

never been affiliated with any company that exported subject merchandise to the United States during the POI; and (3) its export activities were not controlled by the central government of the PRC.

In accordance with 19 CFR 351.214(b)(2)(iv), Yituo submitted documentation establishing the following: (1) the date on which it first shipped new pneumatic off-the-road tires for export to the United States and the date on which the new pneumatic off-the-road tires were first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

### Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the "Act") and 19 CFR 351.214(d)(1), we find that the request submitted by Yituo meets the threshold requirements for initiation of a new shipper review for shipments of new pneumatic off-the-road tires from the PRC produced and exported by Yituo. *See* Memorandum to the File through Wendy Frankel, Office Director, New Shipper Initiation Checklist, dated concurrently with this notice. The POR is February 20, 2008, through August 31, 2009. *See* 19 CFR 351.214(g)(1)(i)(A). The Department will conduct this review according to the deadlines set forth in section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Yituo, which will include separate rate sections. The review will proceed if the response provides sufficient indication that Yituo is not subject to either *de jure* or *de facto* government control with respect to its export of new pneumatic off-the-road tires.

We will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Yituo in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Yituo certified that it both produced and exported the subject merchandise, the sale of which is the basis for this new shipper review request, we will apply the bonding privilege to Yituo only for subject

merchandise which Yituo both produced and exported.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 19 CFR 351.221(c)(1)(i).

Dated: October 27, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

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**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration (C-570-946)

#### **Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination**

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

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

**EFFECTIVE DATE:** November 2, 2009.

**FOR FURTHER INFORMATION CONTACT:** Robert Copyak or Jolanta Lawska, AD/CVD Operations, Office 3, Operations, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2209 and (202) 482-8362, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Case History**

On May 27, 2009, the Department received a petition in proper form by the petitioners.<sup>1</sup> This investigation was initiated on June 16, 2009. *See Pre-Stressed Concrete Steel Wire Strand From the People's Republic of China:*

<sup>1</sup> Petitioners are American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp.

*Initiation of Countervailing Duty Investigation*, 74 FR 29670 (June 23, 2009) (Initiation), and accompanying Initiation Checklist.<sup>2</sup> On August 12, 2009, we postponed the deadline for the preliminary determination by 65 days to no later than October 24, 2009.<sup>3</sup> *See Pre-Stressed Concrete Steel Wire Strand From the Peoples Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 74 FR 40567 (August 12, 2009).

Due to the large number of producers and exporters of PC strand in the PRC, we determined that it was not possible to investigate individually each producer or exporter and, therefore, selected two producers/exporters of PC strand to be mandatory respondents: Fasten Group Import & Export Co., Ltd. (Fasten I&E) and Xinhua Metal Products Company (Xinhua). *See* Memorandum through Melissa G. Skinner, Director, Operations, Office 3, to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding "Respondent Selection," (July 2, 2009).<sup>4</sup>

On July 2, 2009, we issued the initial countervailing duty (CVD) questionnaire to the Government of the People's Republic of China (GOC) and the mandatory respondents. On August 4, 2009, Xinhua submitted its initial questionnaire response. On August 24, 2009, the GOC and Fasten I&E submitted its initial questionnaire responses.<sup>5</sup> Regarding the GOC, we issued supplemental questionnaires on September 2, 8, 15, 18, 22, and 29, 2009, to which the GOC submitted responses on September 29, 2009, and October 13, 15, and 19. Regarding the Fasten Companies, we issued supplemental questionnaires on September 11, and 14, 2009, as well as October 1, 2, 9, and 16, 2009, to which the Fasten Companies responded on September 14, 22, 24, 2009, and October 13, 15, and 19, 2009. In the September 11, 2009, supplemental questionnaire the Department instructed the Fasten

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

<sup>3</sup> October 24, 2009, falls on a weekend. Therefore the actual signature date is October 26, 2009.

<sup>4</sup> A public version of this memorandum is available in the CRU.

<sup>5</sup> Included with the initial questionnaire of Fasten I&E were questionnaire responses from the Fasten Group Corporation (Fasten Corp.), Jiangyin Fasten Steel (Fasten Steel), Jiangyin Hongyu Metal Products Co., Ltd. (Hongyu Metal), and Jiangyin Walsin Steel Cable Co., Ltd. (Walsin). In this preliminary determination, we refer to the aforementioned companies and Jiangyin Hongsheng Co., Ltd. (Hongsheng) as the Fasten Companies.

Companies to submit an initial questionnaire response on behalf of Hongsheng, to which Hongsheng responded on October 6, 2009. Regarding Xinhua, we issued a supplemental questionnaire on September 3 and 29, 2009, as well as October 6, 2009, to which Xinhua responded on September 21, 2009, and October 15, 2009. On August 14, 2009, we issued an initial CVD questionnaire to Xinhua's parent company, Xinyu Iron and Steel Joint Stock Limited Company (Xinyu), to which Xinyu responded on September 17, 2009. On September 1, 2009, we issued an initial CVD questionnaire to the parent of Xinyu, Xinyu Iron and Steel Limited Liability Company (Xingang), to which Xingang responded on September 17, 2009.

### Scope of the Investigation

For purposes of this investigation, PC strand is steel wire strand, other than of stainless steel, which is suitable for use in, but not limited to, pre-stressed concrete (both pre-tensioned and post-tensioned) applications. The scope of this investigation encompasses all types and diameters of PC strand whether uncoated (uncovered) or coated (covered) by any substance, including but not limited to, grease, plastic sheath, or epoxy. This merchandise includes, but is not limited to, PC strand produced to the American Society for Testing and Materials (ASTM) A-416 specification, or comparable domestic or foreign specifications. PC strand made from galvanized wire is excluded from the scope if the zinc and/or zinc oxide coating meets or exceeds the 0.40 oz./ft<sup>2</sup> standard set forth in ASTM-A-475.

The PC strand subject to this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### Scope Comments

In accordance with the *Preamble* to the Department's regulations (see *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*)), in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. The Department did not receive scope comments from any interested party.

### Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the 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 June 3, 2008, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the PRC of the subject merchandise. See *Pre-Stressed Concrete Steel Wire Strand from China*, Investigation Nos. 701-TA-464 and 731-TA-1160 (Preliminary), 74 FR 34782 (July 17, 2009).

### Period of Investigation

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

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

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

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

Additionally, for the reasons stated in the CWP Decision Memorandum, we are

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

### Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii) - (v) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) a firm that produces an input that is primarily dedicated to the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. See also the Preamble to the Department's regulations, which states "[I]n certain circumstances, a large minority voting interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership." See *Preamble*, 63 FR at 65401. The Court of International Trade (CIT) has further upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-603 (CIT 2001) (*Fabrique*).

### The Fasten Companies

Based on the initial questionnaire responses of the Fasten Companies, we have identified Fasten Corp. as the parent of the Fasten Companies, Fasten I&E as the trading company that

exported subject merchandise during the POI, and Hongsheng as an input supplier. The Fasten Companies stated that Fasten Steel, Walsin, and Company X produced PC strand that was exported to the United States during the POI through Fasten I&E.<sup>6</sup> According to the Fasten Companies, Hongyu Metal, though it produced PC strand, did not supply Fasten I&E with PC strand during the POI.

Based on the ownership information contained in the Fasten Companies' questionnaire responses, we find for purposes of this preliminary determination that, in accordance with 19 CFR 351.525(b)(6)(vi), Fasten Corp. is cross-owned with Fasten I&E and Hongsheng. Our finding in this regard is based on the fact that Fasten I&E and Hongsheng are majority-owned by Fasten Corp.<sup>7</sup> We further find that pursuant to 19 CFR 351.525(b)(6)(vi), Hongyu Metal is cross-owned with Fasten Corp., Fasten I&E, and Hongsheng by virtue of Hongsheng's majority ownership of Hongyu Metal.

In addition, we find that Fasten Steel and Walsin are affiliated with Hongsheng and, thus Fasten Corp. and Fasten I&E as well, as defined under section 771(33)(E) of the Act.<sup>8</sup> As explained above, under 19 CFR 351.525(b)(6)(vi), cross-ownership is normally found where majority voting ownership interests between two corporations or through common ownership of two (or more) corporations exists. The *Preamble* goes on to explain that the Department may, nonetheless, find cross-ownership where the level of ownership is less than 50 percent if the Department finds that the interests of the firms in question have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other firm in essentially the same ways it can use its own assets (or subsidy benefits). See *Preamble*, 63 FR at 65401.

Based on Hongsheng's level of ownership of Fasten Steel, combined with the information in the Fasten Companies October 15, 2009, we preliminarily determine that Fasten Steel is cross-owned with Hongsheng and, thus, is cross-owned with the Fasten Companies. The Fasten Companies October 15, 2009, submission indicates that Hongsheng possesses a significant ability to control the operations of Fasten Steel. Hongsheng appointed three out of seven

of directors in Fasten Steel's board of directors. One of the individuals appointed to the board of Fasten Steel serves as the board chairman. The other two board members of appointed by Hongsheng serve Fasten Steel's as director and general manager. See the Fasten Companies October 15, 2009, submission at 1 through 4. In addition, the October 15, 2009, submission indicates that Hongsheng served as the guarantor on several of Fasten Steel's loans. Also, the October 15, 2009, submission indicates a degree of cooperation with respect to the wire rod that Hongsheng acquired from wire rod suppliers during the POI. As the Fasten Companies explain, "during Hongsheng's negotiations with rod suppliers, Fasten Steel did play an import role because, as a producer of the subject merchandise, Fasten Steel had a better understanding of the wire rod market and prices." See October 19, 2009, submission as 3. Lastly, information supplied by Hongyu Metal indicates that during the POI, Hongyu Metal paid its electricity expenses to Fasten Steel thereby further indicating the degree to which Fasten Steel inter-connected with subsidiaries of Hongsheng. See Hongyu Metal's August 26, 2009, submission at 22. Therefore, based on this information, we preliminarily determine that Fasten Steel is cross-owned with Hongsheng as well as Fasten Corp., Hongyu Metal, and Fasten I&E. Consequently, as explained further below, measurement of any subsidy benefits received by Fasten I&E, Hongyu Metal or Fasten Steel are subject to the cross-ownership regulations under 19 CFR 351.525(b), as applicable.

