DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–938]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on citric acid and citrate salts from the People's Republic of China for the period January 1, 2010, through December 31, 2010. These preliminary results cover RZBC Group Shareholding Co., Ltd., RZBC Co., Ltd., RZBC Juxian Co., Ltd., and RZBC Imp. & Exp. Co., Ltd. (collectively, the RZBC Companies). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties as detailed in the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Patricia Tran, 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) 482–4793 and (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 2009, the Department published a CVD order on citric acid and certain citrate salts (citric acid) from the People's Republic of China (PRC).[1] On May 2, 2011, we published a notice of ''Opportunity to Request Administrative Review'' of the order.[2]

On May 20, 2011, we received a request to conduct an administrative review from the RZBC Companies.[3] On May 27, 2011, we received a request for administrative review from Yixing Union Biochemical Co., Ltd. (Yixing Union Co.) and Yixing Union Cogeneration Co., Ltd. (Cogeneration) (collectively, the Yixing Union Companies). On May 31, 2011, we received a request for administrative review from Huangshi Xinghua Biochemical Co., Ltd. (Xinghua). On June 14, 2011, the Yixing Union Companies withdrew their request for review. In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on June 28, 2011, covering the RZBC Companies and Xinghua.[4]

On July 26, 2011, the Department issued the initial questionnaire to the Government of the People's Republic of China (GOC), the RZBC Companies, and Xinghua. On July 27, 2011, Xingua withdrew its review request. On August 11, 2011, the Department published a partial rescission of review for Xingua.[5]

On September 27, 2011, the GOC and the RZBC Companies submitted their responses to the initial questionnaire. Based on a request by Petitioners,[6] on October 12, 2011, the Department extended the regulatory deadline to submit factual information until November 17, 2011. On October 17, 2011, Petitioners submitted comments on the initial questionnaire responses filed by the GOC and the RZBC Companies.

On November 17, 2011, Petitioners submitted new factual information concerning world market prices and international freight prices for steam coal and sulfuric acid as well as internal freight charges for steam coal. On November 28, 2011, the RZBC Companies submitted new factual information concerning world prices for sulfuric acid in response to Petitioners' November 17, 2011, submission. On December 13, 2011, Petitioners replied to the RZBC Companies' November 28, 2011, submission and submitted additional factual information. On December 15, 2011, the Department issued letters to the RZBC Companies and Petitioners in which it rejected the factual information contained in their respective November 28 and December 13, 2011, submissions on the grounds that the submissions were untimely. On December 21, 2011, the RZBC Companies submitted a letter objecting to the Department's decision to reject its factual information. On December 22, 2011, Department officials met with counsel representing the RZBC Companies to discuss the Department's decision to reject the November 28, 2011, new factual information submitted by the RZBC Companies.

On December 30, 2011, the Department published a notice of postponement for the preliminary results of this review until no later than May 30, 2012.[7]

On January 3, 2012, the Department issued a letter to the RZBC Companies regarding the November 28, 2011, submission, stating that the companies' arguments were considered, but that the Department continues to reject the document on the grounds that it was untimely.

On January 9, 2012, the Department issued a supplemental questionnaire to the RZBC Companies regarding the provision of steam coal for less than adequate remuneration (LTAR) and provision of sulfuric acid for LTAR programs. On February 1, 2012, the Department issued a supplemental questionnaire to the GOC and a second supplemental to the RZBC Companies. On February 6 and March 2, 2012, the RZBC Companies submitted their supplemental questionnaire responses. On February 15 and 29, 2012, the GOC submitted its supplemental questionnaire responses.

On February 27, 2012, Petitioners submitted deficiency comments on and filed rebuttal factual information to the GOC's February 15, 2012, supplemental questionnaire response regarding the provision of steam coal for LTAR.

On March 8 and 16, 2012, the Department issued supplemental questionnaires to the GOC and received the GOC's responses on March 23 and 29, 2012. On March 20, 2012, Petitioners submitted deficiency comments on the RZBC Companies' March 2, 2012, supplemental questionnaire response. On March 21, 2012, the Department issued a third supplemental questionnaire to the RZBC Companies and received the questionnaire response on April 11, 2012.

[1] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Notice of Countervailing Duty Order,* 74 FR 25705 (May 29, 2009) (*CVD Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 24460 (May 2, 2011).

[3] This public document and all other public documents and public versions generated in the course of this proceeding by the Department and interested parties are available to the public through Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS), located in Room 7046 of the main Department building.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781 (June 28, 2011).

[5] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Partial Rescission of Countervailing Duty Administrative Review,* 76 FR 49735 (August 11, 2011).

[6] Petitioners are Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas LLC.

[7] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review,* 76 FR 82275 (December 30, 2011).

On May 18, 2012, Petitioners filed pre-preliminary comments on the provision of steam coal for LTAR program.

Scope of the Order

The scope of the order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of the order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of the order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of the order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Scope Rulings

On November 2, 2010, Aceto Corporation (Aceto) requested that the Department find its calcium citrate USP to be outside the scope of the *CVD Order* and the antidumping duty orders on citric acid and certain citrate salts from the PRC and Canada. *See CVD Order,* 74 FR 25703. On February 14, 2011, the Department issued a final scope ruling, finding that Aceto's product is within the scope of those orders. *See* Memorandum from Christopher Siepmann, International Trade Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Citric Acid and Certain Citrate Salts: Scope Ruling for Calcium Citrate USP,'' (February 14, 2011).

On July 26, 2010, Global Commodity Group LLC (GCG) requested that the Department find a blend of citric acid it imports containing 35 percent citric acid from the PRC and 65 percent citric acid from other countries is outside the scope of the *CVD Order* and the antidumping duty order on citric acid and certain citrate salts from the PRC. On May 2, 2011, the Department issued a final scope ruling, finding that GCG's product is within the scope of those orders. *See* Memorandum from Christopher Siepmann, International Trade Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Citric Acid and Certain Citrate Salts: Final Determination on Scope Inquiry for Blended Citrate Acid from the People's Republic of China and Other Countries,'' (May 2, 2011). Pursuant to this ruling, we have instructed CBP that the quantity of citric acid from the PRC in the commingled merchandise is subject to the CVD and antidumping orders. We have also instructed CBP that if the quantity of citric acid from the PRC in a commingled shipment cannot be accurately determined, then the entire commingled quantity is subject to the orders.

Period of Review

The period for which we are measuring subsidies, *i.e.,* the period of review (POR), is January 1, 2010, through December 31, 2010.

Application of the CVD 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 Determination,* 72 FR 60645 (October 25, 2007) (*Coated Paper from the PRC*), and the accompanying Issues and Decision Memorandum (Coated Paper Decision Memorandum). In *Coated Paper from the PRC,* the Department found that:

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

See Coated Paper Decision Memorandum at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.[8] Furthermore, on March 13, 2012, Public Law 112–99 was enacted which makes clear that the Department has the authority to apply the CVD law to non-market economies (NMEs) such as the PRC. The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.[9]

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. *See* CWP Decision Memorandum at Comment 2.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act), provide that the Department shall apply ''facts otherwise available'' if necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

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.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result 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

[8] *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.

[9] *See* Public Law 112–99, § 1(b), 126 Stat. 265 (2012).

accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 at 870 (1994).

GOC—Sulfuric Acid

In the July 26, 2011, initial questionnaire, we requested ownership information from the GOC about the companies that produced the sulfuric acid purchased by the RZBC Companies.[10] We notified the GOC that the Department generally treats producers that are majority owned by the government or a government entity as controlled by the government and, hence, as ''authorities'' within the meaning of section 771(5)(B) of the Act. However, for those majority government-owned companies that the GOC argues are not ''authorities'' and for each producer that is not majority owned by the government, we instructed the GOC to answer all questions in Appendix 5 (Information Regarding Input Producers) and Appendix 6 (Information on Government and Chinese Communist Party (CCP) Officials and Representatives).

