

**DEPARTMENT OF COMMERCE****International Trade Administration**

[C-570-976]

**Galvanized Steel Wire From the People's Republic of China: 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 galvanized steel wire (galvanized wire) from the People's Republic of China (PRC). For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

**DATES:** *Effective Date:* September 6, 2011.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Czajkowski or David Lindgren, AD/CVD Operations, Office 6, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202-482-1395 or 202-482-3870, respectively.

**SUPPLEMENTARY INFORMATION:****Case History**

On March 31, 2011, the Department received a countervailing duty (CVD) petition, filed in proper form, concerning imports of galvanized wire from the PRC.<sup>1</sup> The Department initiated a CVD investigation on April 20, 2011.<sup>2</sup>

As stated in the *Initiation Notice*, the Department released U.S. Customs and Border Protection (CBP) entry data for U.S. imports of galvanized wire from the PRC between January 1, 2010, and December 31, 2010, to be used as the basis for respondent selection.<sup>3</sup> The CBP entry data covered products included in

this investigation which entered under Harmonized Tariff Schedule of the United States (HTSUS) numbers: 7217.20.3000; 7217.20.4510; 7217.20.4520; 7217.20.4530; 7217.20.4540; 7217.20.4550; 7217.20.4560; 7217.20.4570; and 7217.20.4580. In the Entry Data Memorandum, the Department noted that the scope also indicated that subject merchandise might also enter under HTSUS numbers: 7229.20.0015; 7229.90.5008; 7229.90.5016; 7229.90.5031; and 7229.90.5051. Parties were given seven days from the publication of the *Initiation Notice* to submit comments on the CBP data and respondent selection.

On May 3, 2011, Shanghai Bao Zhang Industry Co. Ltd. (SBZ) requested to be selected as a mandatory respondent in the CVD investigation.<sup>4</sup> Alternatively, SBZ requested that, if it were not selected as a mandatory respondent, the Department consider it as a voluntary respondent should a mandatory respondent fail to participate. Additionally, on May 4, 2011, SBZ, Anhui Bao Zhang Metal Products Co., Ltd. (ABZ) and B&Z Galvanized Wire Industry filed comments on respondent selection, arguing that the Department should treat all Bao Zhang companies as a single entity for respondent selection and should ensure that trading companies are not selected as mandatory respondents.<sup>5</sup> On May 18, 2011, the Department completed its respondent selection analysis. Specifically, the Department selected the following companies, in alphabetical order, as mandatory respondents in this CVD investigation: M&M Industries Co. Ltd. (M&M); Shandong Hualing Hardware and Tool Co., Ltd. (Shandong Hualing); and Tianjin Huayuan Metal Wire Products Co., Ltd. (HYW).<sup>6</sup> These companies accounted for the largest volume of exports of merchandise under consideration to the United States that the Department determined could be reasonably examined. The Department issued a CVD questionnaire to the Government of the PRC (GOC) and the

mandatory respondents on May 19, 2011. Responses to this questionnaire were originally due on June 27, 2011.

On June 27, 2011, SBZ and its reported cross-owned affiliates (ABZ) and Shanghai Li Chao Industry Co., Ltd. (Li Chao) (collectively, the Bao Zhang Companies) submitted a questionnaire response.<sup>7</sup> The questionnaire response provided information that the Bao Zhang Companies were involved in the production and exportation of subject merchandise during the period of investigation (POI).

The GOC, HYW and M&M submitted requests on June 20, 2011, June 22, 2011, and June 24, 2011, respectively, for extensions to the deadline for their questionnaire responses. The Department extended the deadline for submission of these responses until July 5, 2011. On June 29, 2011, the GOC requested a second extension to the deadline for filing its questionnaire response. On July 1, 2011, HYW and M&M also requested a second extension to the deadline for filing questionnaire responses. The Department extended the deadline for submission of the questionnaire responses, a second time, until July 7, 2011. On July 7, 2011, questionnaire responses were filed by the GOC, HYW,<sup>8</sup> and M&M.<sup>9</sup> On July 7, 2011, the GOC requested an extension for submitting ownership information related to the producers from which the Huayuan Companies and the Bao Zhang Companies purchased wire rod and zinc inputs. On July 14, 2011, the Department granted the GOC an extension until July 19, 2011. On July 19, 2011, the GOC filed additional information pertaining to the ownership of some producers of wire rod inputs purchased by the respondents.<sup>10</sup>

<sup>7</sup> Bao Zhang Companies June 27, 2011 Questionnaire Response. As discussed in more detail in the "Cross-Ownership" section below, we preliminarily determine that these three companies are cross-owned.

<sup>8</sup> HYW filed its responses as Attachment 1 and then included responses for its reported cross-owned affiliates Tianjin Tianxin Metal Products Co., Ltd. (Tianxin) as Attachment 2, Tianjin Huayuan Times Metal Products Co., Ltd. (Times) as Attachment 3 and Tianjin Mei Jia Hua Trade Co., Ltd. (MJH) as Attachment 4. As discussed in more detail in the "Cross-Ownership" section below, we preliminarily determine that HYW, Tianxin and MJH (collectively, the Huayuan Companies), are cross-owned. We also preliminarily determine that Times is not cross-owned with the Huayuan Companies.

<sup>9</sup> GOC July 7, 2011 Questionnaire Response; Huayuan Companies July 7, 2011 Questionnaire Response; and M&M July 7, 2011 Questionnaire Response.

<sup>10</sup> See Letter from the GOC to the Department, "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China, Inv. No. C-570-976; Questionnaire Response," dated July 19, 2011.

<sup>1</sup> The petitioners are Davis Wire Corporation, Johnstown Wire Technologies, Inc., Mid-South Wire Company, Inc., National Standard, LLC, and Oklahoma Steel & Wire Company, Inc. (Petitioners).

<sup>2</sup> See *Galvanized Steel Wire From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 76 FR 23564 (April 27, 2011) (*Initiation Notice*), and accompanying Initiation Checklist. Public documents and public versions of proprietary Departmental memoranda referenced in this notice are on file in the Central Records Unit (CRU), Room 7046 in the main building of the Commerce Department.

<sup>3</sup> See Memorandum regarding "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Entry Data" (Entry Data Memorandum), dated April 21, 2011.

<sup>4</sup> See Letter from SBZ to the Department, "Antidumping Duty Investigation of Galvanized Wire from the People's Republic of China: Request for Mandatory Status or Alternatively for Voluntary Status," dated May 3, 2011.

<sup>5</sup> See Letter from SBZ, *et al.* to the Department, "Comments on Respondent Selection: Investigation of the Galvanized Steel Wire from the People's Republic of China," dated May 4, 2011.

<sup>6</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Mark Hoadley, Program Manager, Office 6, "Galvanized Steel Wire from the People's Republic of China Countervailing Duty Investigation: Respondent Selection," dated May 18, 2011.

Shandong Hualing, one of the mandatory respondents, did not submit a questionnaire response by the original June 27, 2011 deadline, nor did it request an extension to file its questionnaire response. In fact, the GOC, in its questionnaire response, stated that Shandong Hualing informed the GOC that the company did not plan to cooperate with the Department's investigation.<sup>11</sup> Because Shandong Hualing chose not to participate in this investigation, on July 22, 2011, the Department selected SBZ as an additional mandatory respondent in this investigation.<sup>12</sup> On June 8, 2011, the Department postponed the deadline for the preliminary determination until August 29, 2011.<sup>13</sup>

On July 26, 2011, the Department issued supplemental questionnaires to the Huayuan Companies, M&M and the Bao Zhang Companies. On July 28, 2011, the Department also issued a supplemental questionnaire to the GOC. The Bao Zhang Companies submitted an extension request on August 1, 2011, and the GOC, the Huayuan Companies and M&M submitted extension requests on August 2, 2011.

On August 4, 2011, Department officials met with counsel for the GOC and the Huayuan Companies, regarding the Department's July 26, 2011 supplemental questionnaire issued to the Huayuan Companies.<sup>14</sup> The GOC and the Huayuan Companies expressed concern about the potential burden of obtaining information from trading companies that are the Huayuan Companies' customers. The Department noted the language in the questionnaire regarding trading companies and indicated that when a company is aware that its sales to trading companies were exported to the United States, it should provide the information requested in the questionnaire for exports of subject merchandise to the United States.

On August 4, 2011, the Department extended the deadline for submission of

<sup>11</sup> See GOC July 7, 2011 Questionnaire Response at 1.

<sup>12</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Barbara E. Tillman, Director, Antidumping and Countervailing Duty Operations, Office 6, "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Selection of an Additional Mandatory Respondent," dated July 22, 2011.