Regarding Walsin, we have not reached any conclusions with respect to cross-ownership. However, as a producer of subject merchandise whose goods were exported by Fasten I&E to the United States during the POI, we find that any subsidies to Walsin are attributable to the subject merchandise pursuant to the Department's trading company regulation at 19 CFR 351.525(c). Therefore, we find it unnecessary to reach any conclusions with respect to cross-ownership.

Regarding Company X, we find that affiliation and cross-ownership do not exist with regard to Fasten Corp., Fasten I&E, Hongsheng, Fasten Steel, or Hongyu Metal. However, measurement of any subsidy benefits received by Company X remains subject to our trading company regulation within the meaning of 19 CFR 351.525(c).

Regardless of cross-ownership, 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 which is producing subject merchandise that is sold through the trading company. However, when investigating or reviewing companies, the Department, has, in some instances, limited the number of producers it examines under 19 CFR 351.525(c). For example, in *Pasta from Italy*, one of the mandatory respondents selected was a trading company that exported pasta produced by multiple pasta manufacturers. In accordance with 19 CFR 351.525(c), the Department cumulated the benefits received by the trading company and its pasta producers, but, limited its analysis to the two major pasta manufacturers that supplied the trading company during the period of review (POR). See *Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review*, 66 FR 64214 (December 12, 2001) (*Pasta from Italy*), and accompanying Issues and Decision Memorandum (*Pasta from Italy Decision Memorandum*) at "Attribution."

Similarly, in light of the circumstances of the instant case, we preliminarily determine that it is appropriate to limit our examination of possible subsidies to PC strand producers to the following companies, all of whom are affiliated in some manner with the Fasten Corp.: Fasten Steel, Hongyu Metal, and Walsin. We note that, when compared with Company X, Walsin accounted for a larger share of PC strand exported to the United States by Fasten I&E during the POI. See the Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, "Analysis of Fasten Group Import & Export Co., Ltd.'s (Fasten I&E) Suppliers of Subject Merchandise" (October 26, 2009), of which the public version is on file in the CRU of the Commerce Building.

In consideration of the foregoing, in accordance with 19 CFR 351.525(b)(6)(iii), we have attributed subsidies received by the Fasten Corp. to the consolidated sales of the Fasten Corp., which include Fasten I&E. In accordance with 19 CFR 351.525(b)(6)(i), we have attributed subsidies received by Fasten I&E to the sales of Fasten I&E.

In accordance with 19 CFR 351.525(c), we have cumulated the subsidies received by Walsin with benefits from subsidies attributable to Fasten I&E. Specifically, for each countervailable subsidy received by Walsin, we derived the benefit and calculated a program subsidy rate. We then multiplied the total subsidy rate

<sup>6</sup> The identity of Company X is proprietary. See Preliminary Calculation Memo for Fasten Companies.

<sup>7</sup> The exact level of ownership is proprietary.

<sup>8</sup> The level of ownership of Fasten Steel and Walsin held by Hongsheng is proprietary.

calculated for Walsin by Walsin's share of PC strand that was exported to the United States during the POI by Fasten I&E.<sup>9</sup> Lastly, we added the apportioned subsidy rate to the other subsidy rates attributable to Fasten I&E.

Concerning Hongyu Metal and Fasten Steel, we are attributing subsidies received those firms by the sum of the firms' respective total sales and the sales of Fasten I&E. *See* 19 C.F.R.

351.525(b)(6)(ii). As noted above, Hongyu Metal did not produce PC strand that was exported to the United States by Fasten I&E during the POI. Nonetheless, our decision to examine subsidies received by Hongyu Metal is consistent with the Department's prior practice, which was affirmed by the Court of International Trade. *See Cut-to-Length Carbon Steel Plate From Belgium; Final Results of Countervailing Duty Administrative Review*, 64 FR 12982, 12984 (March 16, 1999); *see also Fabrique*, 166 F. Supp. 2d 593, 603–604.

As explained in the "Analysis of Programs" section below, we are examining whether Hongsheng purchased wire rod for LTAR.<sup>10</sup> Hongsheng did not produce the wire rod that it sold to Fasten Steel and Hongyu Metal during the POI. Rather, Hongsheng acquired the inputs from other producers. Therefore, in conducting our subsidy analysis of the provision of wire rod for LTAR program, we limited our benefit calculations to Hongsheng's wire rod suppliers that we have determined are government authorities capable of providing a financial contribution as described under 771(5)(D)(iv) of the Act. In accordance with 19 CFR 351.525(b)(6)(iii), we are attributing subsidies received by Hongsheng to sales of Hongsheng, Hongyu Metal, Fasten Steel, and Fasten I&E.

Further, we are attributing any benefits received by Walsin in connection with the purchase of wire rod for LTAR produced by government authorities to the total sales of Walsin. In addition, we are cumulating the subsidies received by Walsin with those subsidies received by Fasten I&E in the manner described above.

#### **Xinhua, Xinyu, and Xingang (Collectively the Xinhua Companies)**

In its initial questionnaire response, Xinhua reported that it is wholly-owned by Xinyu and that Xinyu, in turn, is

wholly-owned by Xingang. In accordance with 19 CFR 351.525(b)(6)(vi), we preliminarily determine that Xinhua, Xinyu, and Xingang are cross-owned. Further, pursuant to 19 CFR 351.525(b)(6)(iii), we are attributing the subsidies received by Xingang to the consolidated sales of Xingang, which include Xinyu and Xinhua. Similarly, we are attributing the subsidies received by Xinyu to the consolidated sales of Xinyu, which include Xinhua. And, in accordance with 19 CFR 351.525(b)(6)(i), we are attributing subsidies received by Xinhua to the sales of Xinhua. Lastly, pursuant to 19 CFR 351.525(b)(6)(v), we are attributing subsidies transferred to Xinhua from a cross-owned firm to the sales of Xinhua.

Xinhua reported that it acquired a relatively small quantity of wire rod inputs from Xinyu during the POI. For purposes of the preliminary determination, we are treating Xinhua's purchases of wire rod from Xinyu as an internal transaction that does not constitute a financial contribution from a government authority. Therefore, we have not included such transactions in our subsidy analysis.

#### **Allocation Period**

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

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.

Additionally, in accordance with the Department's practice we have determined that we will identify and measure subsidies in China beginning on the date of the country's accession to

the World Trade Organization (WTO), December 11, 2001. *See, e.g., Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (*Line Pipe from the PRC*), and accompanying Issues and Decision Memorandum (*Line Pipe from the PRC Decision Memorandum*) at "Allocation Period" section and Comment 18.

#### **Adverse Facts Available**

##### *Provision of Electricity for LTAR*

On July 2, 2009, the Department issued its initial questionnaire to the GOC. In the questionnaire, the Department asked the GOC several questions regarding its alleged provision of electricity to the mandatory respondents for LTAR. *See* Appendix 7 of the Department's initial questionnaire. The GOC failed to respond to these questions. *See* the GOC's August 24, 2009, questionnaire response at 52 through 55. The Department issued a supplemental questionnaire in which it asked the GOC once again to submit the requested information concerning the provision of electricity for LTAR program. *See* the Department's September 2, 2009, supplemental questionnaire. Again, the GOC failed to provide all of the requested information with regard to several of the Department's questions. *See* the GOC's September 29, 2009, supplemental questionnaire response at 12 through 14.

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

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

<sup>9</sup>In deriving the share of PC strand produced by Fasten Steel and Walsin that was exported by Fasten Steel I&E during the POI, we did not include the sales volume of Company X.

<sup>10</sup>Concerning Walsin, during the POI it purchased its wire rod inputs from suppliers other than Hongsheng.

LTAR” section of this preliminary determination for a discussion of the Department’s derivation of the benefit.

#### *Various Grant Programs*

The Fasten Companies and the Xinhua Companies reported receiving grants under various central, provincial, and municipal level programs. We sent out supplemental questionnaires to the GOC regarding these grant programs. In certain instances, the GOC failed to provide the information necessary for the Department to conduct its subsidy analysis as it pertains to the issue of *de facto* specificity, as described under section 771(5A)(D)(iii) of the Act. Namely, the GOC failed to provide, as requested, information concerning the manner in which the various grants were distributed across firms and industries.

We preliminarily determine that by failing to provide the requested information, the use of facts available, as described under 776(a)(2)(A) of the Act, is warranted. We further preliminarily determine that the GOC has failed to act to the best of its ability concerning these grant programs and that the application of AFA, described under section 776(b) of the Act, is warranted. Therefore, we are finding that the grant programs are specific under section 771(5A)(D)(iii) of the Act. The grant programs for which we are applying AFA in this regard are discussed below in the “Analysis of Programs” section.