With the exception of one sulfuric acid producer, the GOC did not challenge the Department's ''authority'' practice with regard to producers that are majority owned by the government or a government entity. The GOC attempted to provide information to Appendices 5 and 6 for only one of the sulfuric acid producers from which the RZBC Companies purchased the input during the POR. For that sulfuric acid producer, the GOC provided a response to some of the questions contained in Appendix 5, but failed to identify owners, members of the board of directors, or managers who were also government or CCP officials or representatives during the POR.[11] For the same sulfuric acid producer, the GOC did not respond to any questions contained in Appendix 6.[12] To Appendix 6, the GOC stated that the Department's CCP questions are not relevant to the investigation of the LTAR program and that, as a matter of PRC law the government cannot interfere in the management and operation of the sulfuric acid suppliers.[13] The GOC stated that, in prior cases, it explained that the CCP, the People's Congress, and the Chinese People's Political Consultative Conference are not government bodies.[14] The GOC also stated that ''because these organizations are not governmental bodies, the GOC cannot require them to provide the information requested by the Department.'' [15] Furthermore, the GOC stated that ''there is no central informational database to search for the requested information, and the industry and commerce administrations do not require companies to provide such information.'' [16] As such, the GOC claimed that it was unable to respond to the Department's questions.[17]

On March 16, 2012, we issued a deficiency questionnaire in which we asked the GOC to provide a response to those questions in Appendix 5 and Appendix 6, which it did not answer in the initial questionnaire response.[18] In its March 23, 2012, response, the GOC did not provide an answer to the questions, stating ''The GOC has previously provided a response that it believes appropriately addresses these inquires.'' [19]

Regarding the GOC's objection to the Department's questions about the role of CCP officials in the management and operations of the sulfuric acid producer, we have explained our understanding of the CCP's involvement in the PRC's economic and political structure in a past proceeding.[20] Public information suggests that the CCP exerts significant control over activities in the PRC.[21] This conclusion is supported by, among other documents, a publicly available background report from the U.S. Department of State.[22] With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.[23]

Because the GOC did not respond to our requests for information on this issue, we have no further basis for evaluating the GOC's claim that the role of the CCP is irrelevant. Thus, the Department finds, as it has in other PRC CVD proceedings, that the information requested regarding the role of CCP officials in the management and operations of the sulfuric acid producer, and in the management and operations of the producer's owners, is necessary to our determination of whether the producer is an authority within the meaning of section 771(5)(B) of the Act. In addition, the GOC did not promptly notify the Department, in accordance with section 782(c), that it was unable to submit the information in the requested form and manner, nor did it suggest any alternative forms for submitting this information. Further, the GOC did not provide any information regarding the attempts it undertook to obtain this information, despite the fact that we provided the GOC with a second opportunity to provide the information. Therefore, we have no basis to accept the GOC's claim that it is unable to provide this information. This is particularly appropriate given that the GOC has claimed that such information regarding the CCP is irrelevant, when the Department has made it clear on the record of this administrative review, other segments of this proceeding, as well as other PRC CVD proceedings that such information is relevant to our analysis of whether input producers are ''authorities'' under the statute.

Therefore, we preliminarily find that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on ''facts otherwise available'' in conducting our preliminary analysis of a sulfuric acid producer.[24] Moreover, we preliminarily find that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. By stating that the requested information is not relevant, the GOC has placed itself in the position of the Department, and only

[10] *See* Department's Initial Questionnaire Issued to the GOC (July 26, 2011) at II–8.

[11] *See* GOC's Initial Questionnaire Response (IQR) (September 27, 2011) at II–12.

[12] *Id.* at II–14 through II–18.

[13] *Id.*

[14] *Id.* at II–14.

[15] *Id.* at II–16.

[16] *Id.*

[17] *Id.*

[18] *See* Department's Deficiency Questionnaire Issued to the GOC (March 16, 2012) at 3.

[19] *See* GOC's Deficiency Questionnaire Response (March 23, 2012) at 5.

[20] *See* Memorandum to the File from Patricia M. Tran, ''Additional Documents for the Preliminary Results,'' dated May 30, 2012 (Additional Documents Memorandum) at Attachments II and III (which include the post-preliminary analysis memorandum from certain seamless carbon and alloy steel standard, line, and pressure pipe and a State Department report, both recognizing the significant role the CCP has in the GOC).

[21] *Id.* at Attachment IV.

[22] *Id.; see also Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 75 FR 57444 (September 21, 2010) (*Seamless Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Seamless Pipe Decision Memorandum) at Comment 7.

[23] *See* Seamless Pipe Decision Memorandum at 16.

[24] *See* section 776(a)(2)(A) of the Act.

the Department can determine what is relevant to this administrative review.[25] Furthermore, by stating that it is unable to obtain the information because the CCP is not the government, the GOC is substantially non-responsive. The GOC would have the Department reach its determination on the role of the CCP with regard to the government and the input producer based solely on the conclusory statements of the GOC without any of the information that the Department considers necessary for its analysis. As this constitutes a failure to cooperate to the best of its ability, we find that an adverse inference is warranted in the application of facts available.[26] As AFA, we preliminarily find that the sulfuric acid producer for which the GOC did not provide complete information is an ''authority'' within the meaning of section 771(5)(B) of the Act.

GOC—Steam Coal

In the final results of the first administrative review, the Department was not able to determine whether steam coal is being provided by the GOC to a specific industry or enterprise or group of industries or enterprises, because of insufficient record evidence. *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review,* 76 FR 77206 (December 12, 2011) (*Citric Acid First Review*), and accompanying Issues and Decision Memorandum (Citric Acid First Review ID Memo) at Comment 6. We stated that we would revisit the *de facto* specificity of the provision of steam coal for LTAR program in a future review. *Id.*

On February 1, 2012, we issued a supplemental questionnaire in which we requested the GOC to provide the following information concerning the steam coal industry in the PRC for 2008, 2009, and 2010:

the number of producers of steam coal;

the percentage of total volume and value of domestic production of steam coal that is accounted for by companies in which the GOC maintains an ownership or management interest either directly or through other government entities;

the names and addresses of the top ten steam coal producing firms—in terms of sales and quantity produced—in which the GOC maintains an ownership or management interest;

a discussion of what laws or policies govern the pricing of steam coal, the levels of production of steam coal, or the development of steam coal capacity; and a list of industries in China that use steam coal and the volume of steam coal used/consumed by each industry and submit official documentation to support the response.

On February 15, 2012, the GOC provided an inadequate response to the Department's questions regarding steam coal, stating that ''the GOC only collects information on general coal producers and does not disaggregate the data it collects about the coal industry by different segments within that industry.''[27] The GOC added that ''most of the Chinese coal producers also produced steam coal and, thus, the GOC believes that providing information on general coal producers and the general coal industry will provide a reasonable indication of nature of the steam coal industry.''[28]

Specifically, to the Department's request for the number of producers of steam coal for 2008, 2009, and 2010, the GOC provided information on coal producers.[29] Similarly, to the Department's request for the percentage of total volume and value of domestic production of steam coal that is accounted for by companies in which the GOC maintains an ownership or management interest, the GOC limited its response to only ''coal producers that are wholly state-owned or state-controlled'' and submitted those ''companies' share of gross industry revenue.''[30] In response to the Department's request for the names and addresses of the top ten steam coal producing firms, in terms of sales and quantity produced, in which the GOC maintains an ownership or management interest, the GOC provided a list of ten coal companies for each year, but failed to submit the requested ''sales and quantity produced'' for the listed companies.[31] Additionally, to the Department's request for a list of industries in China that use steam coal and the volume of steam coal used/consumed by each industry, the GOC provided a list of industries that purchase steam coal directly with no associated volume data and no explanation about how the list was compiled.[32]

On March 8, 2012, we issued a second supplemental questionnaire in which we again asked the GOC to provide a response to the provision of steam coal questions.[33] In its March 29, 2012, response, the GOC explained that after receiving the February 1, 2012, questionnaire, the government contacted the National Bureau of Statistics of China (NBSC) to obtain information on the steam coal industry, but the NBSC stated that it did not have such information.[34] The GOC stated that it also consulted with the China National Coal Association (CNCA), which responded that:

''At present, relevant Chinese agencies and institutions have not collected information on the total number of steam coal producers. At present, almost all coal producers produce both steam coal and coking coal. Until now, there is not a single coal producer that produces solely coking coal. Therefore {the total number of Chinese coal producers} should be the total number of Chinese steam coal producers.''[35]

As such, the GOC stated that it submitted information on the steam coal industry/production in its February 15, 2012, response and had no additional information to provide to the Department.[36] Concerning the Department's second request for a list of industries in China that use steam coal and the volume of steam coal used/consumed by each industry, the GOC, in its March 29, 2012, response stated that ''this information has already been provided by the GOC, to the best of its ability'' in its February 15, 2012, response.[37] However, in response to the Department's request for this data, in its February 15, 2012, response, the GOC simply submitted a list of industries that

[25] *See Ansaldo Componenti, S.p.A.* v. *United States,* 628 F. Supp. 198, 205 (CIT 1986) (stating that ''{i}t is Commerce, not the respondent, that determines what information is to be provided''). The Court in *Ansaldo* criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department's decision, and for claiming that submitting such information would be ''an unreasonable and unnecessary burden on the company.'' *Id. See also Essar Steel Ltd.* v. *United States,* 721 F. Supp. 2d 1285, 1298–99 (CIT 2010) (stating that ''{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion'' and that ''Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin''); *NSK, Ltd.* v. *United States,* 919 F. Supp. 442, 447 (CIT 1996) (''NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'''); *Nachi-Fujikoshi Corp.* v. *United States,* 890 F. Supp. 1106, 1111 (CIT 1995) (''Respondents have the burden of creating an adequate record to assist Commerce's determinations.'').

