP for zinc, we determine that zinc was not provided for LTAR and that a benefit does not exist. See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

#### *B. Export Incentive Payments Characterized as "VAT Rebates"*

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." See 19 CFR 351.517(a); see also 19 CFR 351.102 (for a definition of "indirect tax"). To determine whether the GOC provided a benefit under this program, we compared the VAT exemption upon export to the VAT levied with respect to the production and distribution of like products when sold for domestic consumption. The GOC reported that the VAT levied on wire decking sales in the domestic market is 17 percent and that the VAT exempted upon the export of wire decking is 5 percent. Thus, we

have preliminarily determined that the VAT exempted upon the export of wire decking did not confer a countervailable benefit because the amount of the VAT rebated on export is lower than the amount paid in the domestic market.

### **III. Programs Preliminarily Determined To Be Not Used**

We preliminarily determine that DHMP and Eastfound did not apply for or receive benefits during the POI under the programs listed below:

#### *A. Loan Programs*

1. Honorable Enterprise Program
2. Preferential Loans for Key Projects and Technologies
3. Preferential Loans as Part of the Northeast Revitalization Program
4. Policy Loans for Firms Located in Industrial Zones in the City of Dalian in Liaoning Province

#### *B. Provision of Goods and Services for LTAR*

1. Provision of Water for LTAR for Firms Located in Designated Geographical Areas in the City of Dalian in Liaoning Province

#### *C. Income and Other Direct Taxes*

1. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment
2. Income Tax Exemption for Investment in Domestic Technological Renovation
3. Preferential Income Tax Policy for Enterprises in the Northeast Region
4. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China

#### *D. Indirect Tax and Tariff Exemptions*

1. VAT Deductions on Fixed Assets

2. VAT Exemptions for Newly Purchased Equipment in the Jinzhou District

#### *E. Grant Programs*

1. Five Points, One Line
2. Export Interest Subsidies
3. State Key Technology Project Fund
4. Subsidies for Development of Famous Export Brands and China World Top Brands
5. Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands
6. Exemption of Fees for Firms Located in Designated Geographical Areas in the City of Dalian in Liaoning Province

#### *F. Preferential Income Tax Subsidies for FIEs*

1. Income Tax Exemption Program for Export-Oriented FIEs
2. Local Income Tax Exemption and Reduction Programs for Productive FIEs
3. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises

### **Verification**

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

### **Suspension of Liquidation**

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for subject merchandise produced and exported by the entities listed below. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Producer/Exporter	Net Subsidy <i>Ad Valorem</i> Rate
Dalian Eastfound Metal Products Co., Ltd. (Eastfound Metal) and its affiliate Dalian Eastfound Material Handling Products Co., Ltd. (Eastfound Material) (collectively, Eastfound) .....	3.13%
Dalian Huameilong Metal Products Co., Ltd. (DHMP) .....	2.02%
Aceally (Xiamen) Technology Co., Ltd. ....	437.73%
Alida Wire Mesh & Wire Cloth Mfg. ....	437.73%
Anping Ankai Hardware & Mesh Products Co., Ltd. ....	437.73%
Anping County Jincheng Metal Products Co., Ltd. ....	437.73%
Anping County Yuantong Hardware Net Industry Co., Ltd. ....	437.73%
Anping Ruiqilong Wire Mesh Co., Ltd. ....	437.73%
Anping Web Wire Mesh Co., Ltd. ....	437.73%
Anping Yilian Metal Products Co., Ltd. ....	437.73%
Aplus Industrial (HK) Ltd. ....	437.73%
Beijing Jiuwei Storage Equipment Co., Ltd. ....	437.73%
Dalian Aipute Industry & Trade Co., Ltd. ....	437.73%
Dalian Best Metal Products Co., Ltd. ....	437.73%
Dalian Jianda Metal Products Co., Ltd. ....	437.73%
Dalian Litainer Logistic Equipment Co., Ltd. ....	437.73%
Dalian Litainer Metal Products Co., Ltd. ....	437.73%
Dalian Pro Metal Co., Ltd. ....	437.73%
Dalian Traction Motor Co., Ltd. ....	437.73%
Dalian Yutiein Storage Manufacture Co., Ltd. ....	437.73%

