

The products within the scope of this order are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

#### Initiation of Minor Alterations Anti-Circumvention Proceeding

Section 781(c) of the Act provides that the Department may find circumvention of an AD order when products which are of the class or kind of merchandise subject to an AD order have been “altered in form or appearance in minor respects \* \* \* whether or not included in the same tariff classification.” Based on the arguments and information contained in petitioners’ allegation, we find that there is a sufficient basis to initiate an anti-circumvention inquiry pursuant to section 781(c) of the Act and 19 CFR 351.225(i) to determine whether wire rod with an actual diameter measuring between 4.75 mm and 5.00 mm results from a minor alteration, and thus, a change so insignificant as to render such wire rod subject to the *Wire Rod Order*. For a summary of the comments received from interested parties and further discussion of the Department’s basis for initiating this minor alteration inquiry, see the accompanying Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, “Initiation of Minor Alteration Circumvention Inquiry on Wire Rod With an Actual Diameter Between 4.75 and 5.00 Millimeters,” (Initiation Memorandum), of which the public version is on file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

As explained in the Initiation Memorandum, the Department has declined to initiate on petitioners’ allegation that the wire rod at issue constitutes a later-developed product as described under section 781(d) and 19 CFR 351.225(j). We based our determination on information submitted by Deacero that indicates that a Japanese firm made small-diameter wire rod (e.g., rod with diameters as narrow as 4.2 mm) commercially available prior to the filing of the petition.

In addition, we have declined to initiate a scope inquiry under 19 CFR

351.225(k)(2) as requested by petitioners. As explained in the Initiation Memorandum, we find that the petition from the underlying investigation as well as information from the International Trade Commission (ITC) referenced in the petition indicates that the diameters referenced in the scope of the *Wire Rod Order* pertain to actual diameters. Therefore, we find that wire rod with an actual diameter of less than 5.00 mm is not within the scope of the *Wire Rod Order*.

Our finding under 19 CFR 351.225 (k)(1), that wire rod with an actual diameter that is less than 5.00 mm is not within the scope of the *Wire Rod Order*, is consistent with our decision under 19 CFR 351.225(i) To initiate a minor alteration anti-circumvention inquiry concerning wire rod with an actual diameter between 4.75 mm and 5.00 mm. In *Nippon Steel* the Court of Appeals for the Federal Circuit (CAFC) found that the Department may be precluded from conducting a minor alteration inquiry in instances in which the product is well-known prior to the order and was specifically excluded from the investigation. See *Nippon Steel Corp. v. United States*, 219 F.3d 1348, 1356 (Fed. Cir. 2000) (*Nippon Steel*). The *Wire Rod Order* does not specifically exclude wire rod with an actual diameter between 4.75 mm and 5.00 mm and, thus, the conditions necessary to preclude a minor alteration inquiry are not present. The Department reached the same conclusion in this regard in the *Wax Candles from the PRC Inquiry Prelim*, which was upheld in the *Wax Candles from the PRC Inquiry*. See *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 71 FR 32033, 32037 (June 2, 2006) (*Wax Candles from the PRC Inquiry Prelim*), see also *Later-Developed Merchandise Anti-Circumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Anti-Dumping Duty Order*, 71 FR 59076–59076 (October 6, 2006) (*Wax Candles from the PRC Inquiry*), and accompanying Issues and Decision Memorandum (*Wax Candles from the PRC Inquiry Decision Memorandum*).

We are initiating this minor alteration anti-circumvention inquiry on Deacero and Ternium, the Mexican firms identified by petitioners in their circumvention allegations. However,

within 45 days of the issuance of the initiation of this inquiry, if the Department receives sufficient evidence that other Mexican manufacturers are involved in the production of wire rod with an actual diameter between 4.75 mm and 5.00 mm, we will consider examining such additional manufacturers.

In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct CBP to suspend liquidation and require a cash deposit of estimated duties on the merchandise from firms covered by the determination.

The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation.

This notice is published in accordance with sections 781(c) and 781(d) of the Act and 19 CFR 351.225(i).

Dated: May 31, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C–570–938]

#### Citric Acid and Certain Citrate Salts from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review

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

**SUMMARY:** The Department of Commerce is conducting an administrative review of the countervailing duty order on citric acid and certain citrate salts from the People’s Republic of China for the period September 19, 2008, through December 31, 2009. We preliminarily find that RZBC Co., Ltd. (“RZBC Co.”); RZBC Import & Export Co., Ltd. (“RZBC I&E”); RZBC (Juxian) Co., Ltd. (“RZBC Juxian”); and RZBC Group Co., Ltd. (“RZBC Group”) (collectively, “RZBC”), and Yixing Union Biochemical Co., Ltd. (“Yixing Union Co.”) and Yixing Union Cogeneration Co., Ltd. (“Cogeneration”) (collectively, “Yixing Union”) received countervailable subsidies during the period of review. If these preliminary results are adopted in our final results of this review, we will instruct U.S.