[26] *See* section 776(b) of the Act.

[27] *See* GOC's First Supplemental Questionnaire Response—Part A (February 15, 2012) (GOC Part A SQR) at 1.

[28] *Id.*

[29] *Id.*

[30] *Id.* at 1–2

[31] *Id.* at 2–4.

[32] *Id.* at 5 and Exhibit 2.

[33] *See* Department's Supplemental Questionnaire Issued to the GOC (March 8, 2012).

[34] *See* GOC's Second SQR (March 29, 2012) (GOC Second SQR) at 1.

[35] *Id.*

[36] *Id.*

[37] *Id.* at 4.

it claims purchase steam coal directly and failed to submit the requested volume data.[38] The GOC also failed to provide documentation supporting its response that those listed industries actually purchase steam coal.[39]

With respect to the GOC's failure to provide the information requested about steam coal, we preliminarily find that necessary information is not available on the record and that the GOC has withheld necessary information that was requested of it and, thus, the Department must rely on facts otherwise available.[40] Concerning the PRC steam coal industry/production, we preliminarily find that the GOC acted to the best of its ability in responding to the Department's information request. The GOC provided a detailed explanation of the efforts it took to obtain information regarding steam coal. Because the GOC's explanation is sufficient to determine that it acted to the best of its ability, we are relying on the ''facts available'' on the record and are not applying an adverse inference for the preliminary finding on whether PRC prices from actual transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC.

As noted above, the GOC submitted information for the coal industry and stated that the information on general coal producers and the general coal industry can provide a reasonable indication of the steam coal industry. We, therefore, are relying on that general coal information to determine whether the PRC steam coal market is distorted by the involvement of the GOC. In its February 15, 2012, supplemental questionnaire response, the GOC reported that Chinese wholly state-owned or state controlled coal producers accounted for 60.59, 61.94, and 59.13 percent of gross industry revenue in 2008, 2009, and 2010, respectively.[41] The fact that Chinese state-owned enterprises were responsible for such a large percentage of domestic production volume, as reflected in their share of gross industry revenue, we preliminarily find that it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market. *See Preamble to Countervailing Duty Regulations,* 63 FR 65348, 65377 (November 25, 1998) (*Preamble*); *see also* ''Provision of Steam Coal for LTAR,'' below.

We preliminary find, however, that the GOC failed to cooperate by not acting to the best of its ability in responding to the Department's information request about the PRC industries that use steam coal and the volume of steam coal used/consumed by each of those industries. Despite two opportunities to submit volume data for the industries reported to purchase steam coal, the GOC chose to not provide such data to the Department. The GOC did not notify the Department, in accordance with section 782(c) of the Act, that it was unable to submit the information in the requested form and manner, nor did it suggest any alternative forms of data. As a result, the record is void of any evidence that would allow the Department to conduct an analysis to determine whether there is predominant or disproportionate use of steam coal by an industry(ies) reported by the GOC. Consequently, we preliminarily find that an adverse inference is warranted in the application of facts available with regard to the specificity of the provision of steam coal for LTAR.[42] As AFA, we preliminarily find that the provision of steam coal for LTAR is *de facto* specific. *See* ''Provision of Steam Coal for LTAR,'' below.

GOC—Other Subsidies

The financial statements submitted by the RZBC Companies indicated that they received potentially countervailable subsidies in the form of grants. Consequently, we sought further information from the companies about these grants, and also asked the GOC to provide information about the programs under which the grants were provided.[43]

The Department normally relies on information from the government to assess program specificity; however, the GOC did not submit such information in all instances. Where the RZBC Companies submitted information which showed the specificity of a program, we relied upon that information to make our preliminary finding. Where neither the RZBC Companies nor the GOC provided information that would allow us to determine the specificity of a program, we relied upon AFA to make our preliminary finding. For those particular programs, we preliminarily find that the GOC withheld necessary information that was requested of it and, thus, the Department must rely on facts available for these preliminary results. *See* section 776(a)(2)(A) of the Act. Moreover, we preliminarily find that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act.

Due to the GOC's failure to provide the requested information about the programs under which the RZBC Companies received grants, we are assuming adversely that these grants are being provided to a specific enterprise or industry, or group of enterprises or industries. *See* section 771(5A) of the Act.

Subsidies Valuation Information

Allocation Period

The average useful life (AUL) period in this proceeding, as described in 19 CFR 351.524(d)(2), is 9.5 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture the subject merchandise. Consistent with the Department's practice, we have rounded the 9.5 years up to 10 years for purposes of setting the AUL. *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review,* 72 FR 43607, 43608 (August 6, 2007), unchanged in final, 73 FR 7708.

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)–(iv) direct 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, or produce an input that is primarily dedicated to the production of the downstream product. In the case of a transfer of a subsidy between cross-owned companies, 19 CFR 351.525(b)(6)(v) directs the Department to attribute the subsidy to the sales of the company that receives the transferred subsidy.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists

[38] *See* GOC Part A SQR at 5 and Exhibit 2.

[39] *Id.*

[40] *See* sections 776(a)(1) and (a)(2)(A) of the Act.

[41] *See* GOC Part A SQR at 2.

[42] *See* section 776(b) of the Act.

[43] *See* Department's Supplemental Questionnaires Issued to the GOC on February 1 and March 16, 2012, and Supplemental Questionnaires Issued to the RZBC Companies on February 1 and March 21, 2012.

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).

The RZBC Companies

The RZBC Companies consist of the RZBC Group Shareholding Co. Ltd. (RZBC Group),[44] RZBC Co., Ltd. (RZBC Co.), RZBC (Juxian) Co., Ltd. (RZBC Juxian), and RZBC Imp. & Exp. Co., Ltd. (RZBC IE). All companies are domestically owned PRC companies. RZBC Co., RZBC Juxian, and RZBC IE are wholly owned by RZBC Group and, hence, are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). RZBC Co. and RZBC Juxian are producers of the subject merchandise; RZBC IE is the exporter of the subject merchandise; and RZBC Group is a headquarters company and does not produce any merchandise. Consequently, the subsidies received by these companies are being attributed according to the rules established in 19 CFR 351.525(b)(6)(ii),(c) and (b)(6)(iii), respectively.

In its initial questionnaire response, the RZBC Companies also reported their ownership history and affiliations prior to the POR, but since the cut-off date of December 11, 2001. RZBC Co. reported that the company ''Sisha'' was a prior owner.[45] In the first administrative review of this order, the Department determined that Sisha Co., Ltd. (Sisha) was cross-owned with RZBC Co. and instructed the company to file a response on behalf of Sisha.[46] *See* Citric Acid First Review ID Memo at ''Attribution of Subsidies—RZBC.'' The Department found that Sisha received a countervailable, allocable subsidy in 2003. *See* Citric Acid First Review ID Memo at ''Enterprise Development Fund from Zibo City Financial Bureau.''

Consistent with the *Citric Acid First Review,* we continue to find that Sisha was cross-owned with RZBC Co. (*see* 19 CFR 351.525(b)(6)(vi)) and have attributed the allocable benefit for Sisha's grant to the RZBC Companies for the POR. For more information, *see* ''Enterprise Development Fund from Zibo City Financial Bureau,'' below.