Producer/Exporter	Net Subsidy Ad Valorem Rate
Dalian Zengtian Metal-Net Production Co., Ltd. ....	437.73%
Dandong Riqian Equipment Co., Ltd. ....	437.73%
Deyoma Wire Decking Factory ....	437.73%
Global Storage Equipment Manufacturer Ltd. (Huade Industries) ....	437.73%
Hebei Dongshengyuan Trading Co., Ltd. ....	437.73%
Hebei Tengyue Trading Co., Ltd. ....	437.73%
High Hope Int'l Group Jiangsu Native Produce Imp & Exp Corp. Ltd. ....	437.73%
Imex China Ltd. ....	437.73%
Jiangdong Xinguang Metal Product Co. ....	437.73%
Jiangsu Nova Logistics System Co., Ltd. ....	437.73%
Jiangsu Sainty Shengtong Imp & Exp Co. ....	437.73%
JP Metal Works Processing Factory ....	437.73%
Kule (Dalian) Co., Ltd. ....	437.73%
Kunshan Maxshow Industry Trade Co., Ltd. ....	437.73%
Lanxuan Metal Product Co., Ltd. ....	437.73%
Longkou Forever Developed Metal Product Co., Ltd. ....	437.73%
Nanjing Better Metallic Products Co., Ltd. ....	437.73%
Nanjing Better Storage Equipment Manufacturing Co., Ltd. ....	437.73%
Nanjing Dongtuo Logistics Equipment Co., Ltd. ....	437.73%
Nanjing Ebil Metal Products Co., Ltd. ....	437.73%
Nanjing Huade Storage Equipment Manufacture Co., Ltd. ....	437.73%
Nanjing Jiangrui International Logistics Co. ....	437.73%
Nanjing Jiangrui Metal Products Co., Ltd. ....	437.73%
Nanjing Jiangrui Racking Manufacture Co., Ltd. ....	437.73%
Nanjing Youerda Logistic Equipment Engineering Co. Ltd. ....	437.73%
Nanjing Youerda Metallic Products Co., Ltd. ....	437.73%
National Sourcing Co., Ltd. ....	437.73%
Ningbo Beilun Songyi Storage Equipment Manufacturer Co., Ltd. ....	437.73%
Ningbo Huixing Metal Product, Co., Ltd. ....	437.73%
Ningbo Telingtong Metal Products Co., Ltd. ....	437.73%
Ningbo United Group Imp & Exp Co. Ltd. ....	437.73%
Pinghu Dong Zhi Metal Products ....	437.73%
Schenker International China Ltd. (Dalian Branch) ....	437.73%
Shanghai Boracs Logistics Equipment Manufacturing Co., Ltd. ....	437.73%
Shanghai Bright Imp & Exp Co., Ltd. ....	437.73%
Shanghai Flory Industries Co., Ltd. ....	437.73%
Shanghai Hesheng Hardware Products Co. ....	437.73%
Shanghai Jingxing Storage Equipment Engineering Co., Ltd. (formerly Shanghai Jinxing Rack Factory) ....	437.73%
Shanghai Yibai Int'l Trading Co. ....	437.73%
Summit Storage Systems Ltd. ....	437.73%
Suzhou (China) Sunshine Hardware Equipment Imp & Exp Co., Ltd. ....	437.73%
Suzhou Jinta Metal Working Co., Ltd. ....	437.73%
Suzhou Z-TAK Metal and Technology Co., Ltd. ....	437.73%
Tianjin Dingxing Furniture Company ....	437.73%
Tianjin Machinery Imp & Exp Corp. ....	437.73%
Tianjin Mandarin Import & Export Co., Ltd. ....	437.73%
Tianjin Zhonglian Metals Ware Co., Ltd. ....	437.73%
TMC Logistic Products ....	437.73%
Vida Logistics System Co., Ltd. ....	437.73%
Wuxi Puhui Metal Products Co., Ltd. ....	437.73%
Wuyi Tianchi Mechanical & Electrical Manufacture Co., Ltd. ....	437.73%
Xiamen E-Soon Machinery Co., Ltd. ....	437.73%
Xiamen GaoPing Co., Ltd. ....	437.73%
Xiamen Luckyroc Industry Co., Ltd. ....	437.73%
Xiangshan Ningbo General Steel Metal Structure Co., Ltd. ....	437.73%
Yuyao Sanlian Goods Shelves Manufacture Co., Ltd. ....	437.73%
All Others ....	2.58%