<sup>13</sup> See *Galvanized Steel Wire From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 76 FR 33242 (June 8, 2011).

<sup>14</sup> See Memorandum regarding "Ex-Parte Meeting with Counsel for the Government of China and for Tianjin Huayuan Wire Metal Products Co., Ltd.: Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China," dated August 5, 2011.

the supplemental questionnaire responses, granting the Huayuan Companies, M&M, and the Bao Zhang Companies an extension for part of their questionnaire response until August 9, 2011, with the remainder due on August 19, 2011. On August 5, 2011, the Department also extended the deadline for the GOC's response, with one portion due on August 11, 2011, and the remainder due on August 22, 2011. The Huayuan Companies, M&M, and the Bao Zhang Companies each filed their supplemental questionnaire responses on August 9, 2011, and August 19, 2011.<sup>15</sup>

The GOC filed its supplemental questionnaire response on August 11, 2011, and August 22, 2011.<sup>16</sup> On August 12, 2011, the Department issued a second supplemental questionnaire to the Huayuan Companies and M&M. The Huayuan Companies and M&M filed responses to these second supplemental questionnaires on August 17, 2011.<sup>17</sup> Finally, on August 25, 2011, the Petitioners filed pre-preliminary determination comments.<sup>18</sup>

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

In addition to the CVD investigation on galvanized wire, the Department also initiated antidumping duty (AD) investigations of galvanized wire from the PRC and Mexico.<sup>19</sup> The CVD and AD investigations have the same scope with regard to the merchandise covered.

On August 19, 2011, Petitioners submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), requesting alignment of the final CVD

<sup>15</sup> Bao Zhang Companies August 9, 2011 Supplemental Questionnaire Response; Huayuan Companies August 9, 2011 Supplemental Questionnaire Response; M&M August 9, 2011 Supplemental Questionnaire Response; Bao Zhang Companies August 19, 2011 Supplemental Questionnaire Response; HYW August 19, 2011 Supplemental Questionnaire Response; Tianxin August 19, 2011 Supplemental Questionnaire Response; Times August 19, 2011 Supplemental Questionnaire Response; MJH August 19, 2011 Supplemental Questionnaire Response; and M&M August 19, 2011 Supplemental Questionnaire Response.

<sup>16</sup> GOC August 11, 2011 Supplemental Questionnaire Response and GOC August 22, 2011 Supplemental Questionnaire Response.

<sup>17</sup> MJH August 17, 2011 Supplemental Questionnaire Response and M&M August 17, 2011 Supplemental Questionnaire Response.

<sup>18</sup> See Letter from Petitioners to the Department, "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Petitioners' Pre-Preliminary Determination Comments," dated August 25, 2011.

<sup>19</sup> See *Galvanized Steel Wire From the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations*, 76 FR 23548 (April 27, 2011).

determination with the final AD determination of galvanized wire from the PRC.<sup>20</sup> 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 January 10, 2012, unless postponed.

#### Scope of the Investigation

The scope of the investigation covers galvanized steel wire which is a cold-drawn carbon quality steel product in coils, of solid, circular cross section with an actual diameter of 0.5842 mm (0.0230 inch) or more, plated or coated with zinc (whether by hot-dipping or electroplating).

Steel products to be included in the scope of the investigation, regardless of Harmonized Tariff Schedule of the United States ("HTSUS") definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.02 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

The products subject to the investigation are currently classified in subheadings 7217.20.30 and 7217.20.45 of the HTSUS which cover galvanized wire of all diameters and all carbon content. Galvanized wire is reported under statistical reporting numbers 7217.20.3000, 7217.20.4510, 7217.20.4520, 7217.20.4530, 7217.20.4540, 7217.20.4550, 7217.20.4560, 7217.20.4570, and 7217.20.4580. These products may also enter under HTSUS subheadings 7229.20.0015, 7229.90.5008, 7229.90.5016, 7229.90.5031, and

<sup>20</sup> See Letter from Petitioners to the Department "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China—Request to Align Final Determination with Antidumping Investigation," dated August 19, 2011.

7229.90.5051. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

### Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.<sup>21</sup> Between May 5, 2011, and May 19, 2011, we received numerous comments concerning the scope of the AD investigations of galvanized wire from the PRC and Mexico and the CVD investigation of galvanized wire from the PRC.

Because of the timing of the scope comments and Petitioners' response to the comments, we did not have time to analyze the issues raised by parties prior to this preliminary determination. The Department is currently evaluating these scope comments, and will issue its decision regarding the scope of the investigation no later than the date of the preliminary determination in the companion AD investigation. That decision will be placed on the record of this CVD investigation, and all parties will have the opportunity to comment.

### Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On May 20, 2011, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of galvanized wire from the PRC.<sup>22</sup>

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

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.<sup>23</sup>

<sup>21</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*, 75 FR at 70719.

<sup>22</sup> See *Galvanized Steel Wire From China and Mexico*, 76 FR 29266 (May 20, 2011).

<sup>23</sup> See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decision Memorandum (CFS from the PRC Decision Memorandum).

In *CFS from the PRC*, the Department found that

\* \* \* given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.<sup>24</sup> The Department has affirmed its decision to apply the CVD law to the PRC in subsequent final determinations.<sup>25</sup>

Additionally, for the reasons stated in the CWP from the PRC Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this investigation.<sup>26</sup>

### Period of Investigation

The POI for which we are measuring subsidies is January 1, 2010, through December 31, 2010.<sup>27</sup>

### Use of Facts Otherwise Available and Adverse Inferences

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. For purposes of this preliminary determination, we find it necessary to apply adverse facts available (AFA) in the following circumstances.

<sup>24</sup> See CFS from the PRC Decision Memorandum at Comment 6.

<sup>25</sup> 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), and accompanying Issues and Decision Memorandum (CWP from the PRC Decision Memorandum) at Comment 1.

<sup>26</sup> See CWP from the PRC Decision Memorandum at Comment 2.

<sup>27</sup> See 19 CFR 351.204(b)(2).

### Application of AFA: Non-Cooperative Respondent

As explained above in the "Case History" section, the Department selected Shandong Hualing as a mandatory respondent. As a result of Shandong Hualing's failure to submit responses to the Department's initial questionnaire, we find the company to be a non-cooperative, mandatory respondent. By not responding to the Department's initial questionnaire, Shandong Hualing withheld requested information and significantly impeded this proceeding. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(1), (2)(A) and (C) of the Act, we are basing the CVD rate for Shandong Hualing on facts otherwise available.

We further preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit a response to the Department's initial questionnaire, Shandong Hualing did not cooperate to the best of its ability in this investigation. Accordingly, we preliminarily find that AFA is warranted to ensure that the company does not obtain a more favorable result than had it fully complied with our request for information.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."<sup>28</sup> The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>29</sup>

It is the Department's practice in CVD proceedings to select, as AFA, the highest calculated rate in any segment

<sup>28</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>29</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.A.N. 4040, 4199.

of the proceeding.<sup>30</sup> In previous CVD investigations of products from the PRC, we adapted the practice to use the highest rate calculated for the same or similar program in the instant proceeding or, if not available, in other PRC CVD proceedings.<sup>31</sup> Thus, under this practice, for investigations involving the PRC, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, the Department uses the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD proceeding. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, the Department applies the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies.<sup>32</sup>

<sup>30</sup> See, e.g., *Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*LWS from the PRC*), and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available"; see also *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions From the PRC*), and accompanying Issues and Decision Memorandum (Aluminum Extrusions from the PRC Decision Memorandum) at "Application of Adverse Inferences: Non-Cooperative Companies."

<sup>31</sup> See *supra*, note 28; see also *LWS From the PRC; see also Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in the *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009)), and accompanying Issues and Decision Memorandum at "Application of Facts Available, Including the Application of Adverse Inferences".

<sup>32</sup> See *Aluminum Extrusions from the PRC Decision Memorandum* at "Application of Adverse Inferences: Non-Cooperative Companies"; see also, e.g., *Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*LWTP from the PRC*), and accompanying Issues and Decision Memorandum (LWTP from the PRC Decision Memorandum) at "Selection of the Adverse Facts Available Rate."

On this basis, we preliminarily determine the AFA subsidy rate for Shandong Hualing to be 253.07 percent *ad valorem*. For a detailed discussion of the AFA rates selected for each program under investigation, see Application of Adverse Facts Memorandum.<sup>33</sup>

*Application of AFA: Finding Wire Rod and Zinc Input Producers To Be Government Authorities Under the Provision of Wire Rod and Zinc for Less Than Adequate Remuneration Program*

The Department is investigating the alleged provision of wire rod and zinc for less than adequate remuneration (LTAR) by the GOC. We requested information from the GOC regarding the specific companies that produced these input products that the Huayuan Companies and the Bao Zhang Companies purchased during the POI.