#### *Status of Wire Rod Suppliers*

The Department is investigating the extent to which firms, acting as government authorities, sold wire rod to the respondents for LTAR. As discussed in further detail below in the “Provision of Wire Rod for LTAR” section, the Department sought information from the mandatory respondents and the GOC concerning the identity of the firms that produced the wire rod ultimately sold to the mandatory respondents during the POI. In other words, the Department sought information that would enable it to determine whether the input suppliers acted either as producers of the input or as trading companies that resold the input that was produced by other firms. Without being able to confirm the identity of the ultimate producer of the wire rod, the Department is unable to determine whether the wire rod was supplied by government authorities. In some instances, the GOC and the mandatory respondents failed to provide the requested information. We preliminarily determine that the GOC and the mandatory respondents have not

provided the requested information and that the use of facts available, as described under section 776(a)(2)(A) of the Act is warranted. We further preliminarily determine that the GOC and the mandatory respondents did not act to the best of their ability, as described under section 776(b) of the Act, when failing to respond to the Department’s requests for information concerning the status of the mandatory respondents’ input suppliers. Therefore, as AFA in this preliminary determination, we are making the following assumptions:

1. In instances in which a mandatory respondent identified an input supplier as a private company but failed to indicate whether the supplier was an input producer or a trading company, we are assuming that the supplier acted as a trading company, and;
2. In instances in which the mandatory respondent identified an input supplier as a state-owned company but failed to indicate whether the supplier was an input producer or a trading company, we are assuming that the supplier acted as a producer.

These adverse assumptions have the effect of increasing the amount of benefits attributed to the mandatory respondent in question.

#### **Subsidies Valuation Information**

##### **Benchmarks and Discount Rates**

##### **Benchmarks for Short-Term RMB Denominated Loan**

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

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

Comment 10. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department’s practice. For example, in *Softwood Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum (*Softwood Lumber from Canada Decision Memorandum*) at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC* and more recently updated in *LWTP from the PRC*. See *CFS from the PRC Decision Memorandum at* Comment 10; see also *LWTP from the PRC Decision Memorandum at* “Benchmarks and Discount Rates” section. This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita 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 gross national income (GNI), based on the World Bank’s classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries as of July 2007. As explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund and 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 antidumping (AD) purposes for any part of the years in question (Armenia, Azerbaijan, Belarus, Georgia, Moldova, 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. Specifically, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.

The resulting inflation-adjusted benchmark lending rates are provided in the respondents' preliminary calculation memoranda. Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondents' interest payments for inflation. This was done using the PRC inflation figure as reported in the IFS.

### Benchmarks for Long-Term Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. See *Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*LWRP from the PRC*), and accompanying Issues and Decision Memorandum (*LWRP from the PRC Decision Memorandum*) at "Discount Rates" section. In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and

the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum (*Citric Acid from the PRC Decision Memorandum*) at Comment 14. Finally, because these long-term rates are net of inflation as noted above, we adjusted the PRC respondents' payments to remove inflation.

### Benchmarks for Foreign Currency-Denominated Loans

For foreign currency-denominated short-term loans, the Department used as a benchmark the one-year dollar interest rates for the London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. See *LWTP from the PRC Decision Memorandum* at "Benchmarks and Discount Rates" section. For long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.

### Discount Rates

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

### Analysis of Programs

#### I. Programs Preliminarily Determined To Be Countervailable

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

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

In *Tires from the PRC*, the Department determined that majority government ownership of an input producer is sufficient to qualify it as an "authority." See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and*

*Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*Tires from the PRC*), and accompanying Issues and Decision Memorandum (*Tires from the PRC Decision Memorandum*) at "Government Provision of Rubber for Less than Adequate Remuneration." Based on the record in the instant investigation, we determine that wire rod producers that supply respondents and that are majority-government owned are "authorities." As a result, we determine that wire rod supplied by companies deemed to be government authorities constitute a financial contribution to respondents in the form of a governmental provision of a good and that the respondents received a subsidy to the extent that the price they paid for wire rod produced by these suppliers was sold for LTAR. See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

The Fasten Companies and the Xinhua Companies reported acquiring certain quantities of wire rod from trading companies. In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an "authority" within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input was sold for LTAR. See CWP from the PRC Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration" section; see also *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" section, and CWASPP from the PRC Decision Memorandum at "Provision of SSC for LTAR." 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 respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities. In several instances, the GOC and the mandatory respondents were able to supply the requested information.

However, in some instances, although the GOC and the mandatory respondents properly indicated whether



the wire rod suppliers were trading companies in the business of reselling wire rod they were, nonetheless, unable to identify the producers that supplied the trading companies. Because the respondent companies and the GOC have not been able to supply the requested information, we find that the necessary information is not on the record and, as a result, we are resorting to the use of facts available (FA) within the meaning of sections 776(a)(1) and (2) of the Act. In its response, the GOC provided information on the amount of wire rod produced by state-owned enterprises (SOEs) and private producers in the PRC. Using these data, we derived the ratio of wire rod produced by SOEs during the POI. Thus, pursuant to sections 776(a)(1) and (2) of the Act, we have resorted to the use of FA with regard to the wire rod sold to the Fasten Companies and Xinhua Companies by certain domestic trading companies. Specifically, we assumed that the percentage of wire rod supplied by these domestic trading companies that is produced by government authorities is equal to the ratio of wire rod produced by SOEs during the POI.<sup>11</sup> See Preliminary Calculation Memoranda for the Fasten Companies and the Xinhua Companies. The approach is consistent with the Department's practice. See, e.g., CWP from the PRC Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration;" see also LWRP from the PRC Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration."

In other instances, the GOC and the mandatory respondents failed to indicate, as instructed, whether their wire rod suppliers were producers or trading companies. This lack of information impedes our ability to determine whether the wire sold by these wire rod suppliers was, in fact, produced by a government authority. See section 776(a)(2)(A) and (C) of the Act. Therefore, as discussed in the "Adverse Facts Available" section, we are resorting to the use of AFA as described under section 776(b) of the Act. Specifically, we are making the following adverse assumptions:

1. In instances in which a mandatory respondent identified an input supplier as a private company but failed to indicate whether the supplier was an input producer or

a trading company, we are assuming that the supplier acted as a trading company, and;

2. In instances in which the mandatory respondent identified an input supplier as a state-owned company but failed to indicate whether the supplier was an input producer or a trading company, we are assuming that the supplier acted as a producer.

These adverse assumptions have the effect of increasing the amount of benefits attributed to the mandatory respondent in question.

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

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

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

See *Preamble to Countervailing Duty Regulations*, 63 FR 65377, (November 25, 1998) (Preamble). The Preamble further recognizes that distortion can

occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. *Id.*

In the instant investigation, the GOC reported the total wire rod production by state-owned entities during the POI. The number of these state-owned entities (SOEs and COEs) accounted for approximately the same percentage of the wire rod production in the PRC as was recently found in *Shelving and Racks from the PRC*, in which the Department determined that the GOC had direct ownership or control of wire rod production. See *Shelving and Racks Decision Memorandum*, at Comment 4. Because the GOC has not provided any information that would lead the Department to reconsider the determination in *Shelving and Racks from the PRC*, we find that the substantial market share held by SOEs shows that the government plays a predominant role in this market. See *Shelving and Racks Decision Memorandum* at 15. The government's predominant position is further demonstrated by the low level of imports, which accounted for only 0.91 percent of the volume of wire rod available in the Chinese market during the POI. See GOC's September 15, 2009, questionnaire response at 23. Because the share of imports of wire rod into the PRC is small relative to Chinese domestic production of wire rod, it would be inappropriate to use import values to calculate a benchmark. This is consistent with the Department's approach discussed in *LWRP Decision Memorandum*, at Comment 7.

In addition to the government's predominant role in the market, we found in *Shelving and Racks from the PRC* that the 10 percent export tariff and export licensing requirement instituted by the GOC contributed to the distortion of the domestic market in the PRC for wire rod. Such export restraints can discourage exports and increase the supply of wire rod in the domestic market, with the result that domestic prices are lower than they would otherwise be. See *Shelving and Racks Decision Memorandum* at 15. Consequently, we determine that there are no appropriate tier one benchmark prices available for wire rod.

We note that Fasten I&E reported that it imported wire rod during the POI. See Exhibit 1 of Fasten I&E's September 22, 2009, supplemental questionnaire response. As noted above, imports of wire rod accounted for a small percent of the volume of wire rod available in the Chinese market during the POI. As explained above, we have determined that there are no appropriate tier-one

<sup>11</sup> In other words, in instances where we are applying FA, we are assuming that the percentage of wire rod purchased by domestic trading companies during the POI was equal to the ratio of wire rod produced by SOEs during the POI, as indicated by the aggregate data supplied in the questionnaire responses of the GOC.

benchmark prices on the record, including import prices. This is consistent with the Department's approach in prior CVD proceedings involving the PRC. *See* LWRP from the PRC Decision Memorandum at Comment 7; *see also* Racks from the PRC Decision Memorandum at "Provision of Wire Rod for Less Than Adequate Remuneration" section. Consequently, 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.

We next examined whether the record contained data that could be used as a tier-two wire rod benchmark under 19 CFR 351.511(a)(2)(ii). The Department has on the record of the investigation prices for SWRH 82B wire rod (or high carbon wire rod), as sourced from the American Metals Market (AMA). *See* petitioners' October 6, 2009, submission at Exhibit 4. The benchmark prices are reported on a monthly basis in U.S. dollars per metric ton (MT). Petitioners provide information indicating that one of the producers of subject merchandise, Walsin, uses SWRH 82B to produce subject merchandise. No other interested party submitted tier-two wire prices on the record of the investigation.