Also, RZBC IE reported that it exports subject merchandise produced by other, unaffiliated companies, but that this merchandise was not exported to the United States during the POR.[47] Although any subsidies to the unaffiliated producers would normally be cumulated with those of the trading company that sold their merchandise pursuant to 19 CFR 351.525(c), the Department has, in some instances, limited the number of producers it examines where the merchandise was not exported to the United States during the POR or accounted for a very small share of respondent's exports to the United States.[48] In this review, we have not issued CVD questionnaires to the unaffiliated producers of citric acid whose merchandise was exported by RZBC IE, because such merchandise was not exported to the United States during the POR. Also, we have removed the sales of these products from RZBC IE's 2010 sales to derive the denominator for purposes of calculating countervailable subsidy rates for the RZBC Companies. This approach is consistent with the Department's treatment of RZBC IE's exports of subject merchandise produced by unaffiliated companies in *Citric Acid First Review. See* Citric Acid First Review ID Memo at ''Attribution of Subsidies—RZBC.''

Sales Denominators

We preliminarily determine that multiple sales denominators are appropriate for use in the attribution of subsidies to the RZBC Companies. To attribute a subsidy received by RZBC Co., RZBC Juxian, or RZBC IE, we used as the denominator the total consolidated sales of all three companies, exclusive of sales among affiliated companies, for 2010. To attribute a subsidy received by RZBC Group, we used as the denominator the total consolidated sales of RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE, exclusive of sales among affiliated companies, for 2010. Lastly, to attribute an export subsidy received by a company, we used as the denominator the 2010 export sales of RBZC IE, exclusive of sales of merchandise produced by unaffiliated companies.

Benchmarks and Discount Rates

The Department is investigating loans received by the RZBC Companies from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies (see 19 CFR 351.524(b)(1)). The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

Short-Term RMB Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' Normally, the Department uses comparable commercial loans reported by the company as a benchmark.[49] If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we ''may use a national average interest rate for comparable commercial loans.''[50]

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons explained in *Coated Paper from the PRC,*[51] 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. 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

[44] During the POR, there was a name change from ''RZBC Group Co., Ltd.'' to ''RZBC Group Shareholding Company.'' *See* RZBC Companies' IQR (September 27, 2011) at ''RZBC Group'' page III–7.

[45] *Id.* at ''RZBC Co. Ltd.'' page III–5.

[46] In the first administrative review, the Department also found that the company ''HTI'' was a prior owner of RZBC Co. and, thus, was cross-owned with the RZBC Companies. *See* Citric Acid First Review ID Memo at ''Attribution of Subsidies—RZBC.'' All subsidies received by HTI that the Department found to be countervailable were expensed. *See* Citric Acid First Review ID Memo at ''Shandong Province Financial Special Fund for Supporting High and New Technology Industry Development Project.''

[47] *See* RZBC Companies' IQR at ''RZBC IE'' page III–6.

[48] *See, e.g., Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review,* 66 FR 64214 (December 12, 2001), and accompanying Issues and Decision Memorandum at ''Attribution.''

[49] *See* 19 CFR 351.505(a)(3)(i).

[50] *See* 19 CFR 351.505(a)(3)(ii).

[51] *See* Coated Paper Decision Memorandum at Comment 10.

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.[52]

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *Coated Paper from the PRC*[53] and more recently updated in *Thermal Paper from the PRC.*[54] Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: Low income; lower-middle income; upper-middle income; and high income. As explained in *Coated Paper from the PRC,* this pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.[55] Beginning in 2010, however, the PRC is in the upper-middle income category. Accordingly, as explained further below, we are using the interest rates of upper-middle income countries to construct the 2010 benchmark.

After identifying the appropriate interest rates, the next step in constructing the benchmark has been to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators. In each of the years from 2001–2009, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group.

This contrary result for a single year in ten does not lead us to reject the strength of governance as a determinant of interest rates. As confirmed by the Federal Reserve, ''there is a significant negative correlation between institutional quality and the real interest rate, such that higher quality institutions are associated with lower real interest rates.'' [56] However, for 2010, incorporating the governance indicators in our analysis does not make for a better benchmark. Therefore, while we have continued to rely on the regression-based analysis used since *Coated Paper from the PRC* to compute the benchmarks for loans taken out prior to the POI, for the 2010 benchmark we are using an average of the interest rates of the upper-middle income countries. Based on our experience for the 2001–2009 period, in which the average interest rate of the lower-middle income group did not differ significantly from the benchmark rate resulting from the regression for that group, use of the average interest rate for 2010 does not introduce a distortion into our calculations.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as ''upper middle income'' by the World Bank for 2010 and ''lower middle income'' for 2001–2009. First, we did not include those economies that the Department considered to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to 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.

The resulting inflation-adjusted benchmark lending rates are in the Department's Interest Rate Benchmark Memorandum.[57] Because these rates are net of inflation, we adjusted the benchmark to include an inflation component.

Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department 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.[58]

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.[59] Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

Foreign Currency-Denominated Loans

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

[52] *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.''

[53] *See* Coated Paper Decision Memorandum at Comment 10.

[54] *See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying Issues and Decision Memorandum (Thermal Paper Decision Memorandum) at 8–10.

[55] *See* The World Bank Country Classification, *http://econ.worldbank.org/.*

[56] *See* Additional Documents Memorandum at Attachment I for Federal Reserve Consultation Memorandum.

[57] *See* Memorandum to the File from Patricia M. Tran, International Trade Analyst, AD/CVD Operations, Office 3, regarding ''Preliminary Results Interest Rate Benchmark Memorandum,'' dated May 30, 2012 (Interest Rate Benchmark Memorandum).

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

[59] *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 Investigation*), and accompanying Issues and Decision Memorandum (Citric Acid Investigation ID Memo) at Comment 14.

currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where ''n'' equals or approximates the number of years of the term of the loan in question.

Discount Rate Benchmarks

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 agreed to provide the subsidy.

The resulting interest rate benchmarks that we used in the preliminary calculations are provided in the Preliminary Results Interest Rate Benchmark Memorandum.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Shandong Province Policy Loans Program

In the underlying investigation and *Citric Acid First Review,* the Department found that the *Shandong Province Development Plan of Chemical Industry during ''Tenth Five-Year Plan'' Period* identifies objectives and goals for the development of the citric acid industry and calls for lending to support these objectives and goals. *See* Citric Acid Investigation ID Memo at ''Policy Lending,'' and Citric Acid First Review ID Memo at ''Shandong Province Policy Loans Program.'' Moreover, loan documents, reviewed by the Department in the first administrative review, stated that because the food-use citric acid industry ''has characteristics of capital and technology concentration and belongs to high and new technology * * * the State always takes positive policy to encourage its development.'' *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review,* 76 FR 33219, 33228 (June 8, 2011) (*Citric Acid First Review Prelim*), unchanged in the final results.

On the record of the instant review, the GOC reported that there were no changes to this program during the POR.[60] Therefore, consistent with the *Citric Acid Investigation* and *Citric Acid First Review,* we preliminarily find that Shandong Province policy loans from state-owned commercial banks constitute financial contributions from ''authorities'' within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act. Further, pursuant to section 771(5)(E)(ii) of the Act, such financing provides a benefit equal to the difference between what the recipients paid on the loans and the amount they would have paid on comparable commercial loans. We also preliminarily find that the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the Government of Shandong's policy to develop the citric acid industry.

RZBC Co., RZBC Juxian, and RZBC IE reported that they had loans and bank acceptance notes outstanding during the POR, which were provided by state-owned commercial banks. To calculate the benefit under this program, we compared the amount of interest each company paid on their outstanding loans to the amount of interest they would have paid on comparable commercial loans. *See* 19 CFR 351.505(a). In conducting this comparison, we used the interest rates described in the ''Benchmarks and Discount Rates'' section above. We have attributed benefits under this program to the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (exclusive of inter-company sales), as discussed in the ''Attribution of Subsidies'' section above. On this basis, we preliminarily find that the RZBC Companies received a countervailable subsidy of 0.40 percent *ad valorem.*

B. Export Seller's Credit for High- and New-Technology Products

RZBC IE also reported having outstanding loans from the Export-Import Bank of China (EXIM) during the POR, which were provided under this program. In the underlying investigation and *Citric Acid First Review,* the Department found that loans under this program conferred a countervailable subsidy. *See* Citric Acid Investigation ID Memo at ''Policy Lending,'' and Citric Acid First Review ID Memo at ''Export Seller's Credit for High- and New-Technology Products.''