With respect to the specific companies that produced the input products purchased by the Huayuan Companies and the Bao Zhang Companies, we were seeking information that would allow us to determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. In our original and supplemental questionnaires, we requested detailed information from the GOC that would be needed for this analysis. We informed the GOC that, if it disputed that producers that are majority-owned by the government are "authorities," the GOC needed to provide the requested information on those disputed producers as well. Thus, for any producers of wire rod or zinc that were identified by the Huayuan Companies and the Bao Zhang Companies as majority government-owned, the GOC needed to provide the requested information only if it wished to argue that those producers were not authorities. For any of these input producers that the GOC claimed were privately owned by individuals and/or companies during the POI, we requested the following:

- Translated copies of source documents that demonstrate the producer's ownership during the POI, such as capital verification reports, articles of association, share transfer agreements, or financial statements.
- Identification of the owners, members of the board of directors, or managers of the producers who were also government or Chinese Communist Party (CCP) officials or representatives during the POI.

<sup>33</sup> See Memorandum regarding, "Application of Adverse Facts Available Rates for Preliminary Determination," dated August 29, 2011 (Application of Adverse Facts Memorandum).

- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.

Finally, for input producers owned by other corporations (whether in whole or in part) or with less-than-majority state ownership during the POI, we requested information in order to trace back the ownership to the ultimate individual or state owners. For these suppliers, we requested the following:

- The identification of any state ownership of the company's shares; the names of all government entities that own shares, either directly or indirectly, in the company; whether any of the owners are considered "state-owned enterprises" by the government; and the amount of shares held by each government owner.
- For each level of ownership, a translated copy of the section(s) of the articles of association showing the rights and responsibilities of the shareholders and, where appropriate, the board of directors, including all decision making (voting) rules for the operation of the company.
- For each level of ownership, identification of the owners, members of the board of directors, or managers of the producers who were also government or CCP officials during the POI.
- A discussion of whether and how operational or strategic decisions made by the management or board of directors are subject to government review or approval.

- A statement of whether any of the shares held by government entities have any special rights, priorities, or privileges, e.g., with regard to voting rights or other management or decision-making for the company; a statement of whether there are any restrictions on conducting, or acting through, extraordinary meetings of shareholders; whether there are any restrictions on the shares held by private shareholders; and the nature of the private shareholders' interest in the company, e.g., operational, strategic, or investment-related, etc.

In its questionnaire response on July 7, 2011, the GOC provided some ownership information but reported that it was unable to obtain the complete ownership information for all of the companies that produced wire rod and zinc purchased by the Huayuan Companies and the Bao Zhang Companies. The GOC further stated that it expected to provide such information to the Department as soon as it received it from the local industry and commerce

administration bureaus.<sup>34</sup> On July 19, 2011, the GOC submitted additional ownership information pertaining to certain wire rod producers, but reported that it was still not able to complete the ownership information for all wire rod and zinc producers named by respondents.

On July 28, 2011, we issued a supplemental questionnaire to the GOC requesting that it complete the remaining ownership information for the wire rod and zinc producers, as well as respond to questions regarding the role, if any, of GOC and CCP officials in the input producers (e.g., through management or the board of directors) and in their owners, including any corporate owners.<sup>35</sup> In response to the GOC's request for an extension, the Department allowed the GOC to file part of its response on August 11, 2011, and the remainder on August 22, 2011.

In the August 11, 2011 response, the GOC provided some additional ownership information; it also stated that certain companies that own some portion of wire rod producers did not have any GOC or CCP officials or representatives involved in their ownership, boards of directors or management.<sup>36</sup> However, the GOC did not provide complete information requested with respect to whether GOC or CCP officials were involved in the ownership, board of directors or management of all of these wire rod producers. The GOC also explained that it was unable to obtain some of the company-specific ownership information for zinc producers and that it was not able to collect information on whether companies holding some share of zinc producers have any GOC or CCP officials involved in their ownership, boards of directors or management.<sup>37</sup>

In addition to not providing all of the requested information regarding whether government and CCP officials were owners, members of the boards of directors, or managers of the input producers who produced the wire rod and zinc purchased by the respondents during the POI, the GOC also declined to answer questions about the CCP's structure and functions that are relevant to our determination of whether the producers of wire rod and zinc are government authorities within the meaning of section 771(5)(B) of the Act.

<sup>34</sup> See GOC July 7, 2011 Questionnaire Response at 16.

<sup>35</sup> See Letter from the Department to the GOC "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Supplemental Questionnaire," dated July 28, 2011.

<sup>36</sup> See GOC August 11, 2011 Supplemental Questionnaire Response at I-13-14, I-16.

<sup>37</sup> See *id.* at I-23.

On August 22, 2011, the GOC filed the remainder of its supplemental questionnaire response but it did not include any additional information regarding whether there were GOC or CCP officials involved in the management, board of directors or ownership of the wire rod or zinc input producers. Rather, the GOC stated that the CCP, along with other organizations, is not a government organization and that CCP officials' involvement in input producer companies "does not lead to interference by the Chinese government in the management and operation of the input suppliers."<sup>38</sup> Additionally, the GOC explained that Chinese law prohibits GOC officials from taking positions in private companies.<sup>39</sup> Furthermore, the GOC explained that "there is no central database to search the requested information and the industry and commerce administration does not require the companies to provide such information."<sup>40</sup> As such, the GOC stated it was unable to respond to the questions regarding GOC and CCP officials' involvement in the wire rod and zinc input producers themselves and in the input producers' ownership and management.<sup>41</sup>

Regarding the GOC's objection to the Department's questions about the role of CCP officials in the management and operations of the wire rod and zinc input producers, we have explained our understanding of the CCP's involvement in the PRC's economic and political structure in a past proceeding.<sup>42</sup> The Department considers the information regarding the CCP's involvement in the PRC's economic and political structure to be important because public information suggests that the CCP exerts significant control over activities in the PRC.<sup>43</sup> This is supported by, among other documents, a publicly available background report from the U.S. Department of State.<sup>44</sup> With regard to the GOC's claim that Chinese law prohibits GOC officials from taking

<sup>38</sup> See GOC August 22, 2011 Supplemental Questionnaire Response at I-7-10.

<sup>39</sup> See *id.*

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

<sup>42</sup> See Memorandum regarding "Galvanized Steel Wire from the People's Republic of China: Preliminary Countervailing Duty Determination: Additional Documents," dated August 29, 2011 at Attachment 1.

<sup>43</sup> See *id.* at Attachment 2.

<sup>44</sup> See *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), and accompanying Issues and Decision Memorandum (Seamless Pipe from the PRC Decision Memorandum) at Comment 7.

positions in private companies, we have previously found that this particular law does not pertain to CCP officials.<sup>45</sup>

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, we continue to find that the information on the role of CCP officials in the management and operations of the wire rod and zinc input producers, and in the management and operations of the input producers' owners is necessary to our determination of whether these input producers are authorities within the meaning of section 771(5)(B) of the Act. Furthermore, we find that this is information that could be obtained by the GOC and further, the GOC did not provide any information regarding what attempts it undertook to obtain this information. Therefore, we determine that the GOC's statement that it is unable to provide this information is insufficient to find that the GOC has cooperated to the best of its ability.

Based on the above, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in making our preliminary determination.<sup>46</sup> Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available.<sup>47</sup> Therefore, based on AFA, we are finding that all of the input producers of the wire rod and zinc purchased by the respondents during the POI are "authorities" within the meaning of section 771(5)(B) of the Act.

#### *Application of AFA: Provision of Electricity for Less Than Adequate Remuneration*

The GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of Section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of Section 771(5)(E) of the Act and whether such a provision was specific with the meaning of Section 771(5A) of the Act. In the both the Department's

<sup>45</sup> See Seamless Pipe from the PRC Decision Memorandum at 16.

<sup>46</sup> See sections 776(a)(1) and (a)(2)(A) of the Act.

<sup>47</sup> See section 776(b) of the Act.

May 19, 2011 original questionnaire and the July 28, 2011 supplemental questionnaire, for each province in which a respondent is located, the Department asked the GOC to provide a detailed explanation of: (1) How increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no provincial-specific data in its August 11, 2011 supplemental response.

Consequently, we preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on “facts available” in making our preliminary determination.<sup>48</sup> Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available.<sup>49</sup> In drawing an adverse inference, we find that the GOC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We have also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.<sup>50</sup> The benchmark rates we have selected are derived from information from the record of the instant investigation and are the highest electricity rates on this record for the applicable rate and user categories.