Therefore, for purposes of the preliminary determination, we find that the data from AMA should be used to derive a tier-two, world market price for wire rod that would be available to purchasers of wire rod in the PRC. We note that the Department has relied on pricing data from industry publications in recent CVD proceedings involving the PRC. *See, e.g.*, CWP from the PRC Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration" section; *see also* LWRP from the PRC Decision Memorandum at "Hot-Rolled Steel for Less Than Adequate Remuneration" section. We find that, for purposes of the preliminary determination, prices from the AMA to be sufficiently reliable and representative.

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

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two,

the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, at this time we lack information and, therefore, have not adjusted the benchmark in this regard, but will continue to seek the relevant information for the final determination. However, we have added import duties, as reported by the GOC, and the VAT applicable to imports of wire rod into the PRC. With respect to the three percent insurance charge on imports noted by the petitioner, consistent with *Racks from the PRC*, while the Department will consider in future determinations the propriety of including insurance as a delivery charge, the existing record of this investigation does not support such an adjustment. *See* Racks from the PRC Decision Memorandum.

Comparing the benchmark unit prices to the unit prices paid by respondents for wire rod, we determine that wire rod was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a). In the case of the Xinhua Companies, we compared the wire rod benchmarks prices to the prices the Xinhua Companies paid to their wire rod suppliers. Xinhua purchased some of its wire rod from Xinyu. As explained in the "Attribution" section above, we are not including Xinhua's purchases of wire rod from Xinyu in our subsidy calculations. In the case of Hongsheng, we compared the wire rod benchmark prices to the prices Hongsheng paid to its wire rod suppliers. In the case of Walsin, it purchased its wire rod from suppliers other than Hongsheng. Thus, we compared the wire rod benchmark prices to the prices Walsin paid to its suppliers.

Finally, with respect to specificity, the third subsidy element specified under the Act, the GOC has provided information on end uses for wire rod. *See* Exhibit 58 of the GOC's August 26, 2009, questionnaire response. The GOC stated that the end uses of wire rod relate to the type of industry involved as a direct purchaser of the input. The GOC further stated that the consumption of wire rod occurs across a broad range of industries. While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice,

we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. *See* section 771(5A)(D)(iii)(I) of the Act. *See* LWRP from the PRC Decision Memorandum at Comment 7; *see also* Racks from the PRC Decision Memorandum at "Provision of Wire Rod for Less Than Adequate Remuneration."

We find that the GOC's provision of wire rod for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). Therefore, to calculate the net subsidy rate, we divided the benefit by a denominator comprised of total sales. Regarding the Xinhua companies, for wire rod sold to Xinhua for LTAR, we divided Xinhua's benefit by Xinhua's total sales. Regarding the Fasten Companies, for wire rod sold to Hongsheng for LTAR, we divided Hongsheng's benefit by combined total sales of Hongsheng, Fasten Steel, Hongyu Metal, and Fasten I&E. Regarding wire rod sold to Walsin for LTAR, we divided Walsin's benefit by its total sales. We then cumulated the benefits Walsin received under the program using the methodology described in the "Attribution" section of this preliminary determination. Specifically, we multiplied the total subsidy rate for Walsin by its share of PC strand that was exported to the United States during the POI by Fasten I&E. We then added the resulting apportioned rate to the total subsidy rate calculated for Fasten I&E. On this basis, we calculated a total net subsidy rate of 9.78 percent *ad valorem* for the Xinhua Companies and 5.57 percent *ad valorem* for the Fasten Companies.

#### *B. Provision of Land Use Rights for LTAR to FIEs in Jiangxi and the City of Xinyu*

As explained in the Initiation Checklist that accompanied the *Initiation*, we are investigating the extent to which Jiangxi Province has industrial plans in place that support the provision of land to the members of the steel industry for LTAR and whether the City of Xinyu provides land to FIEs for LTAR. *See* Initiation Checklist at 13, of which a public version is available in room 1117 of the CRU of the Commerce Building. The Xinhua Companies are located in Jiangxi Province and the City of Xinyu. The Fasten Companies are not located in Jiangxi Province or the City of Xinyu. Therefore, we are not examining the Fasten Companies under this program. On this basis, we preliminarily determine that the Fasten Companies did not use this program during the POI.



The Xinhua Companies reported that Xinyu acquired three parcels of land from government authorities located in the City of Xinyu. Two purchases occurred in 1996. The other purchase occurred in 2004. As explained above, we are limiting our analysis of subsidies beginning after December 11, 2001, which is the date of the PRC's accession to the WTO. Thus, we are not examining the land Xinyu acquired from government authorities in 1996. Regarding the land Xinyu acquired in 2004, information supplied by the Xinhua Companies indicates that Xinyu acquired the land from the Xinyu Hi-Tech Economic Development Zone Committee, which we find is controlled by City of Xinyu, and that the land purchased is located in a development zone.

The Department determined in *LWS from the PRC* that the provision of land-use rights constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act. See *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*LWS from the PRC*), and accompanying Issues and Decision Memorandum (LWS from the PRC Decision Memorandum) at Comment 8. The Department also found that when the provision of land-use rights in an industrial park is limited to a designated geographical region within the seller's (e.g., county's or municipality's) jurisdiction, the provision of the land-use rights is regionally specific under section 771(5A)(D)(iv) of the Act. *Id.* at Comment 9. In the instant investigation, the Xinyu Hi-Tech Economic Development Zone is a designated area within the area under the jurisdiction of the City of Xinyu. Therefore, consistent with *LWS from the PRC*, we preliminarily determine that Xinyu's purchase of granted land-use rights located within the Xinyu Hi-Tech Economic Development Zone in 2004 gives rise to countervailable subsidies to the extent that the purchases conferred a benefit.

To determine whether the Xinhua Companies received a benefit, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we look to whether there are market-determined prices (referred to as tier-one prices in the LTAR regulation) within the country. See 19 CFR 351.511(a)(2)(i). In *LWS from the PRC*, the Department determined that "Chinese land prices are distorted by the significant government role in the

market" and, hence, that tier-one benchmarks do not exist. See *LWS from the PRC Decision Memorandum* at Comment 10. The Department also found that tier-two benchmarks (world market prices that would be available to purchasers in China) are not appropriate. *Id.* at "Analysis of Programs-Government Provision of Land for Less Than Adequate Remuneration"; see also 19 CFR 351.511(a)(2)(ii). Therefore, the Department determined the adequacy of remuneration by reference to tier-three and found that the sale of land-use rights in China was not consistent with market principles because of the overwhelming presence of the government in the land-use rights market and the widespread and documented deviation from the authorized methods of pricing and allocating land. See *LWS from the PRC Decision Memorandum* at Comment 10; see also 19 CFR 351.511(a)(2)(iii). We preliminarily determine that in the instant investigation the GOC has not submitted any information that rebuts the conclusions reached by the Department in *LWS from the PRC*.

For these reasons, we are not able to use Chinese or world market prices as a benchmark. Therefore, we are preliminarily comparing the price that the Xinyu paid for its granted land-use rights with comparable market-based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of, China. Specifically, we are preliminarily comparing the price Xinyu paid to the City of Xinyu in 2004 to the price of certain industrial land in industrial estates, parks, and zones in Thailand in 2004. See *LWS from the PRC Decision Memorandum* at "Analysis of Programs Government Provision of Land for Less Than Adequate Remuneration."

To calculate the benefit, we computed the amount that Xinyu would have paid for its granted land-use rights and subtracted the amount Xinyu actually paid for its 2004 purchase. Our comparison indicates that the price Xinyu paid to the government authority in 2004 was less than our land benchmark price and, thus, that Xinyu received a benefit under section 771(5)(E)(iv) of the Act. Next, in accordance with 19 CFR 351.524(b)(2), we examined whether the subsidy amount exceeded 0.5 percent of Xinyu's total consolidated sales in the year of purchase. Our analysis indicates that the subsidy amount exceeded the 0.5 percent threshold. Therefore, we used the discount rate described under the "Benchmarks and Discount Rates"

section of this preliminary determination to allocate the benefit over the life of the land-use rights contract, which is 50 years.

To calculate the net subsidy rate, we divided the benefit by Xinyu's consolidated sales for the POI. On this basis, we calculated a net subsidy rate of 0.01 percent *ad valorem*.

### *C. Import Tariff and Value Added Tax Exemptions for FIES and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries*

Enacted in 1997, the State Council's Circular on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular No. 37) exempts both foreign invested enterprises (FIEs) and certain domestic enterprises from the value-added tax (VAT) and tariffs on imported equipment used in their production. The National Development and Reform Commission (NDRC) and the General Administration of Customs are the government agencies responsible for administering this program. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. Under the program, companies are authorized to receive the exemptions based on their FIE status and the list of assets approved by the GOC at the time their FIE status was approved. Domestic enterprises eligible for the VAT and duty exemptions must have government-approved projects that are in line with the current "Catalog of Key Industries, Products, and Technologies the Development of Which is Encouraged by the State." Whether an FIE or domestic enterprise, only equipment that is not listed in the Catalog on Non-Duty Exemptible Article for Importation is eligible for the VAT and duty exemptions. Different catalogs are prepared for FIEs and domestic enterprises. To receive the exemptions, a qualified enterprise has to show a certificate provided by the NDRC, or its provincial branch, to the customs officials upon importation of the equipment.