Customs and Border Protection to assess countervailing duties as detailed in the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results.

**DATES:** *Effective Date:* June 8, 2011.

**FOR FURTHER INFORMATION CONTACT:**

David Layton, Seth Isenberg, or Austin Redington, Office of AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3069, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-0371, (202) 482-0588, and (202) 482-1664, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 29, 2009, the Department of Commerce ("the Department") published a countervailing duty order on citric acid and certain citrate salts ("citric acid") from the People's Republic of China ("PRC"). See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Notice of Countervailing Duty Order*, 74 FR 25705 (May 29, 2009) ("CVD Order"). On May 3, 2010, we published a notice of "Opportunity to Request Administrative Review" for this countervailing duty order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 75 FR 23236 (May 3, 2010). On May 18, 2010, we received a request for administrative review from the RZBC; on May 24, 2010, we received a request for administrative review from Yixing Union. On June 1, 2010, we received a request from Archer Daniels Midland Company; Cargill, Incorporated; and Tate & Lyle Americas (collectively, "Petitioners") to conduct an administrative review of 56 companies, including RZBC and Yixing Union. In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on June 30, 2010. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 75 FR 37759 (June 30, 2010). On August 17, 2010, the Department issued a respondent selection memorandum selecting RZBC and Yixing Union as mandatory respondents. See Memorandum to Susan H. Kuhbach from Patricia M. Tran, regarding Respondent Selection: Countervailing Duty Administrative Review-Citric Acid and Certain Citrate Salts (August 17, 2010).

On September 27, 2010, Petitioners timely withdrew their request for an administrative review for 54 companies. On November 22, 2010, the Department published a partial rescission of review for these 54 companies, continuing the review with respect to RZBC and Yixing Union. See *Citric Acid and Certain Citrate Salts From People's Republic of China: Partial Rescission of Countervailing Duty Administrative Review*, 75 FR 71078 (November 22, 2010).

On September 17, 2010, we issued countervailing duty questionnaires to the Government of the PRC ("GOC"), RZBC, and Yixing Union. We received responses to these questionnaires from RZBC and Yixing Union on November 9, 2010, and from the GOC on November 15, 2010. On February 28, 2011, we issued supplemental questionnaires to the GOC, RZBC, and Yixing Union. We received responses to the first supplemental questionnaires from each of the three respondents on March 28, 2011. On April 21, 2011, we issued second supplemental questionnaires, which also included some questions concerning the new subsidy allegations discussed below, to the GOC, RZBC, and Yixing Union. We received responses to the second supplemental questionnaire from the GOC on May 5, May 9, and May 10, 2011. We received responses to the second supplemental questionnaire from RZBC on May 9, and May 10, 2011, and from Yixing Union on May 9, 2011. The Department issued a third supplemental questionnaire to Yixing Union and RZBC on May 11, and May 16, 2011, respectively. Yixing Union responded to the third supplemental questionnaire on May 17, 2011, and RZBC responded to this questionnaire on May 19, 2011.

On August 16, 2010, Petitioners submitted new subsidy allegations requesting the Department examine two alleged subsidy programs that it had deferred examining in the investigation and one additional program, national policy lending. On December 2, 2010, Petitioners requested that the Department extend the deadline to submit new subsidy allegations. In response to Petitioners' request, the Department extended the deadline to submit new subsidy allegations until December 10, 2010. See Department's Letter to Petitioners granting their extension request (December 3, 2010), which is on file in the Central Records Unit ("CRU") in room 7046 in the main Department building. On December 10, 2010, Petitioners submitted new subsidy allegations requesting the Department expand its countervailing duty administrative review to include five

additional subsidy programs, and separately requesting that the Department investigate Yixing Union's creditworthiness. The Department rejected the new subsidy allegations because the Petitioners failed to adequately identify the originators of the business proprietary information included in the submission, and it provided Petitioners with the opportunity to resubmit these allegations by December 15, 2010. The Petitioners resubmitted the allegations on December 15, 2010.