For details on the calculation of the subsidy rate for the respondents, see the “Provision of Electricity for LTAR” section below.

### Subsidy Valuation Information

#### Allocation Period

Under 19 CFR 351.524(d)(2), we presume the allocation period for non-recurring subsidies to be the average useful life (AUL) prescribed by the

Internal Revenue Service (IRS) for renewable physical assets of the industry under consideration (as listed in the IRS’s 1977 Class Life Asset Depreciation Range System, and as updated by the U.S. Department of the Treasury). This presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. According to the IRS’ 1977 Class Life Asset Depreciation Range System, the AUL period for assets for galvanized wire is 12 years. No party in this proceeding has disputed this allocation period.

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

As discussed above, in accordance with the Department’s practice, we identify and measure subsidies in the PRC beginning on the date of the country’s accession to the WTO, *i.e.* December 11, 2001.<sup>51</sup>

#### Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)–(v) sets forth additional attribution rules for corporations with cross-ownership. The following types of cross-ownership are covered in these additional attribution rules: (ii) Two or more corporations with cross-ownership produce the subject merchandise; (iii) a firm that received a subsidy is a holding or parent company of the subject company; (iv) a firm that produces an input that is primarily dedicated to the production of the downstream product; or (v) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject company.

<sup>51</sup> See, *e.g.*, *Certain Magnesia Carbon Bricks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying Issues and Decision Memorandum at “Subsidies Valuation Information.”

#### 1. Cross-Ownership

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>52</sup>

Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), among and across the following companies involved in the production and sale of the subject merchandise.

#### The Huayuan Companies

We preliminarily determine that cross-ownership exists within the Huayuan Companies among and across the following companies involved in the production and sale of the subject merchandise: HYW, Tianxin and MJH. Further, we preliminarily determine that cross-ownership does not exist between Times and the other companies in the Huayuan Companies. Because much of the information upon which this decision is based is business proprietary, a full discussion is set forth in the Huayuan Companies Preliminary Cross-Ownership Memorandum.<sup>53</sup>

#### The Bao Zhang Companies

We preliminarily determine that cross-ownership exists within the Bao Zhang Companies, in accordance with 19 CFR 351.525(b)(6)(vi), among and across the following companies involved in the production and sale of the subject merchandise: SBZ, ABZ and Li Chao. Because much of the information upon which this decision is based is business proprietary, a full discussion is set forth in the Bao Zhang

<sup>52</sup> See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600–604 (CIT 2001).

<sup>53</sup> See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, from Nicholas Czajkowski and David Lindgren, International Trade Compliance Analysts regarding “Galvanized Steel Wire from the People’s Republic of China: Preliminary Countervailing Duty Determination, Cross-Ownership: Huayuan Companies,” dated August 29, 2011 (Huayuan Companies Preliminary Cross-Ownership Memorandum).

<sup>48</sup> See sections 776(a)(1)–(a)(2)(A) of the Act.

<sup>49</sup> See section 776(b) of the Act.

<sup>50</sup> See *id.* at 776(b)(4).

Companies Preliminary Cross-Ownership Memorandum.<sup>54</sup>

## 2. Trading Company Attribution

Under 19 CFR 351.525(c), benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing company are affiliated. M&M reported that it is a trading company and that it purchased galvanized wire to the United States during the POI from various producers,<sup>55</sup> including the cross-owned producers of galvanized wire within the Huayuan Companies (HYW and Tianxin).<sup>56</sup> M&M reported that it is not cross-owned with any of the producers from which it purchased galvanized wire, and there is no information on the record on the record that would cause the Department to conclude that M&M is cross-owned with any of its suppliers.

When investigating or reviewing trading companies, the Department, has, in some instances, limited the number of producers it examines under 19 CFR 351.525(c).<sup>57</sup> In determining a subsidy rate for M&M, we preliminarily determine that it is appropriate to limit our examination of the producers, which supplied M&M during the POI, to the cross-owned producers within the Huayuan Companies.<sup>58</sup> Since this decision is based on business proprietary information, our analysis is

<sup>54</sup> See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, from Nicholas Czajkowski and David Lindgren, International Trade Compliance Analysts regarding "Galvanized Steel Wire from the People's Republic of China: Preliminary Countervailing Duty Determination, Cross-Ownership: Bao Zhang Companies," dated August 29, 2011 (Bao Zhang Companies Preliminary Cross-Ownership Memorandum).

<sup>55</sup> See M&M July 7, 2011 Questionnaire Response at III-2.

<sup>56</sup> See "Cross-Ownership" section above.

<sup>57</sup> See *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 (Pasta from Italy Decision Memorandum) at "Attribution"; see also *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 74 FR 56576, 56577-79 (November 2, 2009) (*PC Strand from the PRC*) (unchanged in the *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum (PC Strand from the PRC Decision Memorandum) at "Attribution of Subsidies").

<sup>58</sup> See Pasta from Italy Decision Memorandum at "Attribution"; see also PC Strand from the PRC Decision Memorandum at "Attribution of Subsidies."

set forth in M&M's preliminary calculation memorandum.<sup>59</sup>

Pursuant to the Department's trading company regulation at 19 CFR 351.525(c), we find that any subsidies provided to the cross-owned producers within the Huayuan Companies are attributable to the subject merchandise exported by M&M. In accordance with 19 CFR 351.525(c), we cumulated the subsidies received by the cross-owned producers within the Huayuan Companies with the subsidies received by M&M. Specifically, for each countervailable subsidy received by the cross-owned producers within the Huayuan Companies, we derived the benefit and calculated a program subsidy rate, and cumulated those rates with the rates calculated for subsidies received directly by M&M.

### Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondent's receipt of benefits under each program at issue. As discussed in further detail below in the "Programs Preliminarily Determined To Be Countervailable" section, where the program has been found to be an export subsidy, we used the recipient's total exports as the denominator. For cross-owned producers, we used total exports net of sales between the cross-owned producers, and where appropriate and possible, made adjustments for the value of the producers' sales sold through a cross-owned trading company.<sup>60</sup>

Where the program has been found to be countervailable as a domestic subsidy, we used the following denominators. If the subsidy was provided to one or more of the cross-owned producers of subject merchandise, we used the total sales of those producers net of any sales between the cross-owned producers. Where appropriate and possible, we made adjustments for the value of the cross-owned producers' sales sold through a cross-owned trading company. Where the subsidy was provided to a cross-owned input supplier, we used the total sales of the cross-owned producers of subject merchandise plus the sales of the cross-

<sup>59</sup> See Memorandum to Thomas Gilgum, Program Manager, AD/CVD Operations, Office 6, from Nicholas Czajkowski and David Lindgren, International Trade Compliance Analysts regarding "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: M&M Preliminary Calculation Memorandum," dated August 29, 2011 (M&M Preliminary Calculation Memorandum).

<sup>60</sup> See 19 CFR 351.525(b)(2), (b)(6), and (c).

owned input supplier net of any sales between these companies (*i.e.*, we used only external sales as the denominator). Where the subsidy was provided directly to a trading company, we used the trading company's total sales as the denominator.<sup>61</sup> For a further discussion of the denominators used, see the Preliminary Calculation Memoranda.<sup>62</sup>

### Discount Rates for Allocating Non-Recurring Subsidies

Consistent with 19 CFR 351.524(d)(3)(i)(C), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described below for the year in which the government agreed to provide the subsidy.

#### 1. Short-Term Interest Rate

The Department's regulations at 19 CFR 351.524(d)(3) state that Department will use as a discount rate the following, in order of preference: (A) The cost of long-term, fixed-rate loans of the firm in question, excluding any loans that the Department has determined to be countervailable subsidies; (B) the average cost of long-term, fixed-rate loans in the country in question; or (C) a rate that the Department considers to be most appropriate. For the reasons explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.<sup>63</sup> Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as a discount rate under 19 CFR 351.524(d)(3)(i)(A). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.524(d)(3)(i)(A).

Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based

<sup>61</sup> See generally, 19 CFR 351.525(b).

<sup>62</sup> See Memorandum to Thomas Gilgum, Program Manager, AD/CVD Operations, Office 6, from Nicholas Czajkowski and David Lindgren, International Trade Compliance Analysts regarding "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Bao Zhang Companies Preliminary Calculation Memorandum," dated August 29, 2011; see also Memorandum to Thomas Gilgum, Program Manager, AD/CVD Operations, Office 6, from Nicholas Czajkowski and David Lindgren, International Trade Compliance Analysts regarding "Countervailing Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Huayuan Companies Preliminary Calculation Memorandum," dated August 29, 2011; see also M&M Preliminary Calculation Memorandum (collectively, Preliminary Calculation Memoranda).