On the record of the instant review, the GOC reported that that there were no changes to the program during the POR.[61] Therefore, consistent with the *Citric Acid Investigation* and *Citric Acid First Review,* we preliminarily find that the loans provided by the GOC under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. The loans also provide a benefit under 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(A)–(B) of the Act.

To calculate the benefit under this program, we compared the amount of interest RZBC IE paid on the outstanding loans to the amount of interest the company would have paid on comparable commercial loans. *See* 19 CFR 351.505(a). In conducting this comparison, we used the interest rates described in the ''Benchmarks and Discount Rates'' section above. We divided the total benefit amount by the RZBC Companies' export sales during the POR. On this basis, we preliminarily find that the RZBC Companies received a countervailable subsidy of 0.74 percent *ad valorem.*

C. Reduced Income Tax Rate for High or New Technology Enterprises

In the *Citric Acid First Review,* the Department found this program to be countervailable. *See* Citric Acid First Review ID Memo at ''Reduced Income Tax Rate for High or New Technology Enterprises.'' As discussed in the preliminary results of the first review, Article 28.2 of the Enterprise Income Tax Law (EITL) authorizes a reduced income tax rate of 15 percent for high- and new-technology enterprises (HNTEs). *See Citric Acid First Review Prelim,* 76 FR at 33229–30. The criteria and procedures for identifying eligible HTNEs are provided in the *Measures on Recognition of High and New Technology Enterprises* (GUOKEFAHUO {2008} No. 172) (*Measures on Recognition of HNTEs*) and the *Guidance on Administration of Recognizing High and New Technology Enterprises* (GUOKEFA HUO {2008} No. 362). *Id.* Article 8 of the *Measures on Recognition of HNTEs* provides that the science and technology administrative departments of each province, autonomous region, and municipality directly under the central government or cities under separate state planning shall collaborate with the finance and taxation departments at the same level to recognize HTNEs in their respective jurisdictions. *Id.*

The annex of the *Measures on Recognition of HNTEs* lists eight high-

[60] *See* GOC's IQR at II–2.

[61] *Id.* at II–3.

and new-technology areas selected for the State's ''primary support'': (1) Electronics and Information Technology; (2) Biology and New Medicine Technology; (3) Aerospace Industry; (4) New Materials Technology; (5) High-tech Service Industry; (6) New Energy and Energy-Saving Technology; (7) Resources and Environmental Technology; and (8) High-tech Transformation of Traditional Industries. *Id.*

On the record of the instant review, the GOC reported that there were no changes to this program during the POR.[62] RZBC Co. and RZBC Juxian reported that they received tax savings under this program on their 2009 income tax returns filed during the POR.

Consistent with the *Citric Acid First Review,* we preliminarily find that the reduced income tax rate paid by RZBC Co. and RZBC Juxian 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. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily find, consistent with the *Citric Acid First Review,* that the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in *Measures on Recognition of HNTEs* and, hence, is specific under section 771(5A)(D)(i) of the Act. Both the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.

To calculate the benefit, we compared the income tax rate that RZBC Co. and RZBC Juxian would have paid in the absence of the program (25 percent) to the income tax rate that the companies actually paid. We treated the income tax savings realized by RZBC Co. and RZBC Juxian as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POR by the consolidated sales (excluding inter-company sales) for RZBC Co., RZBC Juxian, and RZBC IE for the POR, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c). On this basis, we preliminarily find that the RZBC Companies received a countervailable subsidy of 0.91 percent *ad valorem.*

[62] *Id.* at II–6, 7.

D. Income Tax Credits on Purchases of Domestically Produced Equipment

In the underlying investigation and *Citric Acid First Review,* the Department found that this program provided countervailable subsidies. *See* Citric Acid Investigation ID Memo at ''Income Tax Credits on Purchases of Domestically Produced Equipment,'' and Citric Acid First Review ID Memo at ''Income Tax Credits on Purchases of Domestically Produced Equipment.''

As discussed in the preliminary results of the first reivew, according to the *Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation* {*Projects*} (CAI SHU ZI {1999} No. 290), a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. *See Citric Acid First Review Prelim,* 76 FR 33230. Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year. *Id.*

On the record of the instant review, the GOC reported that that there were no changes to this program during the POR.[63] RZBC Co. and RZBC Juxian reported that they received tax savings under this program on their 2009 income tax returns filed during the POR.

Consistent with the prior segments of this proceeding and prior CVD determinations,[64] we preliminarily find that income tax credits for the purchase of domestically produced equipment are countervailable subsidies. The tax credits are a financial contribution in the form of revenue foregone by the government and 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 351.509(a)(1). We further preliminarily find that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

We treated the income tax savings enjoyed by RZBC Co. and RZBC Juxian as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the companies' tax savings by the consolidated sales (excluding inter-company sales) for RZBC Co., RZBC Juxian, and RZBC IE for the POR, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c). On this basis, we preliminarily find that the RZBC Companies received a countervailable subsidy of 1.36 percent *ad valorem.*

[63] *Id.* at II–4.

[64] *See, e.g., Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination,* 74 FR 64045 (December 7, 2009) (*OCTG from the PRC*), and accompanying Issues and Decision Memorandum (OCTG Decision Memorandum) at 18.

E. Provision of Sulfuric Acid for LTAR

The Department is examining the provision of sulfuric acid to the RZBC Companies. In the first administrative review of this order, the Department found that this program provides countervailable subsidies. *See* Citric Acid First Review ID Memo at ''Provision of Sulfuric Acid for LTAR.''

In the July 26, 2011, initial questionnaire issued to the GOC in this review, we informed the GOC that the Department would not reevaluate the countervailability of this program. However, if there were any changes to the operation of the program during the POR, then the GOC was instructed to explain the changes and answer all relevant questions in Appendix 1.[65] In its September 27, 2011, initial questionnaire response, the GOC did not report any changes to the operation of the program during the POR and did not answer the questions in Appendix 1.[66] As such, the Department continues to find that this program is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act.

As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, we are relying on AFA to determine that one producer of sulfuric acid, from whom the RZBC Companies made purchases, is an ''authority'' within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily find that the RZBC Companies received a financial contribution in the form of the provision of a good. *See* section 771(5)(D)(iii) of the Act.

In the *Citric Acid First Review,* the Department found that actual transaction prices for sulfuric acid in China are significantly distorted by the government's involvement in the market. As such, we determined that domestic prices in the PRC cannot serve as viable, tier one benchmark prices. For the same reasons, we determined that import prices into the PRC cannot serve as a benchmark. *See* Citric Acid First Review ID Memo at ''Provision of Sulfuric Acid for LTAR.'' No new evidence has presented in this review that would call into question that finding. Accordingly, to determine

[65] *See* Department's Initial Questionnaire Issued to the GOC (July 26, 2011) at ''Provision of Sulfuric Acid for LTAR.''

[66] *See* GOC's IQR at II–9 and II–10.

whether the provision of sulfuric acid conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, consistent with the *Citric Acid First Review,* we applied a tier two benchmark, *i.e.,* world market prices available to purchasers in the PRC (*see* 19 CFR 351.511(a)(2)(ii)).

Petitioners placed on the record export values for sulfuric acid from Canada, the European Union (EU), Thailand, India, and the United States for the year 2010, taken from trade statistics compiled by Canadian Customs, Eurostat, Thai Customs, U.S. International Trade Commission, and Global Trade Atlas.[67]

The average of the export prices provided by the Petitioners represents an average of commercially available world market prices for sulfuric acid that would be available to purchasers in the PRC. Also, 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, we have averaged the prices to calculate a single benchmark by month.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we averaged the international freight rates from Canada, the EU, Thailand, India, and the United States to Shanghai, submitted by Petitioners.[68] We also added inland freight in the PRC based on the RZBC Companies' sulfuric acid purchase information,[69] import duties as reported by the GOC, and the VAT applicable to imports of sulfuric acid into the PRC.[70] Both RZBC Co. and RZBC Juxian reported the prices that they paid for sulfuric acid inclusive of inland freight and VAT.