Xinhua, Xinyu, and Xingang reported receiving VAT and duty exemptions under this program due to its status as a qualified domestic enterprise. Walsin and Hongyu Metal also reported using this program due to their status as FIEs.

We preliminarily determine that the VAT and duty exemptions received under the program constitute a financial contribution in the form of revenue forgone by the GOC, which provide a benefit to the recipients in the amount of the VAT and tariff savings. See

sections 771(5)(D)(ii) and 771(5)(E) of the Act, as well as 19 CFR 351.510(a)(1).

We acknowledge that the pool of companies eligible for benefits is larger than FIEs because some domestic companies may also qualify for the exemptions. However, as explained above and in past CVD proceedings, the domestic enterprises must have government-approved projects which are in line with the current "Catalog of Key Industries, Products, and Technologies the Development of Which Is Encouraged by the State," and must be approved by the State Council, NDRC, or another agency to which authority has been delegated. Therefore, we determine that the addition of certain domestic enterprises as eligible users does not broaden the reach or variety of users sufficiently to render the program non-specific. On this basis, we continue to find the program is specific under section 771(5A)(D)(iii)(I) of the Act. Our determination to countervail this program is consistent with the Department's treatment of this program in past CVD proceedings involving the PRC. *See, e.g.*, CFS from the PRC Decision Memorandum at "VAT and Tariff Exemptions on Imported Equipment" and Comment 16; *see also* Tires from the PRC Decision Memorandum at "VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment on Encouraged Industries."

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

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is consistent with the Department's approach. *See, e.g.*, Line Pipe from the PRC Decision Memorandum at

Comment 8: "... we agree with petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties." Next, we summed the amount of duty and VAT exemptions received in each year. For each year, we divided the total grant amount by the corresponding total sales of the respondent for the year in question. Pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the year of receipt for those years in which the grant amount was less than 0.5 percent of the total sales of Xinhua. For those years in which the grant amounts were greater than 0.5 percent of respondent's total sales, we allocated the benefit to the POI using the methodology described under 19 CFR 351.524(d). We derived the long-term discount rate using the methodology described in the "Subsidies Valuation Information" section of this memorandum. We then calculated the total benefit under the program by summing all of the benefit amounts allocated to the POI.

To calculate the net subsidy rate for Xinhua, we divided the total benefit by Xinhua's total sales for the POI. To calculate the total net subsidy rate for Xinyu, we divided the total benefit by Xinyu's consolidated sales for the POI. To calculate the total net subsidy rate for Xingang, we divided the total benefit by Xingang's consolidated sales for the POI. On this basis, we calculated a total net subsidy rate of 0.41 percent *ad valorem* for the Xinhua Companies.

Regarding Walsin, we divided the total benefit it received under the program by its total sales. As explained in the "Attribution" section, we then cumulated the subsidies received by Walsin under the program with benefits from subsidies received by Fasten I&E. Specifically, we multiplied the total subsidy rate for Walsin by Walsin's share of PC strand that was exported to the United States during the POI by Fasten I&E. We then added the resulting apportioned rate to the total subsidy rate calculated for Fasten I&E. Concerning Hongyu Metal, we divided the benefits it received under the program by the combined total sales of Hongyu Metal and Fasten I&E. On this basis, we calculated a total net subsidy rate of 0.44 percent *ad valorem* for the Fasten Companies.

#### *D. Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level*

The Famous Brand program is administered at the central, provincial, and municipal government level. During the POI, Xinhua reported receiving a grant under the Famous Brand program

from the City of Xinyu. Fasten Corp. reported receiving a grant from the Jiangsu Province.

The Notice of Xinyu People's Government on Issuing Administration Rules for Xinyu City Famous Brand Products (Administration Rules) states that firms with the famous brand designation are eligible to receive grants from the City of Xinyu. The Administration Rules state that they were drafted in accordance with the Strategic Work Plan for Industries in Jiangxi Province, as issued by the Jiangxi Provincial Government (1995), document number #86 (Strategic Work Plan). *See* Xinhua's August 4, 2009, questionnaire response at Annex 16. The Strategic Work Plan lists the requirements that applicants must meet in order to receive the famous brand designation. Among those requirements is the following:

The product should have high market share, high economic benefits, high economic driving force or high ability to earn foreign exchange through export.

*Id.* Xinhua reported applying for and receiving a grant from the City of Xinyu during the POI pursuant to the Administration Rules.

Based on the information available on the record of the investigation, we preliminarily determine that grants Xinhua received from the City of Xinyu under the famous brand program constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. Based on the information contained in the Strategic Work Plan, we preliminarily determine that grants provided by the City of Xinyu under the famous brands program are contingent on export activity. Therefore, we find that the program is specific under section 771(5A)(B) of the Act.

Concerning Fasten Corp., information in its questionnaire response indicates that it received a grant from Jiangsu Province during the POI that was contingent upon export performance. *See* Fasten Corp.'s August 26, 2009, questionnaire response at 50. Therefore, we find the grant Fasten Corp. received under the Famous Brand program of Jiangsu Province to be countervailable for the same reasons as discussed above.

The grant that Xinhua and Fasten Corp. received during the POI was less than 0.5 percent of their respective total

export sales during the POI.<sup>12</sup> Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt). On this basis, we calculated a total net subsidy rate of 0.03 percent *ad valorem* for the Xinhua Companies and a total net subsidy rate of 0.01 percent *ad valorem* for the Fasten Companies.

*E. Implementing Measures on the Supporting Fund for Foreign Trade & Economic Development of Jiangxi Province (Implementing Measures)*

Under the Implementing Measures, the Government of Jiangxi Province provides grants to firms with positive growth rates that export between \$10 million and \$20 million worth of high-tech mechanical or electrical products. See Xinhua Questionnaire response at page 104 and Annex 17. Xinhua reported applying for and receiving a grant pursuant to the Implementing Measures during the POI.

Based on the information available on the record of the investigation, we preliminarily determine that the grant Xinhua received from the Government of Jiangxi Province under the Implementing Measures constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. We preliminarily determine that the grant provided by the Government of Jiangxi Province under the Implementing Measures program is contingent on export performance. Therefore, we find that the program is specific under section 771(5A)(B) of the Act.

The grant that Xinhua received during the POI was less than 0.5 percent of its total export sales during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we calculated a total net subsidy rate of 0.06 percent *ad valorem* for the Xinhua Companies.

*F. Circular on Issuance of Management Methods for Foreign Trade Development Support Fund (Support Fund)*

Under the Support Fund, firms with an annual export value of \$1,000,000 to \$5,000,000 are eligible to receive grants from the Ministry of Foreign Trade and Economic Cooperation. See Xinhua

Questionnaire response at page 112 and Annex 18. Xinhua reported applying for and receiving a grant pursuant to the Support Fund during the POI.

Based on the information available on the record of the investigation, we preliminarily determine that the grant Xinhua received from the GOC under the Support Fund constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. We preliminarily determine that the grant provided by the GOC under the Support Fund is contingent on export activity. Therefore, we find that the program is specific under section 771(5A)(B) of the Act.

The grant that Xinhua received during the POI was less than 0.5 percent of its total export sales during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we calculated a total net subsidy rate of 0.05 percent *ad valorem* for the Xinhua Companies.

*G. Export Grants Under Regulations for Export Product Research and Development Fund Management*

In its questionnaire response, Xinhua indicated that in 2007 it received a grant from the Ministry of Finance pursuant to the Notice on Publishing Management Fund Used in Research and Development of Export Mechanical and Electrical Products (WJMJC (2007) (Document Number 527). The legislation indicates that receipt of the grant was contingent upon export performance.

We preliminarily determine that the grant constitutes a financial contribution in the form of a direct transfer of funds and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We further preliminarily determine that the grant program is specific under section 771(5A)(B) of the Act because receipt of the grant is contingent upon exports.

Because Xinhua received the grant in 2007, we conducted the "0.5 percent expense test" as described under 19 CFR 351.524(b)(2). Because the grant that Xinhua received in 2007 was greater than 0.5 percent of its total export sales for 2007, we have allocated the grant over the AUL established for this proceeding. See 19 CFR 351.524(b)(1). We allocated the grant to the POI using the methodology described under 19 CFR 351.524(d)(1). We divided the benefit allocated to the

POI by Xinhua's total export sales for the POI. On this basis, we calculated a total net subsidy rate of 0.03 percent *ad valorem* for the Xinhua Companies.

*H. Rebates for Export and Credit Insurance Fee*

In its questionnaire response, Fasten I&E reported that it received grants during the POI from the GOC in connection with export and credit insurance fees it incurred.

We preliminarily determine that the grants received by Fasten I&E constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, we preliminarily determine that the program is contingent upon export activity and therefore is specific under section 771(5A)(B) of the Act.

The grants that Fasten I&E received under the program during the POI were less than 0.5 percent of its total export sales during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt). Specifically, we divided the grants amounts received by Fasten I&E by the company's total export sales during the POI. On this basis, we calculated a total net subsidy rate of 0.04 percent *ad valorem* for the Fasten Companies.

*I. Income Tax Benefits for FIEs Based on Geographic Location*

This program provides tax incentives for enterprises located in special zones. The GOC states that the program was first enacted on June 15, 1988, pursuant to the Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Zones, as issued by the Ministry of Finance. The GOC states that the program was continued on July 1, 1991, pursuant to Article 30 of the FIE Tax Law. Specifically, pursuant to Article 7 of the FIE Tax Law for productive FIEs established in a coastal economic development zone, special economic zone, or economic technology development zone, the applicable enterprise income tax rate is 15 or 24 percent, depending on the zones in which productive FIE are located, as opposed to the standard 30 percent income tax rate.