<sup>63</sup> See CFS from the PRC Decision Memorandum at Comment 10.

benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in lumber from Canada, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.<sup>64</sup>

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC* and updated in *LWTP from the PRC*.<sup>65</sup> This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to the PRC, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to the state-imposed distortions in the banking sector discussed above.

Following the methodology developed in *CFS from the PRC*, we first determined which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as low income, lower-middle income, upper-middle income, and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries.<sup>66</sup> As explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund, and 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 "low middle income" by the World Bank. First, we did not include those economies that the Department considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not

a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.<sup>67</sup>

## 2. Long-Term Interest Rate

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.<sup>68</sup> In subsequent investigations, 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.<sup>69</sup>

The resulting inflation-adjusted lending rates that we are using as discount rates are provided in the Preliminary Benchmark Memorandum.<sup>70</sup> Based on this methodology, we calculated the discount rates to use in allocating non-recurring subsidies for this preliminary determination.

## Analysis of Programs

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

<sup>67</sup> See Memorandum regarding "Preliminary Affirmative Countervailing Duty Determination: Galvanized Steel Wire from the People's Republic of China, Benchmark Memorandum," dated August 29, 2011 (Preliminary Benchmark Memorandum).

<sup>68</sup> 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) and accompanying Issues and Decision Memorandum at 8.

<sup>69</sup> See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) and accompanying Issues and Decision Memorandum at Comment 14.

<sup>70</sup> See Preliminary Benchmark Memorandum at Attachment 8.

## Programs Preliminarily Determined To Be Countervailable

### 1. Provision of Wire Rod for LTAR

The Department is investigating whether input producers, acting as Chinese government authorities, sold wire rod to the respondents for LTAR. Both the Huayuan Companies and the Bao Zhang Companies reported purchasing wire rod during the POI.<sup>71</sup>

As discussed in detail above in the section "Use of Facts Otherwise Available and Adverse Inferences," we are finding all of the wire rod input producers, which produced the wire rod purchased during the POI by both the Huayuan Companies and the Bao Zhang Companies, to be government authorities based on AFA. As a result, we preliminarily determine that the wire rod sold by these input producers that was purchased by the respondents during the POI constitutes a financial contribution in the form of a governmental provision of a good.<sup>72</sup>

Having dealt with financial contribution, we now turn to specificity, one of the three required subsidy elements under the Act.<sup>73</sup> In our initial questionnaire, we asked the GOC to provide a list of industries in the PRC that purchase wire rod directly, using a consistent level of industrial classification.<sup>74</sup> In response, the GOC simply stated that wire rod is used by a wide variety of steel-consuming industries.<sup>75</sup> In our supplemental questionnaire, we again asked the GOC to provide the information in the form requested, but the GOC provided the same response.<sup>76</sup> While the GOC did not provide the information in the form requested, we have considered the GOC's response in light of the statutory standard for *de facto* specificity and, based on our review, we find the information is sufficient to reach a finding of specificity pursuant to section 771(5A)(D)(iii)(I) of the Act. This determination is consistent with wire decking from the PRC and *PC Strand from the PRC* in which the Department found the provision of wire rod to be specific, based on virtually the same facts.<sup>77</sup>

<sup>71</sup> See Bao Zhang Companies June 27, 2011 Questionnaire Response at III-14; see also Huayuan Companies July 7, 2011 Questionnaire Response at I-16, II-16.

<sup>72</sup> See section 771(5)(D)(iii) of the Act.

<sup>73</sup> See section 771(5A) of the Act.

<sup>74</sup> See May 19, 2011 Original Questionnaire at II-7.

<sup>75</sup> See GOC July 7, 2011 Questionnaire Response at 34.

<sup>76</sup> See GOC August 22, 2011 Supplemental Questionnaire Response at I-14.

<sup>77</sup> See *Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty*

<sup>64</sup> See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) and accompanying Issues and Decision Memorandum (Softwood Lumber from Canada Decision Memorandum) at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

<sup>65</sup> See CFS Decision Memorandum at Comment 10; see also *LWTP from the PRC Decision Memorandum* at 8-10.

<sup>66</sup> See The World Bank Country Classification, <http://econ.worldbank.org/>.

With regard to benefit, the third required subsidy element, we preliminarily determine that the respondents received a benefit to the extent that the purchased wire rod was provided for LTAR.<sup>78</sup> The criteria for identifying appropriate market-determined benchmarks for measuring whether the government-provided goods were provided for LTAR are set forth at 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As the Department has previously explained, 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.<sup>79</sup>

In evaluating whether there are market prices for actual transactions within the country under investigation (i.e., tier one prices), we must first determine whether the prices from actual sales transactions involving PRC buyers and sellers are significantly distorted. As explained in the preamble to the regulations:

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.<sup>80</sup> 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.<sup>81</sup>

In the original questionnaire, we asked the GOC to provide production figures of wire rod by state-owned enterprises (SOEs) during 2008, 2009 and 2010. The GOC provided information regarding government

ownership of wire rod producers during 2008 only. The GOC stated that gathering such information for 2009 and 2010 would "take months to achieve" and, thus, it did not provide these figures.<sup>82</sup> We note that the only information relevant to the POI that the GOC provided were statements to the effect that certain pre-existing export restraints (i.e., export licenses and export taxes) for wire rod were not present during the POI. Therefore, the GOC has not provided the necessary or requested information for the Department to undertake a complete analysis regarding the government's role in the market for wire rod during the POI, and it is necessary to resort to the facts otherwise available pursuant to section 776(a) of the Act. As facts become available, we find that PRC prices of wire rod are significantly distorted as a result of the GOC's involvement in the market.<sup>83</sup>

Consequently, we determine that there are no appropriate tier one benchmark prices available for wire rod. Because we determine that there are no available tier one benchmark prices, we have turned to tier two (i.e., world market prices) available to purchasers in the PRC. For purposes of the preliminary determination, we find that the Japanese and Black Sea FOB export price data from the World Bank and Steel Business Briefing (SBB), respectively, should be used to derive a tier two, world market price for wire rod that would be available to purchasers of wire rod in the PRC.<sup>84</sup> We find that, for purposes of the preliminary determination, prices from the World Bank and SBB to be sufficiently reliable and representative. Both sources identify that the prices reported are export prices and that they are on an FOB basis. Such prices would be available to purchasers in the PRC. We adjusted these FOB export prices to reflect, as closely as possible, the price that the respondent firm would pay if it

imported the product, including import duties and valued added tax (VAT), ocean freight and domestic inland freight as stipulated in 19 CFR 351.511(a)(2)(iv). Where necessary, we converted the variables in the benchmark calculation to the same currency and unit of measure as reported by the mandatory respondents for their purchases of wire rod.

Some of the respondents have reported acquiring wire rod from trading companies or non-producing suppliers with which they were not cross-owned. In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, but the producer of the input is an "authority" within the meaning of section 771(5)(B) of the Act, we must evaluate whether the input has been provided for LTAR by comparing the price paid by the respondent to the trading company to the benchmark price.<sup>85</sup> Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC work together in order to identify the producers from whom the trading companies acquired the wire rod that was subsequently sold to the respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities. As stated previously, the Department has preliminarily determined all input producers of wire rod purchased by the respondents during the POI are authorities.

To determine whether the respondent producers purchased wire rod for LTAR, we compared the unit prices each respondent paid for its wire rod to our wire rod benchmark price. Where the purchase was made from a non-producing cross-owned supplier, we used the price paid by the cross-owned supplier for comparison purposes. We conducted our comparison on a monthly basis. Based on this comparison, we preliminarily determine that wire rod was provided for LTAR and that a benefit exists in the total amount of the difference between the benchmark and the price paid.<sup>86</sup>

<sup>85</sup> See Racks from the PRC Decision Memorandum at "Provision of Wire Rod for Less than Adequate Remuneration" section; see also *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009), and accompanying Issues and Decision Memorandum (CWASPP from the PRC Decision Memorandum) at "Provision of SSC for LTAR."

<sup>86</sup> See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

<sup>78</sup> *Determination*, 75 FR 32902 (June 10, 2010) (*Wire Decking from the PRC*), and accompanying Issues and Decision Memorandum (*Wire Decking from the PRC Decision Memorandum*) at "Provision of Wire Rod for LTAR"; see also *PC Strand from the PRC Decision Memorandum* at Comment 12.

<sup>79</sup> See section 771(5)(E)(iv) of the Act.

<sup>80</sup> See *Softwood Lumber from Canada Decision Memorandum* at "Market-Based Benchmark."