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

Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the "all others" rate by weight averaging the rates of DHMP and Eastfound because doing so risks disclosure of proprietary information. Therefore, for the all others rate, we have calculated a simple average of the two responding firms' rates.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of

all entries of the subject merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above.

## ITC Notification

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

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

## Disclosure and Public Comment

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

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

identification of the arguments to be raised at the hearing.

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

Dated: November 2, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-26947 Filed 11-6-09; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration (A-274-804)

#### **Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago; Preliminary Results of Antidumping Duty Administrative Review**

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

**SUMMARY:** On November 24, 2008, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on carbon and alloy steel wire rod (wire rod) from Trinidad and Tobago for the period of review (POR) October 1, 2007, through September 30, 2008.

We preliminarily determine that during the POR, ArcelorMittal Point Lisas Limited, and its affiliate ArcelorMittal International America LLC (collectively, AMPL) made sales of subject merchandise at less than normal value (NV). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results. The Department will issue the final results within 120 days after publication of the preliminary results.

**EFFECTIVE DATE:** November 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Dennis McClure or Jolanta Lawska, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5973 or (202) 482-8362, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On October 29, 2002, the Department published in the **Federal Register** the

antidumping duty order on wire rod from Trinidad and Tobago; *see Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (October 29, 2002) (Wire Rod Orders). On October 1, 2008, the Department published in the **Federal Register** the *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 57056 (October 1, 2008).

On October 31, 2008, we received timely request for review from petitioners,<sup>1</sup> and AMPL, in accordance with 19 CFR 351.213(b)(2). On November 24, 2008, the Department published the notice of initiation of this antidumping duty administrative review covering the period October 1, 2007, through September 30, 2008, naming AMPL as the respondent. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 70964 (November 24, 2008).

On December 3, 2008, we sent the initial questionnaire covering sections A through D to AMPL. On January 30, 2009, AMPL submitted its sections A through C response to the Department's questionnaire. On February 20, 2009, AMPL submitted its section D response to the Department's questionnaire. On March 19, 2009, the Department sent to AMPL a supplemental questionnaire for sections A through C. We received the response to the supplemental questionnaire on April 16, 2009. On April 30, 2009, petitioners submitted comments on the April 16, 2009, supplemental questionnaire response from AMPL. On May 14, 2009, the Department issued a second supplemental section A-C questionnaire, and on June 4, 2009, AMPL submitted its response. The Department issued a supplemental questionnaire for section D on June 15, 2009, and received the response on July 13, 2009. On August 4, 2009, the Department issued a second supplemental section D questionnaire, and received the response on August 14, 2009.

On May 7, 2009, the Department published a notice extending the time period for issuing the preliminary results of the administrative review from July 3, 2009, to November 2, 2009. *See Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago: Extension of Time Limit for the Preliminary Results of Antidumping*

<sup>1</sup> Petitioners are ISG Georgetown Inc., Nucor Steel Connecticut Inc., Keystone Consolidated Industries Inc., and Rocky Mountain Steel Mills.