To derive the benchmark, we did not include marine insurance. In prior CVD investigations involving the PRC, the Department has found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.[71]

Comparing the adjusted benchmark prices to the prices paid by RZBC Co. and RZBC Juxian for sulfuric acid, we preliminarily find that the GOC provided sulfuric acid for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark and what the respondents paid. *See* 19 CFR 351.511(a). To calculate the benefit, we took the difference between the delivered world market price and the price that the companies paid for sulfuric acid, including delivery charges, and divided the sum of the price differentials by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (exclusive of inter-company sales). On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 1.29 percent *ad valorem* in 2010.

F. Provision of Steam Coal for LTAR

The Department is examining whether the RZBC Companies purchase steam coal for LTAR during the POR. On the record of the instant review, the GOC reported that the RZBC Companies purchased steam coal from state-owned enterprises during the POR.[72] Therefore, we preliminarily determine that the RZBC Companies received a financial contribution from government authorities in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

Regarding specificity, in the final results of the first administrative review, the Department was not able to determine whether steam coal is provided to a specific industry or enterprise or group of industries or enterprises because of insufficient evidence. *See* Citric Acid First Review ID Memo at Comment 6. The Department stated that it would revisit the *de facto* specificity of this program in a future review. *Id.* As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, we are relying on AFA to preliminarily determine that the provision of steam coal for LTAR is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the industries that used/consumed steam coal and the associated volume data for the years 2008, 2009, and 2010.

To determine whether the government's provision of steam coal conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, we relied on 19 CFR 351.511(a)(2) to identify an appropriate, market-determined benchmark for measuring the adequacy of remuneration. 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'' section.

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

In the instant review, we are relying on the facts available regarding the general coal industry to determine whether the PRC steam coal market is distorted by the involvement of the GOC. As discussed in the ''Use of Facts Otherwise Available and Adverse Inferences,'' section above, the GOC reported that Chinese wholly state-owned or state controlled coal producers accounted for 60.59, 61.94, and 59.13 percent of gross industry revenue in 2008, 2009, and 2010,

[67] *See* Petitioners' Submission of Factual Information (November 17, 2011) (Petitioners' Factual Information) at 3–4 and Exhibit 4. Where we could, we extracted from the pricing data export prices to China.

[68] *See* Petitioners' Factual Information at 4–5 and Exhibit 5.

[69] *See* RZBC Companies' SQR (February 6, 2012) at Exhibit 10 (RZBC Co.) and Exhibit 2 (RZBC Juxian).

[70] For import duties and VAT, *see* GOC's Third SQR (March 23, 2012) at 3.

[71] *See, e.g., Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 28557 (May 21, 2010) (*PC Strand from the PRC*), and accompanying Issues and Decision Memorandum (PC Strand Decision Memorandum) at Comment 13.

[72] *See* GOC's IQR at II–9.

respectively.[73] The fact that Chinese state-owned enterprises were responsible for such a large percentage of domestic production volume, as reflected in their share of gross industry revenue, makes it reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market. *Id.* For this reason, we preliminarily determine that domestic prices charged by privately-owned steam coal producers based in the PRC and import prices into the PRC may not serve as viable, tier one benchmark prices.

Turning to tier two benchmarks, *i.e.,* world market prices available to purchasers in the PRC, we received steam coal benchmark pricing data from Petitioners.[74] Petitioners submitted monthly steam coal prices for January 2010, through December 2010, reported by the International Monetary Fund (IMF) for Australia (Newcastle) and from the Platts International Coal Report (Platts Report) for Colombia, Poland, Russia, Australia (Gladstone), Japan and Korea.[75] The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, where more than one benchmark price was submitted for a given month, we averaged those prices to calculate the single benchmark price for that month.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under 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. Accordingly, in deriving the benchmark prices, we included international freight and inland freight. The international ocean freight rates used are an average of the freight rates submitted on the record by Petitioners. Petitioners placed on the record ocean freight pricing data from Platts and the Baltic Panamax Index, for the POR, pertaining to shipments of steam coal from various world ports (in Australia, Colombia, Poland, and Russia) to Qingdao, China.[76] We averaged the international freight rates to derive the amount included in our benchmark.

For inland freight, we relied on information submitted by Petitioners, who provided inland freight charges based on the transportation cost of steam coal calculated from the Qingdao Port to the respondent's location.[77] To derive the monthly inland freight charges, Petitioners used data published by Haver Analytics and the 2010 average freight costs of another energy producer in China.[78] Petitioners first divided the average freight cost per metric ton by the average cost of rail transportation per metric ton kilometer to determine the average distance shipped. Petitioners next divided the monthly average freight charge by the average distance shipped to determine the monthly average freight charge per metric ton kilometer. Petitioners then multiplied that rate by the kilometer distance between Qingdao and RZBC and added 17 percent VAT to arrive at the inland freight charges, which we include in the monthly benchmark prices.[79]

Additionally, to derive the benchmark, we included import duties and the VAT applicable to imports of steam coal into the PRC as reported by the GOC.[80] We did not include marine insurance. In prior CVD investigations involving the PRC, the Department found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges. *See, e.g.,* PC Strand Decision Memorandum at Comment 13.

Comparing the adjusted benchmark prices to the prices paid by RZBC Co. and RZBC Juxian for steam coal during the POR, we preliminarily find that the GOC provided steam coal for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark price and the price that the companies paid. *See* 19 CFR 351.511(a). To calculate the benefit, we took the difference between the delivered world market price and the price that the companies paid for steam coal, including delivery charges, and divided the sum of the price differentials by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales). On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.19 percent *ad valorem* in 2010.

G. Science and Technology Export Innovation Support

According to the RZBC Group it received a subsidy from Rizhao City, Donggang District, the purpose of which is to encourage export development.[81]

Because the financial assistance was pursuant to, ''Rizhao City Financial Support for Encouraging Export Development{s} Policy,'' we preliminarily determine that the program is specific within the meaning of section 771(5A)(B) of the Act. We preliminarily determine that the grants received by RZBC Group constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

The grant that RZBC Group received during the POR was less than 0.5 percent of the exports sales for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable export subsidy of 0.01 percent *ad valorem* in 2010.

H. Donggang Finance Bureau IPO Preparation Subsidy

RZBC Group reported that it received a grant from Rizhao City Donggang District during the POR because it was preparing to make an initial public offering.[82]

We preliminarily determine that the grant received by RZBC Group constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant is limited to firms undertaking an initial public offering, we preliminarily determine the grants to be specific under section 771(5A)(D)(i) of the Act.

The grant that RZBC Group received during the POR was less than 0.5 percent of the total consolidated sales of RZBC Group, RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.02 percent *ad valorem.*

I. Shandong Province Science and Technology Development Fund

The GOC reported that this program was established in 2004, pursuant to the *Provisional Measures on Shandong*

[73] *See* GOC Part A SQR at 2.

[74] *See* Petitioners' Factual Information at 2 and Exhibit 1.

[75] *Id.*

[76] *Id.* at 2–3 and Exhibit 2.

[77] *Id.* at 3 and Exhibit 3.

[78] *Id.*

[79] *Id.*

[80] *See* GOC's Third SQR at 3.

[81] RZBC Companies' March 2, 2012 supplemental questionnaire response (SQR) at Exhibit 6.

[82] *See* RZBC Companies' IQR at ''RZBC Group'' page III–23.

Province Applied Technology Research and Development Fund (the Provisional Measures), to facilitate the development of science and technology in Shandong Province.[83] The program is jointly administered by the Shandong Province Department of Finance and Shandong Province Science and Technology Department.[84]

The GOC provided a copy of *the Provisional Measures* which, at Article 2, states that the fund is to promote technological development and strengthen technological application.[85] As stated in Article 8, the fund will cover the project fees and plan management fees, *i.e.,* labor, equipment, energy, and travel costs.[86]

RZBC Co. reported that it received a subsidy under this program during the POR. The GOC stated that RZBC Co. received assistance for its ''continuous-analog-moving-bed lactic acid production technology'' project.[87]

We preliminary find that the grants received by RZBC Co. under Shandong Province's Applied Technology Research and Development Fund constitute a financial contribution, in the form of a direct transfer of funds from the government, which bestows a benefit equal to the amount of the grant within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also preliminarily find that, because the receipt of assistance under the program is limited in law to certain enterprises, *i.e.,* companies with science and technological development projects, the program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit in the instant review, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the total amount of the grant to the year of receipt, which is the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.01 percent *ad valorem.*

J. First Industrial Enterprises Development Budget in District Level

RZBC Co. reported that it received a grant from Donggang District Economic and Trade Bureau and the Donggang District Financial Bureau during the POR because it promoted the development of the industrial enterprises in the district.[88] RZBC Co. stated that the company applied and underwent the approval process in order to receive the funds.