<sup>81</sup> See *Countervailing Duties*, 63 FR 65348, 65377 (November 25, 1998).

<sup>82</sup> See *id.*

<sup>83</sup> See GOC July 7, 2011 Questionnaire Response at 29.

<sup>84</sup> See *Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Racks from the PRC*), and accompanying Issues and Decision Memorandum (*Racks from the PRC Decision Memorandum*) at "Provision of Wire Rod for Less than Adequate Remuneration"; see also *Wire Decking from the PRC* at "Provision of Wire Rod for LTAR." The POI for *Wire Decking from the PRC* was 2008. The ownership/production for wire rod which the GOC submitted in the instant case is consistent with what it submitted in *Wire Decking from the PRC*. Because the GOC submitted ownership/production information from 2008 in this investigation and statements about wire rod exports during 2010, the Department was prevented from being able to conduct a full analysis.

<sup>85</sup> See Preliminary Benchmark Memorandum.

To calculate the subsidy rate, we divided the total benefit to each respondent by the appropriate denominator discussed above in the “Subsidy Valuation Information” section, and in the Preliminary Calculation Memoranda. On this basis, we calculated a subsidy of 45.94 percent *ad valorem* for the Huayuan Companies, 19.04 percent *ad valorem* for the Bao Zhang Companies, and 45.94 percent *ad valorem* for M&M.

## 2. Provision of Zinc for LTAR

The Department is investigating whether input producers, acting as Chinese government authorities, sold zinc to the respondents for LTAR. Both the Huayuan Companies and the Bao Zhang Companies reported purchasing zinc during the POI.<sup>87</sup>

As discussed in detail above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we are finding all of the zinc input producers that produced the zinc the Huayuan Companies and the Bao Zhang Companies purchased during the POI to be government authorities based on AFA. As a result, we preliminarily determine that the zinc sold by these input producers that was purchased by the respondents during the POI constitutes a financial contribution in the form of a governmental provision of a good.<sup>88</sup>

Having dealt with financial contribution, we now turn to specificity, one of the three required subsidy elements under the Act.<sup>89</sup> In our initial questionnaire, we asked the GOC to provide a list of industries in the PRC that purchase zinc directly, using a consistent level of industrial classification.<sup>90</sup> In response, the GOC stated that zinc had a wide range of uses (*e.g.*, galvanized steel products, alkaline batteries, various metal alloys, *etc.*) and that “a comprehensive list of industries that purchase zinc directly is not available to be provided.”<sup>91</sup> While the GOC did not provide the information in the form requested, we have considered the GOC’s response in light of the statutory standard for *de facto* specificity and, based on our review, we find the information is sufficient to reach a finding of specificity pursuant to section 771(5A)(D)(iii)(I) of the Act. This

<sup>87</sup> See Bao Zhang Companies June 27, 2011 Questionnaire Response at III-15; *see also* Huayuan Companies July 7, 2011 Questionnaire Response at I-17.

<sup>88</sup> See section 771(5)(D)(iii) of the Act.

<sup>89</sup> See section 771(5A) of the Act.

<sup>90</sup> See May 19, 2011 Original Questionnaire at II-7.

<sup>91</sup> See GOC July 7, 2011 Questionnaire Response at 43.

determination is consistent with *Wire Decking from the PRC*, in which the Department found the provision of zinc to be specific, based on virtually the same facts.<sup>92</sup>

With regard to benefit, the third required subsidy element, we preliminarily determine that the respondents received a benefit to the extent that the zinc purchased was provided for LTAR.<sup>93</sup> The criteria for identifying appropriate market-determined benchmarks for measuring whether the government-provided goods were provided for LTAR are set forth at 19 CFR 351.511(a)(2) and discussed above in the “Provision of Wire Rod for LTAR” section.

In the original questionnaire, we asked the GOC to provide production figures of zinc by SOEs during 2008, 2009 and 2010. The GOC provided information regarding government ownership of zinc producers during 2008 only. The GOC stated that gathering such information for 2009 and 2010 would “take months to achieve” and, thus, it did not provide these figures. We note that the only information relevant to the POI that the GOC provided were statements to the effect that exports of zinc were subject to export licenses and that there is no “quantitative restriction.”<sup>94</sup> Therefore, the GOC has not provided the necessary or requested information for the Department to undertake a complete analysis, regarding the government’s role in the market for zinc during the POI, and it is necessary to resort to the facts otherwise available pursuant to section 776(a) of the Act. As facts become available, we find that the zinc industry is significantly distorted as a result of the GOC’s involvement in the market.<sup>95</sup>

Consequently, we determine that there are no appropriate tier one benchmark prices available for zinc. Because we determine that there are no available tier one benchmark prices, we have turned to tier two (*i.e.*, world market prices) available to purchasers in the PRC. For purposes of the preliminary determination, we find that

<sup>92</sup> See *Wire Decking from the PRC* Decision Memorandum at “Provision of Zinc for LTAR.”

<sup>93</sup> See section 771(5)(E)(iv) of the Act.

<sup>94</sup> See GOC July 7, 2011 Questionnaire Response at 41.

<sup>95</sup> See *Wire Decking from the PRC* at “Provision of Zinc for LTAR.” The POI for *Wire Decking from the PRC* was 2008. The ownership/production for zinc which the GOC submitted in the instant case is consistent with what it submitted in *Wire Decking from the PRC*. The Department is unable to undertake a complete analysis based on ownership/production information from 2008 and the GOC’s statements about zinc exports during 2010.

the data from the World Bank, the International Monetary Fund (IMF) and SBB should be used to derive a tier two world market price for zinc that would be available to purchasers of zinc in the PRC.<sup>96</sup> We find that, for purposes of the preliminary determination, prices from the World Bank, IMF and SBB to be sufficiently reliable and representative. All three sources report London Metal Exchange world market zinc prices. Such prices would be available to purchasers in the PRC. We adjusted these prices to reflect, as closely as possible, the price that the respondent firm would pay if it imported the product, including import duties and VAT, ocean freight and domestic inland freight as stipulated in 19 CFR 351.511(a)(2)(iv). Where necessary, we converted the variables in the benchmark calculation to the same currency and unit of measure as reported by the mandatory respondents for their purchases of zinc.

Some of the respondents have reported acquiring zinc from trading companies or non-producing suppliers with which they were not cross-owned. In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, but the producer of the input is an “authority” within the meaning of section 771(5)(B) of the Act, we must evaluate whether the input has been provided for LTAR by comparing the price paid by the respondent to the trading company to the benchmark price.<sup>97</sup> Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC work together in order to identify the producers from whom the trading companies acquired the zinc that was subsequently sold to the respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities. As stated previously, the Department has preliminarily determined all zinc producers to be government authorities.

To determine whether the respondent producers purchased zinc for LTAR, we compared the unit prices each respondent paid for its zinc to our zinc benchmark price. We conducted our comparison on a monthly basis. Based on this comparison, we preliminarily determine that zinc was provided for LTAR and that a benefit exists in the

<sup>96</sup> See Preliminary Benchmark Memorandum.

<sup>97</sup> See Racks from the PRC Decision Memorandum at “Provision of Wire Rod for LTAR” section; *see also* CWASPP from the PRC Decision Memorandum at “Provision of SSC for LTAR.”

total amount of the difference between the benchmark and the price paid.<sup>98</sup>

To calculate the subsidy rate, we divided the total benefit to each respondent by the appropriate denominator discussed above in the “Subsidy Valuation Information” section, and in the Preliminary Calculation Memoranda. On this basis, we calculated a subsidy of 1.68 percent *ad valorem* for the Huayuan Companies, 0.08 percent *ad valorem* for the Bao Zhang Companies, and 1.68 percent *ad valorem* for M&M.

### 3. Provision of Electricity for LTAR

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the government’s provision of electricity, in part, on AFA.

In a CVD case, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. However, where possible, the Department will rely on the responsive producer’s or exporter’s records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. The Huayuan Companies, M&M, and the Bao Zhang Companies provided data on the electricity the companies consumed and the electricity rates paid during the POI.<sup>99</sup>

As noted above, the GOC did not provide the information requested by the Department as it pertains to the provision of electricity for LTAR program. We find that in deciding not to provide the requested information the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC and determine that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act. To determine the existence and amount

of any benefit from this program, we relied on the respondents’ reported information on the amounts of electricity used during the POI. We compared the rates paid by the respondents for their electricity to the highest rates that they could have paid in the PRC during the POI.