We preliminarily determine that this program constitutes a financial contribution in the form of revenue forgone and confers a benefit equal to the amount of tax savings within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act. Because eligibility under this program is limited to firms located within designated geographical

<sup>12</sup> As explained in the "Attribution" section, we used the total consolidated export sales of Fasten Corp. when conducting the 0.5 percent test described under 19 CFR 351.524(b)(2).

regions, we preliminarily determine that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act. We note that the Department has found this program countervailable in previous CVD proceedings. *See, e.g.*, CFS from the PRC Decision Memorandum at “Reduced Income Tax Rates for FIEs Based on Location.”

Under 19 CFR 351.509(b), in the case of an income tax reduction program, the Department normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the reduction. Normally, this date is the date on which the firm in question filed its tax return.

Fasten Steel, Walsin, and Hongyu Metal received an income tax reduction under the program with respect to the tax returns they filed during the POI. Therefore, we determine that these companies received countervailable benefits under this program during the POI. No other mandatory respondent reported receiving benefits under this program during the POI.

In accordance with 19 CFR 351.509(a), to calculate the benefit, we subtracted the income tax rates the companies paid under the program from the income tax rate that the firms would have paid absent the program and multiplied the difference by the firms’ taxable income.

To calculate the net subsidy rate for Fasten Steel, we divided the benefit by the combined total sales of Fasten Steel and Fasten I&E for the POI. To calculate the net subsidy rate for Walsin, we divided the total benefit by Walsin’s total sales for the POI. Next, as explained in the “Attribution” section, we multiplied the total subsidy rate for Walsin by its respective share of PC strand that was exported to the United States during the POI by Fasten I&E. We then added the resulting apportioned rate to the total subsidy rate calculated for Fasten I&E. Regarding Hongyu Metal, we divided the benefit it received under the program by the combined total sales of Hongyu Metal and Fasten I&E. On this basis, we calculated a total net subsidy rate of 0.09 percent *ad valorem* for the Fasten Companies.

The Fasten Companies claim in their September 22, 2009 supplemental questionnaire response that the GOC terminated the Tax Benefits for FIEs Based on Geographic Location program. We find that we currently do not have sufficient information to determination whether this program was terminated. We will continue to examine the Fasten Companies’ claim that this program has been terminated.

#### *J. Two Free, Three Half Tax Exemptions for FIEs*

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

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

To calculate the benefit from this program, we compared the tax rate paid to the rate that otherwise would have been paid by Hongyu Metal and multiplied the difference by Hongyu Metal’s taxable income. We attributed the benefit received to the combined total sales of Hongyu Metal and Fasten I&E. On this basis, we preliminarily determine a countervailable subsidy of 0.03 percent *ad valorem* for the Fasten Companies.

#### *K. Local Tax Exemptions and Reduction Programs for “Productive” FIEs*

Pursuant to Article 9 of the FIE Tax Law and Article 71 of Decree 85 of the Council of 1991, local provinces can establish eligibility criteria and administer the application process for local income tax reductions or exemptions for FIEs, effectively extending the tax exemptions or reductions that are allowed to FIEs by

the national Two Free, Three Half program. In its questionnaire response, Hongyu Metal indicated that it received benefits under this program and its tax return filed during the POI confirms it benefitted from this program.

We preliminarily determine that the exemption or reduction in the local income tax paid by “productive” FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the government and it provides a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, “productive” FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. The Department has also found this program to be countervailable in prior CVD proceedings involving the PRC. *See* Tires from the PRC Decision Memorandum at “Tax Subsidies to FIEs in Specially Designated Geographic Areas, and Local Income Tax Exemption and Reduction Programs for Productive FIEs”; *see also* CFS from the PRC Decision Memorandum at “Local Income Tax Exemption and Reduction Program for “Productive” FIEs.”

To calculate the benefit to Hongyu Metal from this program, we treated the income tax exemption claimed by Hongyu Metal as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the tax rate paid to the rate that otherwise would have been paid by Hongyu Metal (the standard local rate is 3 percent) and multiplied the difference by Hongyu Metal’s taxable income. We attributed the benefit received to the combined total sales of Hongyu Metal and Fasten I&E. On this basis, we preliminarily determine a countervailable subsidy of 0.01 percent *ad valorem* for the Fasten Companies.

#### *L. Federal Provision of Electricity for LTAR<sup>13</sup>*

For the reasons explained, *supra*, at “Adverse Facts Available,” we are basing our determination regarding the government’s provision of electricity programs on AFA. Section 776(b) of the Act authorizes the Department to use as AFA information derived from the

<sup>13</sup> Our preliminary findings regarding the federal provision of electricity for LTAR encompasses other electricity for LTAR programs referenced in the *Initiation*.

petition, the final determination, a previous administrative review, or other information placed on the record. In a CVD case, the Department requires information from both the government of the country whose merchandise is under the order and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. For example in *CTL Plate from Korea*, the Department, relying on adverse inferences, determined that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of sections 771(5)(D)(i) and 771(5A)(D)(iii) of the Act, respectively. See *Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 11397, 11399 (March 7, 2006) (*Preliminary Results of CTL Plate from Korea*) (unchanged in the *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006) (*CTL Plate from Korea*). Similarly, in this instance, because the GOC failed to provide certain information concerning the Provision of Electricity for Less than Adequate Remuneration program, the Department, as AFA, determines that the program confers a financial contribution and is specific pursuant to sections 771(5)(D) and 771(5A) of the Act, respectively.

Where possible, the Department will normally rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. For example, in prior investigations including *LWTP from the PRC* and *Racks from the PRC*, the Department determined the existence and amount of the benefit attributable to the provision of electricity for LTAR by comparing the rates paid by the mandatory respondents for electricity to the higher, benchmark electricity rates. In this investigation, however, while respondents provided some information with respect to their electricity usage and payments, we do not have on the record information that could meaningfully be compared to the appropriate benchmarks. Therefore, we are relying on the highest subsidy rate calculated for the same or similar

program in a China CVD investigation. Specifically, we have determined that, for the purposes of this preliminary determination, the rate found for the provision of electricity for LTAR in the *LWTP from the PRC* of 0.07 percent *ad valorem* is appropriate. We find that this rate is both reliable and relevant as it was calculated in prior final CVD determination for a program of the same type.

On this basis, we calculated a net subsidy rate of 0.07 percent *ad valorem* for the Xinhua Companies and a net subsidy rate of 0.07 percent *ad valorem* for the Fasten Companies.

#### *M. Grants Under the Science and Technology Program of Jiangsu Province*

The Fasten Companies reported that Fasten Corp. received a grant during the POI under the science and technology program of Jiangsu province. The Jiangsu Department of Science and Technology and the Jiangsu Science Federation administer the program pursuant to the Administrative Measures on Jiangsu Sci-Tech Public Service Platform (SUKJJI (2006) No. 102; SUCAIJIAO (2006) (No. 22)).

We find that the grant received by Fasten Corp. constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. The information in the legislation indicates that the program is not limited to a particular enterprise or industry. Therefore, we find that the program is not *de jure* specific as described under section 771(5A)(D)(i) of the Act. We further find that the legislation governing the program does not make eligibility contingent on export activity as discussed under section 771(5A)(B) of the Act. However, as discussed in the "Adverse Facts Available" section, the GOC failed to provide information for this program that is necessary for the Department to conduct its subsidy analysis as it pertains to the issue of *de facto* specificity, as described under section 771(5A)(D)(iii) of the Act. Namely, the GOC failed to provide, as requested, information concerning the manner in which the various grants were distributed across firms and industries. Therefore, we are assuming that the grant programs are specific under section 771(5A)(D)(iii) of the Act.

We conducted the "0.5 percent expense test" as described under 19 CFR 351.524(b)(2). Because the grant amount was less than 0.5 percent of the total consolidated sales of the Fasten Corp., we expense the grant to the year of receipt, which is the POI. On this basis, we calculated a net subsidy rate

of 0.01 percent *ad valorem* for the Fasten Companies.

#### *N. Federal, Provincial, and Municipal Level Policy Lending to Producers of PC Strand*

The Department is examining whether PC strand producers receive preferential lending through state-owned commercial or policy banks. Record evidence demonstrates that the GOC, particularly at the provincial and municipal levels of government, has highlighted and advocated the development of the PC strand industry and the mandatory respondents in this investigation. Moreover, GOC directives in this regard include financing support. Thus, we preliminarily determine that loans received by the PC strand industry from state-owned commercial banks (SOCBs) and policy banks were made pursuant to government directives. The Fasten Companies and the Xinhua Companies had loans outstanding during the POI.

At the national level, in the Steel and Iron Industry Development Policy (July 2005) at Article 16, the GOC states that it will "enhance the R&D, design, and manufacture level in relation to the key technology, equipment and facilities for the Chinese steel industry." To accomplish this, the GOC states it will provide support to key steel projects relying on domestically produced and newly developed equipment and facilities, through tax and interest assistance, and scientific research expenditures. See GOC's August 26, 2009, questionnaire response at Exhibit 5, page 6.

Turning to the provincial and municipal levels, the excerpts below demonstrate the support these governments have shown for the PC strand industry and the respondents in this investigation.