We preliminarily determine that the grant received by RZBC Co. constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, the Department is relying on AFA to preliminarily determine that the grant program is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

To calculate the benefit in the instant review, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the total amount of the grant to the year of receipt, which is the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.02 percent *ad valorem.*

K. First and Second Industrial Enterprises Development Budget in City Level

According to RZBC Co., it received grants from Rizhao City, the purpose of which is to encourage technical improvement and innovation. Each grant is linked to a specific area of achievement and the approval documents name the companies that received the grants. We preliminarily determine that the grants received by RZBC Co. constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, the Department is relying on AFA to preliminarily determine that the grant program is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance. To calculate the benefit in the instant review, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the total amount of the grant to the year of receipt, which is the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.04 percent *ad valorem.*

L. Award for Contribution to City and People

RZBC Co. reported that it received a grant from Rizhao City during the POR because of the company's outstanding contribution to the commercial development of the district.[89] The company did not apply for this grant.

We preliminarily determine that the grant received by RZBC Co. constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. As discussed under ''Use of Facts Otherwise Available and Adverse Inferences,'' above, the Department is relying on AFA to preliminarily determine that the grant program is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

The grant that RZBC Co. received during the POR was less than 0.5 percent of the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.01 percent *ad valorem.*

M. Award for Enterprise Technology Improvement Project

RZBC Co. reported that it received a grant from Rizhao City during the POR because it operated a technology improvement project.[90] RZBC Co. stated that the company did not apply for this grant program.

We preliminarily determine that the grant received by RZBC Co. constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the grant is limited to firms operating technology improvement projects within the city,

[83] *See* GOC's First SQR—Part II (February 29, 2012) at 9.

[84] *Id.*

[85] *Id.* at Exhibit 2.

[86] *Id.*

[87] *Id.* at 12.

[88] *Id.* at III–24 and Exhibit 14 of RZBC Companies' March 2, 2012 supplemental questionnaire response (SQR).

[89] *See* RZBC Companies' IQR at III–28.

[90] *Id.* at III–30.

we preliminarily determine the grants to be specific under section 771(5A)(D)(i) of the Act.

The grant that RZBC Co. received during the POR was less than 0.5 percent of the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the POR. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.01 percent *ad valorem.*

N. Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River[91]

The Department found this program to be countervailable in the *Citric Acid First Review. See* Citric Acid First Review ID Memo at ''Other Subsidies Received by RZBC'' and ''Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River.'' On the record of the instant review, the GOC stated that it does not challenge the Department's countervailable finding for this program.[92] RZBC Juxian reported that it received a benefit under this program during the POR for a sewage treatment project.[93]

This program was established pursuant to the State Council's *Comprehensive Work Plan on Energy Conservation and Emission Reduction* (Guo Fa 2007 No. 7115) and the State Council's mandate to ''strengthen pollution control of Three Rivers, Three Lakes, and the Songhua River.'' *Id.* The program is administered by the Shandong Finance Department and the Shandong Environmental Protection Bureau. *Id.* The purpose of the program is to enhance pollution control efforts by financing projects affecting the Huaihe River, Haihe River, Liaohe River, Taihu Lake, Chaohu Lake, Dianchi Lake, and the Songhua River. *Id.*

Because the fund is limited to enterprises located in these designated areas, the Department determined in the first administrative review that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act. *Id.* The Department also found that these grants are direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act and that they provide a benefit in the amount of the grant under 19 CFR 351.504(a). *Id.* at ''Other Subsidies Received by RZBC.''

To calculate the benefit in the instant review, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the total amount of the grant to the year of receipt, which is the POR. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.16 percent *ad valorem.*

O. Shandong Self-Innovation Subsidy

The GOC reported that this program was established in 2007, pursuant to the *Measures on Shandong Province Self-Innovation Results Commercialization Special Fund (the Measures),* to promote the commercialization of self-innovation results to facilitate the development of high technology industries with intellectual property rights, to guide economic growth and to improve the competitiveness of Shandong Province.[94] The program is jointly administered by the Shandong Province Department of Finance and Shandong Province Science and Technology Department.[95]

The GOC provided a copy of *the Measures* which, at Article 8, states that the fund is to strictly adhere to the strategic plan of Shandong Province's medium- and long-term technology development plan and focus on the development of 15 high-tech industry groups.[96] As stated in Article 10, depending on the characteristics of the project and enterprise, assistance under the fund consists of direct funding of projects, equity investment, discount loans, financial rewards, and reimbursable aid.[97]

RZBC Juxian reported that it received a subsidy under this program during the POR.[98] The GOC stated that RZBC Juxian received assistance for its ''citric acid bio-manufacturing key technology development and application'' project.[99]

We preliminarily find that the grant received by RZBC Juxian under Shandong Province's Self-Innovation Results Commercialization Special Fund constitutes a financial contribution, in the form of a direct transfer of funds from the government, which bestows a benefit equal to the amount of the grant within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. We also preliminarily find that, because the receipt of assistance under the program is limited in law to certain enterprises, *i.e.,* 15 high-tech industry groups, the program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit, we divided the grant amount approved by the total consolidated sales of RZBC Co., RZBC Juxian, and RZBC IE (excluding inter-company sales) for the year in which the grant was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are expensing the grant to the POR, the year of receipt. On this basis, we preliminarily determine that the RZBC Companies received a countervailable subsidy of 0.03 percent *ad valorem.*

P. Enterprise Development Supporting Fund From Zibo City Financial Bureau

In *Citric Acid First Review,* the Department found that Sisha, RZBC Co.'s prior cross-owned parent company, received a countervailable subsidy under this program in 2003. *See* Citric Acid First Review ID Memo at ''Enterprise Development Fund from Zibo City Financial Bureau.'' The Department determined to use Sisha's consolidated sales as reported by Sisha as the denominator for the 2003 allocation test pursuant to 19 CFR 351.524(b)(2). *Id.* We found that the 2003 grant was greater than 0.5 percent of the reported consolidated sales for 2003. *Id.* Thus, because the 2003 grant was a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii), we allocated the benefit over the 10-year AUL.

Because RZBC Co. and Sisha ceased to be cross-owned after March 2008, we applied a Sisha/RZBC Co. sales ratio to compute the benefit attributable to the RZBC Companies during the POR; this approach is consistent with the Department's decision in *Citric Acid First Review. Id.* We then divided that benefit amount by RZBC Co.'s, RZBC IE's, and RZBC Juxian's total combined sales (excluding inter-company sales) for 2010 to obtain the *ad valorem* subsidy rate. On this basis, we preliminary find that the RZBC Companies received a countervailable subsidy of 0.07 percent *ad valorem.*

[91] In its questionnaire response, RZBC Juxian referred to this program as ''Resource Conservation and Environmental Protection.'' *See* RZBC Companies' IQR at ''RZBC Juxian'' page III–20.

[92] *See* GOC's SQR (February 29, 2012) at 2.

[93] *See* RZBC Companies' IQR at ''RZBC Juxian'' page III–19 through III–21, and March 2, 2012, SQR at ''RZBC Juxian'' Exhibit 20.

[94] *See* GOC's First SQR—Part II (February 29, 2012) at 2.

[95] *Id.* at 3.

[96] *Id.* at Exhibit 1.

[97] *Id.* at Exhibit 1.

[98] *See* RZBC Companies' IQR at ''RZBC Juxian'' page III–24 and III–25.

[99] *See* GOC's First SQR—Part II at 6.

II. Programs Preliminarily Determined Not To Provide Countervailable Benefits During the POR

A. Award of Financial Construction

RZBC Juxian reported that it received a benefit under this program during the POR.[100] We preliminarily determine that the benefit from this program results in a net subsidy rate that is less than 0.005 percent *ad valorem.* Consistent with our past practice, we preliminarily have not included this program in our net countervailing duty rate calculations. *See, e.g.,* Coated Paper Decision Memorandum at ''Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE;'' *see also Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 77 FR 17017 (March 23, 2012) (*Steel Wheels from the PRC*), and accompanying Issues and Decision Memorandum (Steel Wheels Decision Memorandum) at ''Income Tax Reductions for Firms Located in the Shanghai Pudong New District.''