To calculate the benchmark, we selected the highest rates in the PRC for the type of user (*e.g.*, “large industrial users”) for the general or peak, normal, and valley ranges, as provided by the GOC.<sup>100</sup> The electricity rate benchmark chart is included in the Preliminary Benchmark Memorandum. This benchmark reflects an adverse inference, which we have drawn as a result of the GOC’s failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.

To measure whether the respondents received a benefit under this program, we first calculated the electricity prices the respondents paid by multiplying the monthly kilowatt hours or kilovolt amperes consumed for each price category (*e.g.*, great industry peak, basic electricity, *etc.*) by the corresponding electricity rates charged for each price category. Next, we calculated the benchmark electricity cost by multiplying the monthly consumption reported by the respondents for each price category (*e.g.*, great industry peak, basic electricity) by the highest electricity rate charged for each price category, as reflected in the electricity rate benchmark chart. To calculate the benefit for each month, we subtracted the amount paid by the respondents for electricity during each month of the POI from the monthly benchmark electricity price. We then calculated the total benefit for each company during the POI by summing the monthly benefits for each company.

Certain respondents also reported receiving electricity adjustments, but did not provide any explanation for these adjustments. Absent an explanation, the Department has no basis to consider including these adjustments in our preliminary calculations. The Department will request additional information from respondents regarding these adjustments and, for the final determination, will evaluate whether and how they should be allocated to electricity consumption.

To calculate the subsidy rate pertaining to electricity payments made by the respondents, we divided the benefit amount by the appropriate total

sales denominator, as discussed in the “Subsidy Valuation Information” section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable subsidy of 1.04 percent *ad valorem* for the Huayuan Companies, 2.37 percent *ad valorem* for the Bao Zhang Companies, and 1.04 percent *ad valorem* for M&M.

### 4. Export Grants From Local Governments

We initiated on a program entitled “Export Assistance Grants.”<sup>101</sup> In their questionnaire responses, two of the respondents reported that they had received export assistance grants from local governments, and another reported that it had received grants provided by the local government to assist in the development of export markets or to recognize export performance. Specifically, the Bao Zhang Companies reported that ABZ received: 1) an “Export Award;” 2) a “Foreign Trade Promotion Award;” and 3) financial assistance for an overseas market survey visit, all from the local Commerce Bureau.<sup>102</sup> The Huayuan Companies reported that MJH received “international market development” export assistance grants from the Tianjin Treasure Bureau prior to and during the POI.<sup>103</sup> M&M also reported receiving “international market development” export assistance grants from the Beijing Municipal Commission of Commerce during the POI.<sup>104</sup>

All three of ABZ’s grants were reported to have been received for activities related to exporting. Regarding MJH’s and M&M’s grants, both reported that a company that is legally entitled to export may apply for the international market development grant for expenses incurred for visiting overseas clients or participating in overseas exhibitions.<sup>105</sup> Based on information on the record, we find that these grants constitute a financial contribution within the meaning of section 771(5)(D)(i) of the Act. A benefit is received equal to the amount of the grants, in accordance with 19 CFR 351.504(a). Because the grants were reportedly provided for promoting exports or were otherwise export-related, we preliminarily

<sup>101</sup> See *Initiation Notice*.

<sup>102</sup> See Bao Zhang August 19, 2011 Supplemental Questionnaire Response at I–7.

<sup>103</sup> See Huayuan Companies July 7, 2011 Questionnaire Response at IV–III–22–25; see also Huayuan Companies August 9, 2011 Supplemental Questionnaire Response at IV–12.

<sup>104</sup> See M&M July 7, 2011 Questionnaire Response at III–23 to III–26.

<sup>105</sup> See Huayuan Companies July 7, 2011 Questionnaire Response at IV–III–23; see also M&M July 7, 2011 Questionnaire Response at III–24.

<sup>98</sup> See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a).

<sup>99</sup> See Bao Zhang Companies August 9, 2011 Supplemental Questionnaire Response at Exhibit 14; see also Huayuan Companies August 9, 2011 Supplemental Questionnaire Response at Exhibit I–S–10, II–S–7; see also MJH August 17, 2011 Supplemental Questionnaire Response at 2; see also M&M August 17, 2011 Supplemental Questionnaire Response at Exhibit 1.

<sup>100</sup> See GOC July 7, 2011 Questionnaire Response at Exhibit 17.

determine that the grants are specific as export subsidies within the meaning of section 771(5A)(B) of the Act. We intend to further investigate these programs during the remainder of the investigation.

In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), we have performed the “0.5 percent test,” for each year in which a grant was provided to ABZ, MJH and M&M. Specifically, for each year in which a grant was received, we divided the total amount of the grants received by each company by the relevant sales values. For those years in which the total amount of the grants exceeded 0.5 percent of the relevant sales in that year, we allocated the grants over time in accordance with 19 CFR 351.524. Otherwise, they were expensed in the year of receipt. To allocate the grants over time, we applied the calculation methodology set forth in 19 CFR 351.524(d), and used the AUL and the discount rates described above in the “Subsidies Valuation Information” section. To determine each company’s total benefit, we summed the amount of the benefits from each of these grants attributable to the POI.

To calculate the subsidy rate pertaining to these export grants, we divided the total benefit amount by the appropriate export sales denominator, as discussed in the “Subsidy Valuation Information” section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable subsidy of 0.15 percent *ad valorem* for the Huayuan Companies, 0.09 percent *ad valorem* for the Bao Zhang Companies, and 0.24 percent *ad valorem* for M&M.

#### 5. Exemption From City Construction Tax and Education Tax for Foreign Invested Enterprises

The Bao Zhang Companies reported that ABZ received benefits under the “Exemption from City Construction Tax and Education Tax for Foreign Invested Enterprises (FIEs)” program. According to the Bao Zhang Companies, ABZ received an exemption from paying the Urban Maintenance and Construction Tax and Additional Education Fees which are based on the VAT payable by a company every month. The Bao Zhang Companies stated that ABZ qualified for this benefit because it is an FIE. Consistent with our findings in *Aluminum Extrusions from the PRC and Racks from the PRC*, we preliminarily determine that the exemptions from the city construction tax and education surcharge under this program confer a

countervailable subsidy.<sup>106</sup> The tax exemptions are financial contributions in the form of revenue forgone by the government and provide a benefit to the recipient in the amount of the tax savings.<sup>107</sup> We also preliminarily determine that the exemptions afforded by this program are limited as a matter of law to certain enterprises (*i.e.* FIEs) and, hence, are specific under section 771(5A)(D)(i) of the Act. To calculate the benefit, we treated ABZ’s tax exemptions as recurring benefits, consistent with 19 CFR 351.524(c)(1), as the exemptions are based on the VAT payable by companies every year.

To compute the amount of the benefit under these exemptions, we first determined the rate the companies would have paid in the absence of the program. According to the Bao Zhang Companies, non-FIEs would have to pay one percent of their VAT payable every year for the Urban Maintenance and Construction Tax and three percent of their VAT payable every year for Additional Education Fees.<sup>108</sup> Therefore, we preliminarily determine that, absent these exemptions, ABZ should have paid four percent of its VAT payable for these taxes. Next, we compared the amount the companies would have paid in the absence of the program (four percent of VAT payable during the POI) with the rate the companies paid (zero), because they are FIEs.

To calculate the subsidy rate, we divided the sum of all tax savings, during the POI, by the appropriate sales denominator as discussed above in the “Subsidy Valuation Information” section and the Preliminary Calculation Memoranda. On this basis, we preliminarily determine the countervailable subsidy to be 0.01 percent *ad valorem* for the Bao Zhang Companies.

According to the GOC, this program was terminated effective December 1, 2010.<sup>109</sup> While there is sufficient evidence on the record demonstrating that a countervailable subsidy was conferred during the POI, we are unable to determine whether a program-wide change, in accordance with 19 CFR 351.526, with respect to this program has occurred. Specifically, the GOC has

<sup>106</sup> See Aluminum Extrusions from the PRC Decision Memorandum at “Exemption from City Construction Tax and Education Tax for FIEs;” see also Racks from the PRC Decision Memorandum at “Exemption from City Construction Tax and Education Tax for FIEs in Guangdong Province.”

<sup>107</sup> See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

<sup>108</sup> See Bao Zhang Companies August 9, 2011 Supplemental Questionnaire Response at I-17-18.

<sup>109</sup> See GOC July 7, 2011 Questionnaire Response at 74.

not provided information clarifying whether a substitute program has been established to replace this program in accordance with 19 CFR 351.526(d)(2). Therefore, we will request from the GOC additional information necessary to determine whether this program has been terminated. If we find that this program was terminated in accordance with the provisions of 19 CFR 351.526(d), we will adjust the cash deposit rate accordingly for the final determination.