*Outline of Eleventh Five-year Program (Guihua) for Industrial Structural Adjustment in Jiangsu:* "Emphasize the development of fine metal products such as high-strength pc strand, automobile tire steel cords, and non-ferrous deep processed products." See GOC's August 26, 2009, questionnaire response at Exhibit 16, page 9.

*Outline of the Development Program (Guihua) for Metallurgical Industries within the Eleventh Five-year Period in Jiangsu:* "In the metal product industry of our province, a large set of metal products enterprises have been formed with Fasten Group as vanguard and with Jinyang Group Co. Ltd., Jiangsu Xingda Steel Tyre Cord Co., Ltd., and Nantong Steel Rope Factory etc. as backbone enterprises." See GOC's

August 26, 2009, questionnaire response at Exhibit 22, at page 2.

*Special Program (Guihua) on Adjustment & Development of Iron and Steel Industries during the Eleventh Five-year Period in Jiangsu:* "We shall strengthen the guidance of industrial policies, the support from credit policy and the regulation by fiscal and taxation policies to guide the direction of investments." See GOC's August 26, 2009, questionnaire response at Exhibit 23 pages 4–5.

*Special Program (Guihua) on Adjustment & Development of Iron and Steel Industries during the Eleventh Five-year Period in Jiangsu:* "Improve the funding ability and enlarge the capital accumulation by the ways of enlarging credit granting, increasing loans,..." See GOC's August 26, 2009, questionnaire response at Exhibit 23, page 13.

*Eleventh Five-year Plan (Guihua) for Structural Adjustment and Development of the Jiangxi Metallurgical (Iron & Steel) Industries:* "We shall vigorously boost the construction of competitive sheet material and wire rod relied on Xinyu Iron and Steel." GOC's August 26, 2009, questionnaire response at Exhibit 18, page 9.

*Outline of the Tenth Five-year Plan (Jihua) of Social and Economic Development on Xinyu Municipality:* "For the iron and steel industry, we should, by taking Xinyu Iron & Steel Co., Ltd., as the flagship, focus on improving the conditions of key equipments, optimizing the process and technological structure, reinforcing the basic management, adjusting the product structure, and expanding the production capacity." See GOC's August 26, 2009, questionnaire response at Exhibit 14, page 14.

*Development Program (Guihua) of Xinyu Metallurgical (Iron & Steel) Industries (2008–2012):* "exerting the efforts to support Xinyu Iron & Steel Co., Ltd. to increase capital stock and raise funds for project construction." See GOC's August 26, 2009, questionnaire response at Exhibit 20, page 13.

*Development Program (Guihua) of Xinyu Metallurgical (Iron & Steel) Industries (2008–2012):* "fourthly, suggesting the provincial government to carry out the favorable policies concerning finance and tax revenue for the metallurgy (steel and iron) enterprises . . ." See GOC's August 26, 2009, questionnaire response at Exhibit 20, page 16.

In addition, in *Tires from the PRC* and the *Preliminary Determination of OCTG from the PRC*, the Department found

that in 2005, the GOC implemented the Decision of the State Council on Promulgating the "Interim Provisions on Promoting Industrial Structure Adjustment" for Implementation (No. 40 (2005)) (Decision 40) in order to achieve the objectives of the Eleventh Five-Year Plan. Decision 40 references the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue), which outlines the projects which the GOC deems "encouraged," "restricted," and "eliminated," and describes how these projects will be considered under government policies. For "encouraged" projects, Decision 40 outlines several support options available to the government, including financing. See *Tires from the PRC* Decision Memorandum at Comment E.1; see also *Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210, 47217 (September 15, 2009) (*Preliminary Determination of OCTG from the PRC*). We are placing these additional documents on the record of this investigation for further consideration and comment. Memorandum to File from Eric B. Greynolds, Program Manager, Office 3, Operations, "Additional Documents Placed on the Record," (October 26, 2009).

Finally, we examined the loan documentation provided by the GOC and noted language for certain loans which also reflects the banks' conclusions that lending to this industry is consistent with the GOC's industrial policy goals. As this information is business proprietary, it is discussed in a separate memorandum. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, "Excerpts from Internal Loan Documents of Mandatory Respondents," (October 26, 2009), of which the public version is on file in the CRU of the Commerce Building.

In response to our questions about the above-cited excerpts, the GOC has stated that the language does not specify a particular government action to achieve the particular goal or that the statement reflects only a proposal. However, taken together, these plans clearly indicate state support and, specifically, credit or financing support for the producers of PC strand. In these circumstances, it is the Department's policy to find a policy lending program that is specific to the industry and, moreover, based on the analysis developed in *CFS from the PRC*, that national and local government control over the SOCBs results in the

loans being a financial contribution by the GOC. See *Citric Acid from the PRC* Decision Memorandum at Comment 5; see also *CFS from the PRC* Decision Memorandum at Comment 8.

Therefore, on the basis of the record information described above, we preliminarily determine that the GOC has a policy in place to encourage the development of production of PC strand through policy lending. Therefore, the loans to PC strand producers from Policy Banks and SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (see section 771(5)(e)(2)). Finally, we determine that the loans are *de jure* specific because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the PC strand industry.

To calculate the benefit under the policy lending program, we compared the amount of interest the mandatory respondents paid on their outstanding loans to the amount they would have paid on comparable commercial loans. See 19 CFR 351.505(c). In conducting this comparison, we used the interest rates described in the "Subsidies Valuation - Benchmarks and Discount Rates" section above.

We have attributed benefits under this program to total sales. In calculating the net subsidy rate for the mandatory respondents, we followed the methodology described in the attribution sections. Specifically, for the Fasten Companies, we attributed subsidies received by the Fasten Corp. to its total consolidated sales. We attributed subsidies received by Fasten I&E to its total sales. We attributed subsidies received by Hongsheng to the combined total sales of Hongsheng, Fasten Steel and Hongyu Metal. We attributed subsidies received by Fasten Steel to the combined total sales of Fasten Steel and Fasten I&E. We attributed subsidies received by Hongyu Metal to the combined sales of Hongyu Metal and Fasten I&E. We attributed subsidies received by Walsin by its total sales. We then apportioned the resulting subsidy rate by Walsin's share of PC strand that was exported to the United States during the POI by Fasten I&E.<sup>14</sup> For the Xinhua Companies, we

<sup>14</sup> In deriving the share of PC strand produced by Fasten Steel and Walsin that was exported by Fasten Steel I&E during the POI, we did not include the sales volume of Company X.



attributed subsidies received by Xingang to its total consolidated sales. We attributed subsidies received by Xinyu to its total consolidated sales. We attributed subsidies received by Xinhua to its total sales. On this basis, we calculated a total net subsidy rate of 1.26 percent ad valorem for the Fasten Companies and 0.58 percent ad valorem for the Xinhua Companies.

*O. Income Tax Credits for Purchases of Domestically-Produced Equipment by Domestically Owned Firms*

Xingang reported receiving an income tax deduction on the tax return it filed during the POI under the Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies program. According to the GOC, this program was established on July 1, 1999 pursuant to "Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation Projects." The GOC states that under the program a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year. The GOC further states that pursuant to the "Circular on Relevant Issues with Respect to Ceasing Implementing of Income Tax Credit to Purchase of Domestically Produced Equipment by Enterprises," the program was terminated effective January 1, 2008.

We determine that the income tax deductions provided under the program constitute a financial contribution, in the form of revenue forgone, and a benefit, in an amount equal to the tax savings, under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We further find that this program is specific under section 771(5A)(A) of the Act because the receipt of the tax savings is contingent upon the use of domestic over imported goods. We note that the Department found this program countervailable in *Line Pipe* from the PRC. See *Line Pipe* from the PRC Decision Memorandum at "Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies."

To calculate the net subsidy rate, we divided the benefit by the combined 2008 sales of Xingang. On this basis, we calculated a net countervailable subsidy rate of 0.41 percent ad valorem for the Xingang Companies.

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

Based on our analysis of the programs listed below, the benefits to respondents during the POI under the programs listed below are less than 0.005 percent ad valorem and are not considered numerically significant, are not allocable to the POI, or have been found to be tied to non-subject merchandise. Consistent with our past practice, we therefore have not included these programs in our preliminary net countervailing duty rate calculations. See, e.g., CFS from the PRC Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE," and *Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France*, 70 FR 39998 (July 12, 2005), and accompanying Issues and Decision Memorandum at "Purchases at Prices that Constitute More than Adequate Remuneration," ("Uranium from France") (citing *Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada*, 69 FR 75917 (December 20, 2004), and accompanying Issues and Decision Memorandum at "Other Programs Determined to Confer Subsidies"). For information concerning the programs we have preliminarily determined to be tied to non-subject merchandise, see the Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations (October 26, 2009), a public document on file in the CRU of the Commerce building.