III. Programs Preliminarily Determined Not To Be Used [101]

We preliminarily find that the RZBC Companies did not use the following programs during the POR:

Reduced Income Tax Rates to Foreign Invested Enterprises (FIEs) Based on Location
Reduced Income Tax Rate for Tech or Knowledge Intensive FIEs
Two Free, Three Half Tax Program for FIEs
Local Income Tax Exemption & Reduction Program for Productive FIEs
VAT Rebate on Purchases by FIEs of Domestically Produced Equipment
Famous Brands—Yixing City
Anqui City Energy & Water Savings Grant
Land for LTAR in Anqui Economic Development Zone
Land-Use Rights Extension in Yixing City
National Government Policy Lending
Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products
International Market Development Fund Grants for Small and Medium Enterprises
Fund for Energy-saving Technological Innovation
Jiangsu Province Energy Conservation and Emissions Reduction Program
Rizhao City: Subsidies to Encourage Enterprise Expansion
Rizhao City: Subsidy for Antidumping Investigations
Rizhao City: Special Fund for Enterprise Development
Rizhao City: Technological Innovation Grants
Rizhao City: Technology Research and Development Fund
Shandong Province: Special Fund for the Establishment of Key Enterprise Technology Centers
Shandong Province: Subsidy for Antidumping Investigations
Shandong Province: Award Fund for Industrialization of Key Energy-saving Technology
Shandong Province: Environmental Protection Industry R&D Funds
Shandong Province: Waste Water Treatment Subsidies
Yixing City: Leading Enterprise Program
Yixing City: Tai Lake Water Improvement Program
Loans Provided to the Northeast Revitalization Program
State Key Technology Renovation Project Fund
National Level Grants to Loss-making State-Owned Enterprises (SOEs)
Income Tax Exemption Program for Export-Oriented FIEs
Tax Benefits to FIEs for Certain Reinvestment of Profits
Preferential Income Tax Rate for Research and Development for FIEs
Preferential Tax Programs for Encouraged Industries
Preferential Tax Policies for Township Enterprises
Provincial Level Grants to Loss-making SOEs
Reduced Income Tax Rates for Encouraged Industries in Anhui Province
Provision of Land for Less Than Adequate Remuneration in Anhui Province
Funds for Outward Expansion of Industries in Guangdong Province
Income Tax Exemption for FIEs Located in Jiangsu Province
Administration Fee Exemption in the Yixing Economic Development Zone (YEDZ)
Tax Grants, Rebates, and Credits in the YEDZ
Provision of Construction Services in the YEDZ for LTAR
Grants to FIEs for Projects in the YEDZ
Provision of Electricity in the YEDZ for LTAR
Provision of Water in the YEDZ for LTAR
Provision of Land in the YEDZ for LTAR
Provision of Land to SOEs for LTAR
Torch Program—Grant
Discounted Loans for Export-Oriented Industries
Provision of Land in the Zhuqiao Key Open Park for LTAR
Special Funds for Energy Saving and Recycling Program
Water Resource Reimbursement Program
Shandong Province: Energy Saving Award
VAT and Import Duty Exemptions on Imported Equipment
Ecology Compensation Subsidy Funds [102]

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a subsidy rate for the RZBC Companies, the only producer/exporter covered by this administrative review. We preliminarily determine that the total estimated net countervailable subsidy rate for the RZBC Companies is 5.27 percent *ad valorem* for 2010.

If these preliminary results are adopted in our final results of this review, 15 days after publication of the final results of this review the Department will instruct CBP to liquidate shipments of subject merchandise by the RZBC Companies entered or withdrawn from warehouse, for consumption from January 1, 2010, through December 31, 2010, at the applicable rate.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts calculated for year 2010. 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. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Case and rebuttal briefs must be submitted to the Department electronically using IA ACCESS. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice by electronically filing the request via IA ACCESS. Unless otherwise specified, the hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

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

[100] *See* RZBC Companies' IQR at ''RZBC Juxian'' page III–22 and III–23.

[101] In this section, we refer to programs preliminarily found to be not used by the RZBC Companies.

[102] This program discovered during the course of the review was expensed prior to the POR.

Dated: May 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–13585 Filed 6–4–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–869]

Large Residential Washers From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping 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 large residential washers (washing machines) from the Republic of Korea (Korea). For information on the subsidy rates, *see* the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* June 5, 2012.

FOR FURTHER INFORMATION CONTACT: Justin M. Neuman or Milton Koch, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0486 and (202) 482–2584, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On January 19, 2012, the Department initiated a countervailing duty (CVD) investigation of washing machines from Korea.[1] In the *Initiation Notice,* the Department selected Samsung Electronics Co., Ltd. (Samsung), LG Electronics, Inc. (LG), and Daewoo Electronics Corporation (Daewoo) as the company respondents in this investigation because the petition identified them as the producers in Korea that exported washing machines to the United States, and because there was no information indicating that there are other Korean producers/exporters. We invited interested parties to comment on our respondent selection within five days of the publication of the initiation notice (*i.e.,* by February 1, 2012). We received none.

On February 15, 2012, the Department issued the CVD questionnaire (including government and company sections) to the Government of Korea (GOK). On March 28, 2012, Daewoo submitted a letter to the Department stating that it would not participate in this investigation. On April 9, 2012, the GOK, Samsung, and LG submitted their questionnaire responses. On April 13, 2012, Samsung submitted corrections to some tax-related information and translation errors submitted as part of its response to the initial questionnaire. On April 23, 2012, the Department received comments from the petitioner regarding these questionnaire responses, and on April 26, 2012, the petitioner filed comments regarding the letter submitted by Daewoo. On April 25, 2012, the Department issued supplemental questionnaires to Samsung and LG, followed by a supplemental questionnaire issued to the GOK on April 26, 2012. Samsung and LG submitted responses to their supplemental questionnaires on May 10, 2012. The GOK submitted its response on May 7, 2012. The petitioner submitted comments regarding the GOK's questionnaire response on May 14, 2012, and also submitted comments regarding the responses of Samsung and LG on May 21, 2012.

On March 1, 2012, at the request of the petitioner,[2] the Department postponed the preliminary determination until May 28, 2012.[3] On May 18, 2012, the Department issued a letter to the GOK, Samsung, and LG requesting that they place the verification reports and the Final Calculation Memoranda from *Bottom Mount Refrigerators* on the record of this investigation.[4] On May 22, 2012, Samsung and LG submitted the requested documents. The GOK provided the requested documents on May 24, 2012.

Alignment of Final CVD Determination With Final AD Determination

On the same day the Department initiated this CVD investigation, the Department also initiated AD investigations of washing machines from Korea and Mexico.[5] The CVD investigation and the AD investigations cover the same merchandise. On May 10, 2012, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (Act), the petitioner requested alignment of the final CVD determination with the final AD determination of washing machines from Korea. 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 AD determination. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than October 10, 2012, unless postponed.

Injury Test

Because Korea is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On February 10, 2012, the ITC published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Korea of subject merchandise.[6]

Scope of the Investigation

The products covered by this investigation are all large residential washers and certain subassemblies thereof from Korea.

For purposes of this investigation, the term ''large residential washers'' denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) All assembled cabinets designed for use in large

[1] *See Large Residential Washers From the Republic of Korea: Initiation of Countervailing Duty Investigation,* 77 FR 4279 (January 27, 2012) (*Initiation Notice*). The petitioner in this investigation is Whirlpool Corporation.

[2] *See* Letter from Whirlpool Corporation, ''Postponement of Preliminary Determination,'' dated February 28, 2012.

[3] *See Large Residential Washers From the Republic of Korea: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 77 FR 13559 (March 7, 2012) (because May 28 falls on a federal holiday, the determination is being issued on the next business day, May 29, 2012).

[4] *See Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination,* 77 FR 17410 (March 26, 2012) and accompanying Issues and Decision Memorandum (*Bottom Mount Refrigerators*).

[5] *See Large Residential Washers From the Republic of Korea and Mexico: Initiation of Antidumping Duty Investigations,* 77 FR 4007 (January 26, 2012).

[6] *See Large Residential Washers From Korea and Mexico,* 77 FR 9700 (February 17, 2012); and USITC Publication 4306, Large Residential Washers from Korea and Mexico: Investigation Nos. 701–TA–488 and 731–TA–1199–1200 (Preliminary) (February 2012).