#### *Program Preliminarily Determined Not To Confer a Countervailable Benefit During the POI*

Export Subsidies Characterized as “VAT Rebates”

The Department’s regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted “exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.”<sup>110</sup> To determine whether the GOC provided a benefit under this program, we compared the VAT rebate upon export to the VAT levied with respect to the production and distribution of like products when sold for domestic consumption. The GOC reported that, during the POI, the VAT levied on both wire rod and zinc sales in the domestic market was 17 percent and that the VAT exemption upon the export of galvanized wire was nine percent.<sup>111</sup> Therefore, we find that the VAT exempted upon the export of galvanized wire did not confer a countervailable benefit during the POI because the amount of the VAT rebated on export is lower than the amount paid in the domestic market.

#### *Programs Preliminarily Determined To Be Not Used By Respondents*<sup>112</sup>

We preliminarily determine that the participating respondents did not apply for or receive any benefits during the POI under the following programs:

1. Provision of Land Use Rights for LTAR within the Jinzhou District within the City of Dalian.
2. Provision of Land Use Rights for LTAR to Enterprises within the Zhaoqing High-Tech Industry Development Zone in Guangdong Province.

<sup>110</sup> See 19 CFR 351.517(a); see also 19 CFR 351.102(a)(28).

<sup>111</sup> See, e.g., GOC August 22, 2011 Supplemental Questionnaire Response at I-22.

<sup>112</sup> In this section we refer to programs preliminarily determined to be not used by the three participating respondent companies.

3. Provision of Land Use Rights for LTAR to Enterprises within the South Sanshui Science and Technology Industrial Park of Foshan City.

4. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment.

5. Income Tax Exemption for Investment in Domestic Technological Renovation.

6. Accelerated Depreciation for Enterprises Located in the Northeast Region.

7. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China.

8. Income Tax Exemption for Investors in Designated Geographical Regions within Liaoning Province.

9. VAT Deduction on Fixed Assets.

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

11. Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax.

12. "Five Points, One Line" Program of Liaoning Province.

13. Provincial Export Interest Subsidies.

14. State Key Technology Project Fund.

15. Subsidies for Development of Famous Export Brands and China World Top Brands.

16. Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands.

17. Zhejiang Province Program to Rebate Antidumping Legal Fees.

18. Technology to Improve Trade Research and Development Fund of Jiangsu Province.

19. Outstanding Growth Private Enterprise and Small and Medium-Sized Enterprises Development in Jiangyin Fund of Jiangyin City.

20. Grants for Programs Under the 2007 Science and Technology Development Plan in Shandong Province.

21. Special Funds for Encouraging Foreign Economic and Trade Development and for Drawing Significant Foreign Investment Projects in Shandong Province.

22. "Two Free, Three Half" Tax Exemptions for "Productive" FIEs.

23. Income Tax Exemption Program for Export-Oriented FIEs.

24. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs.

25. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises.

26. Income Tax Subsidies for FIEs Based on Geographic Location.

27. VAT Refunds for FIEs Purchasing Domestically-Produced Equipment.

28. Income Tax Credits for FIEs Purchasing Domestically-Produced Equipment.

#### *Programs for Which Additional Information Is Needed*

The Department finds that additional information is needed in order to determine whether the following programs are countervailable. After gathering and analyzing the additional information, the Department intends to issue a post-preliminary analysis regarding whether these programs are countervailable.

#### 1. Policy Loans to the Galvanized Wire Industry

The Department initiated on five "preferential loans and interest rates" programs: (1) Policy Loans to the Galvanized Steel Wire Industry; (2) Preferential Loans for Key Projects and Technologies; (3) Preferential Loans and Directed Credit; (4) Preferential Lending to galvanized wire Producers and Exporters Classified as "Honorable Enterprises;" and (5) Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program.<sup>113</sup> Only the Bao Zhang Companies reported outstanding loans from banks during the POI. The Bao Zhang Companies reported that SBZ received loans from banks that were outstanding during the POI, but that neither of these banks are state-owned commercial banks.<sup>114</sup> In the supplemental questionnaire, we requested that the GOC provide information regarding the ownership of these two banks. In its August 22, 2011 supplemental questionnaire response, the GOC states that, for one of the banks, state ownership accounted for less than one percent of the total shares of the bank. For the other bank, the GOC states that a "state-owned legal person" accounted for over 70 percent of the ownership of the bank during the POI.<sup>115</sup> Because the fact that these loans may be from government-owned or controlled banks was provided only in the August 22, 2011 supplemental questionnaire response, the Department has not had sufficient time to request additional information about the nature of these loans nor to assess whether these loans

are countervailable. Therefore, the Department needs additional information to determine whether the loans received by SBZ constitute a countervailable subsidy.

#### 2. Zhabei District "Save Energy Reduce Emission Team" Award

In response to questions in our supplemental questionnaires to the respondent companies regarding income items listed in their financial statements, the Bao Zhang Companies reported, in their August 19, 2011 supplemental questionnaire response, that SBZ received a "Save Energy Reduce Emission Team" award in 2010.<sup>116</sup> The Bao Zhang Companies stated that the financial award was given by the Zhabei District to SBZ for successfully renovating its coal burning oven into a vacant (vacuum) oven, saving energy and reducing emissions.<sup>117</sup> This information was provided too late for the Department to issue questions to both the GOC and the Bao Zhang Companies concerning this program. As such, we are unable to reach a preliminary determination regarding the countervailability of this program for the preliminary determination.

#### *Verification*

In accordance with section 782(i)(1) of the Act, the Department will verify the information submitted by the Huayuan Companies, M&M, the Bao Zhang Companies, and the GOC prior to making our final determination.

#### *Suspension of Liquidation*

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for subject merchandise produced and exported by the entities individually investigated. We have also calculated an all-others rate. Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States. However, the all-others rate may not include zero and *de minimis* rates or any rates based solely on the facts available. In this investigation, the three calculated rates can be used to calculate the all-others rate. Therefore, we have assigned the weighted-average of these three calculated rates as the all-others rate. We preliminarily determine the

<sup>113</sup> See *Initiation Notice*, 76 FR at 23567.

<sup>114</sup> See Bao Zhang Companies July 7, 2011 Questionnaire Response at III-10.

<sup>115</sup> See GOC August 22, 2011 Supplemental Questionnaire Response at I-3.

<sup>116</sup> See Bao Zhang Companies August 19, 2011 Supplemental Questionnaire Response at I-10.

<sup>117</sup> See *id.*

total estimated countervailable subsidy rates to be:

Company	Subsidy rate
Tianjin Huayuan Metal Wire Products Co., Ltd.; Tianjin Tianxin Metal Products Co., Ltd.; and Tianjin Mei Jia Hua Trade Co., Ltd. (collectively, the Huayuan Companies).	48.81 percent <i>ad valorem</i> .
M&M Industries Co., Ltd. ....	48.90 percent <i>ad valorem</i> .
Shanghai Bao Zhang Industry Co., Ltd.; Anhui Bao Zhang Metal Products Co., Ltd.; and Shanghai Li Chao Industry Co., Ltd. (collectively, the Bao Zhang Companies).	21.59 percent <i>ad valorem</i> .
Shandong Hualing Hardware and Tool Co., Ltd. ....	253.07 percent <i>ad valorem</i> .
All Others Rate .....	44.46 percent <i>ad valorem</i> .

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of the subject merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above.

#### ITC Notification

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

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

#### Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. We will notify parties of the schedule for submitting case briefs and rebuttal briefs, in accordance with 19 CFR 351.309(c) and 19 CFR 351.309(d)(1), respectively. A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford

interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, we intend to hold the hearing two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d). Any such hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm, by telephone, the date, time, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: August 29, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011-22715 Filed 9-2-11; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-580-866]

#### Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Preliminary Negative 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 not being provided to producers and exporters of bottom mount combination refrigerator-freezers (bottom mount refrigerators) from the Republic of Korea (Korea).

**DATES:** *Effective Date:* September 6, 2011.

#### FOR FURTHER INFORMATION CONTACT:

Justin M. Neuman or Myrna L. Lobo, 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) 482-2371, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Case History

On April 19, 2011, the Department initiated a countervailing duty (CVD) investigation of bottom mount refrigerators from Korea.<sup>1</sup> In the *Initiation Notice*, the Department set aside a period for all interested parties to raise issues regarding product coverage. The comments we received are discussed in the "Scope Comments" section below.

In the *Initiation Notice*, the Department identified Samsung

<sup>1</sup> See *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Initiation of Countervailing Duty Investigation*, 76 FR 23298 (April 26, 2011) (*Initiation Notice*). The petitioner in this investigation is Whirlpool Corporation.