*A. Programs Used by Xinyu*

1. Jiangxi Provincial Special Science Fund: Heavy Plate Production Line & Research on Technical Application
2. Jiangxi Provincial Special Science Fund: Gas desulfurization of coke oven, development and application of tar purification technology
3. Xinyu Municipal Science Planning Program, 3-Items Funds: Research and development of steel products, process and technology
4. Xinyu Municipal Science Planning Program, 3-Items Funds: Development and application of power generation process with residual heat from boiler
5. Jiangxi Provincial Science and Technology Awards: Technology Advancement Award
6. Xinyu Municipal Science and Technology Awards: Technology Advancement Award

7. Xinyu Municipal Science and Technology Awards: Technology Progress Award for BOF-quality hard-line 35–75.65 steel
8. Xinyu City Intellectual Property Research Program: Strategic Research Council for Intellectual Property of Xinyu Iron and Steel Industry
9. 2008 National Science and Technology Support Fund: Research on Controlled Cooling after Rolling Production Technology of High-Strength Electricity Power Use Special Angle Steel
10. Jiangxi Provincial Science And Technology Support Fund: Development And Application For The Comprehensive Utilization Of Industrial Waste In Metallurgical Industry
11. Jiangxi Provincial Wall Material Renovation Special Fund: Special Subsidies For New Wall Materials
12. Jiangxi Provincial Bulk Cement Special Fund: Transformation Of Bulk Cement Facilities And Equipment
13. Xinyu City "Final Battle to Complete Industry GGP 50 Billion Award"
14. Jiangxi Provincial Environmental Protection Special Fund: Transformation Grant HPF Gas Desulfurization System
15. Jiangxi Provincial Environmental Protection Special Fund: Reconstruction project grants for transportation system of good mine and tailings
16. Jiangxi Provincial Environmental Protection Special Fund: Project Grants For Desulfurization By Wet Process Of HPF Coal Oven Gas
17. Jiangxi Provincial Environmental Protection Special Fund: Grant To Converter One-Time De-Dusting
18. Tertiary Technological Renovation Grants For Discounts
19. Xinyu Municipal Environmental Protection Special Fund: Grants For Pollution Control Facilities And Construction
20. National Environmental Protection And Resource Saving Program: Grants For The Optimization Of Energy Systems
21. Jiangxi Provincial Energy Saving Special Fund Program: Grants For Energy-Saving And Emissions-Reducing Coke Oven 1580mm Sheet Items
22. Treasury Bond Fund Grant (Also referred to as Resource Saving and Environmental Protection Program)
23. Interest Subsidy Grant Under Fund for Technology Renovation Project Loans (Also referred to as

Discount Fund Provided In Accordance With Cai Qi (2006) No. 426 Decree Issued By The Ministry Of Finance)

24. Measures Regarding the Management of the Interest Subsidy Fund for Technology Renovation Project Loans
25. Fenyi County Government Incentives

#### B. Programs Used by Xingang

1. Stamp Exemption on Share Transfers Under Non-Tradable Share Reform
2. Various Tax Benefits
3. Various VAT Deductions

#### C. Programs Used by Fasten Corp.

1. Assistance for Technology Innovation - R&D Project
2. Assistance for Optimizing the Structure of Import/Export of High-Tech Products
3. Assistance for the Development of Company Owned Brand
4. Wuxi Tengfei Award
5. Award for Provincial R&D Platform - Famous Brands
6. Award for Provincial R&D Platform
7. National Science & Technology Assistance Program
8. Award for Wuxi Municipal Level R&D Center
9. Intellectual Property Fund of Jiangsu Province
10. Natural Science Fund of Jiangsu Province
11. Important Structural Adjustment Program of Jiangsu Province
12. Technology Innovation Program of Wuxi

#### D. Fasten I&E

1. Subsidy on VAT Tax Refund for Exports
2. Rebates of Antidumping Legal fees

#### E. Various Firms

1. Provision of Water for LTAR

#### 2. Export Incentive Payments Characterized as "VAT Rebates"

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." See 19 CFR 351.517(a); see also 19 CFR 351.102 (for a definition of "indirect tax"). To determine whether the GOC provided a benefit under this program, we compared the VAT exemption upon export to the VAT levied with respect to the production and distribution of like products when sold for domestic consumption. Information from the GOC indicates that the VAT levied on PC strand sales in the domestic market (17 percent) exceeded the amount of VAT exempted upon the export of PC strand (5 percent). Thus, we preliminarily determine that the VAT exempted upon the export of PC strand did not confer a countervailable benefit.

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

- A. Treasury Bond Loans
- B. Provision of Electricity and Water at LTAR for FIEs and "Technologically Advanced" Enterprises by Jiangsu Province
- C. Import Tariff and VAT Refunds to Promote the Development of Equipment Manufacturing in China
- D. State Key Technology Fund
- E. Exemptions for SOEs from Distributing Dividends to the State
- F. Grants to Loss-Making SOEs
- G. Income Tax Exemptions for Export-Oriented FIEs
- H. Local Income Tax Exemption and Reduction Programs for "Productive FIEs

- I. Preferential Tax Programs for Foreign-Invested Enterprises Recognized as High or New Technology Enterprises
- J. VAT Refunds for FIE's Purchasing Domestically-Produced Equipment
- K. Honorable Enterprise Program
- L. Preferential Loans for Key Projects and Technologies
- M. Reduction in or exemption from Fixed Assets Investment Orientation Regulatory Tax
- N. Preferential Loans for SOEs

#### IV. Programs Preliminarily Determined Not To Exist

- A. Income Tax Exemption for Investment in Domestic Technological Renovation

#### V. Programs for Which We Need More Information

- A. Deed Tax Exemption for SOEs Undergoing Mergers or Restructurings
- B. Elimination of Backward Production Capacity Award Fund
- C. Heavy and Middle Plate Project Loan Program
- D. Reward for Export Program
- E. Pollution Charge Refund Program
- F. Tax Revenue Return Program

#### Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the Xinhua and Fasten 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 individual rates for subject merchandise produced and exported by the entities identified below. We preliminarily determine the total estimated net countervailable subsidy rate to be:

Producer/Exporter	Net Subsidy Rate
Xinhua Metal Products Company (Xinhua), Xinyu Iron and Steel Joint Stock Limited Company (Xinyu), and Xinyu Iron and Steel Limited Liability Company (Xingang) (Collectively the Xinhua Companies) .....	12.06 percent <i>ad valorem</i>
Fasten Group Corporation (Fasten Corp.), Fasten Group Import & Export Co., Ltd. (Fasten I&E), Jiangyin Hongsheng Co. Ltd. (Hongsheng), Jiangyin Fasten Steel (Fasten Steel), Jiangyin Hongyu Metal Products Co., Ltd. (Hongyu Metal), and Jiangyin Walsin Steel Cable Co., Ltd. (Walsin) (Collectively, the Fasten Companies) .....	7.53 percent <i>ad valorem</i>
All Others .....	9.80 percent <i>ad valorem</i>

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* net subsidy rates, or any rates based solely on the facts available.

Notwithstanding the language of section 705(c)(1)(B)(i)(I) of the Act, we have not calculated the all-others rate by weight averaging the rates of the Xinhua and Fasten Companies because doing so

risks disclosure of proprietary information. Therefore, for the all-others rate, we have calculated a simple average of the two responding firms' rates.

In accordance with sections 703(d) (1) (B) and (2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all

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

#### ITC Notification

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

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

#### Disclosure and Public Comment

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

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties

should confirm the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

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

Dated: October 26, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing and Duty Operations.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XB47**

#### Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Non-Pollock Groundfish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of fee rate adjustment.

**SUMMARY:** NMFS issues this notice to decrease the fee rate for the non-pollock groundfish fishery to repay the \$35,000,000 reduction loan to finance the Non-Pollock groundfish fishing capacity reduction program.

**DATES:** The non-pollock groundfish program fee rate decrease will begin on January 1, 2010.

**ADDRESSES:** Send questions about this notice to Leo Erwin, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3282.

**FOR FURTHER INFORMATION CONTACT:** Leo Erwin, (301) 713-2390.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Sections 312(b)–(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b) through (e)) generally authorizes fishing capacity reduction programs. In particular, section 312(d) authorizes industry fee systems for

repaying reduction loans which finance reduction program costs.

Subpart L of 50 CFR part 600 is the framework rule generally implementing section 312(b)–(e).

Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) generally authorizes reduction loans.

Enacted on December 8, 2004, section 219, Title II, of FY 2005 Appropriations Act, Public Law 104-447 (Act) authorizes a fishing capacity reduction program implementing capacity reduction plans submitted to NMFS by catcher processor subsectors of the Bering Sea and Aleutian Islands ("BSAI") non-pollock groundfish fishery ("reduction fishery") as set forth in the Act.

The longline catcher processor subsector (the "Longline Subsector") is among the catcher processor subsectors eligible to submit to NMFS a capacity reduction plan under the terms of the Act.

The longline subsector non-pollock groundfish reduction program's objective was to reduce the number of vessels and permits endorsed for longline subsector of the non-pollock groundfish fishery.

All post-reduction fish landings from the reduction fishery are subject to the longline subsector non-pollock groundfish program's fee.

NMFS proposed the implementing notice on August 11, 2006 (71 FR 46364) and published the final notice on September 29, 2006 (71 FR 57696).

NMFS allocated the \$35,000,000 reduction loan to the reduction fishery and is repayable by fees from the fishery.

NMFS published in the **Federal Register** on September 24, 2007 (72 FR 54219), the final rule to implement the industry fee system for repaying the non-pollock groundfish program's reduction loan and established October 24, 2007 as the effective date when fee collection and loan repayment began. The regulations implementing the program are located at § 600.1012 of 50 CFR part 600's subpart M.

##### II. Purpose

The purpose of this notice is to adjust, in accordance with the framework rule's § 600.1013(b), the fee rate for the reduction fishery. Section 600.1013(b) directs NMFS to recalculate the fee rate that will be reasonably necessary to ensure reduction loan repayment within the specified 30 year term.

NMFS has determined for the reduction fishery that the current fee rate of \$0.02 per pound is more than needed to service the loan. Therefore,