In response to Petitioners' new subsidy allegations, RZBC, the GOC, and Yixing Union (collectively, "Respondents") submitted comments on December 27, December 28, and December 30, 2010, respectively. Petitioners submitted a rebuttal to these comments on January 25, 2011. The Department removed the Petitioners' January 25 rebuttal submission from the record on February 17, 2011, because it contained untimely new factual information. Petitioners submitted a revised rebuttal to Respondents' comments on the new subsidy allegation on February 18, 2011, which excluded the untimely new factual information. On February 22, 2011, the Department issued a memorandum recommending investigating four of the five new subsidy allegations, as well as investigating Yixing Union's creditworthiness for long-term loans outstanding during the POR that originated between 2004 and 2009 and non-recurring subsidies for which we need to calculate a discount rate. See Memorandum to Susan H. Kuhbach, Director, Office 1 from David Layton and Seth Isenberg, International Trade Compliance Analysts, Office 1, "Analysis of New Subsidy Allegations" (February 10, 2011) ("NSA Memorandum"). On February 22, 2011, we issued questionnaires on the new subsidy allegations to the GOC, RZBC, and Yixing Union. We received responses to these new subsidy allegation questionnaires from the GOC, Yixing Union and RZBC on March 18, 2011. The Department issued first supplemental questionnaires on the new subsidy allegations to RZBC and Yixing Union on March 28, 2011, and to the GOC on April 14, 2011. RZBC and Yixing Union responded to the first supplemental questionnaires on April 4, 2011. We received responses to the first new subsidy allegation supplemental questionnaire from the GOC on April 27 and May 4, 2011. The Department issued second supplemental questionnaires on the new subsidy allegations to RZBC and Yixing Union

on April 14, 2011, and to the GOC on May 3, 2011. RZBC responded to its second new subsidy allegation supplemental questionnaire on May 3, 2011, and Yixing Union responded to its second new subsidy allegation supplemental questionnaire on May 3 and May 6, 2011.

On January 14, 2011, we published a postponement of the preliminary results in this review until May 31, 2011. *See Citric Acid and Certain Citrate Salts from People's Republic of China: Extension of Time Limit for the Preliminary Results of the Countervailing Duty Administrative Review*, 76 FR 2648 (January 14, 2011).

On April 27, 2011, Petitioners filed an allegation that RZBC Co., RZBC I&E, and RZBC Juxian were uncreditworthy from 2006 to 2009. We intend to address this allegation after issuance of these preliminary results.

On May 18, 2011, the GOC filed information to supplement its May 17, 2011, response to the Department's second new subsidy allegation supplemental questionnaire. The GOC did not request an extension for the deadline to submit this information. Therefore, in accordance with 19 CFR 351.302(d), the Department will return the May 18, 2011, filing to the GOC as untimely filed.

On May 13, 2011, Petitioners submitted information to rebut RZBC's May 3, 2011, new subsidy allegation supplemental questionnaire response. This submission included an alternate financial statement that RZBC allegedly filed with the Chinese Administrative Bureau of Industry and Commerce ("AIC"), as well as a sworn statement from a chemical expert that disputes RZBC's reported sulfuric acid consumption. On May 19, 2011, Petitioners submitted information to rebut Yixing Union's May 9, 2011, supplemental questionnaire response. This submission included an alternate financial statement that Yixing Union allegedly filed with the AIC. On May 24, 2011, Petitioners submitted comments arguing that the Department should apply total adverse facts available ("AFA") to both RZBC and Yixing Union due to the alleged existence of alternate financial statements. Further, Petitioners' submission argued that the Department should find the provision of steam coal for less than adequate remuneration ("LTAR") to be a countervailable subsidy and that a tier-two benchmark should be used to calculate the subsidy rate.

On May 24, 2011, Yixing Union requested that the Department reject Petitioners' May 19, 2011 comments as containing untimely filed new factual

information or deny Petitioners' request for proprietary treatment of certain foreign market research included in the May 19, 2011, comments. Further, Yixing Union noted that it is unable to comment on the substance of Petitioners' allegations because of Yixing Union's inability to view the May 19, 2011, comments. Yixing Union asserts that the information contained in Petitioners' May 19, 2011, comments is not authentic.

These comments submitted by Petitioners and Yixing Union in May 2011, were filed too late for the Department's consideration in these preliminary results.

### Scope of the Order

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

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

### Scope Rulings

On November 2, 2010, Aceto Corporation ("Aceto") requested that the Department find its calcium citrate USP to be outside the scope of the *CVD Order* and the antidumping duty orders on citric acid and certain citrate salts from the PRC and Canada. *See Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders*, 74 FR 25703 (May 29, 2009). On February 14, 2011, the Department issued a final scope ruling, finding that Aceto's product is within the scope of those orders. *See Memorandum from Christopher Siepmann, International Trade Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Citric Acid and Certain Citrate Salts: Scope Ruling for Calcium Citrate USP"* (February 14, 2011).

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

### Period of Review

The period for which we are measuring subsidies, *i.e.*, the period of review ("POR"), is September 19, 2008,

through December 31, 2009.<sup>1</sup> Because the POR spans two calendar years, we are calculating separate countervailing duty rates for September 19, 2008, through December 31, 2008; and January 1, 2009, through December 31, 2009.

#### 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 the accompanying Issues and Decision Memorandum (“CFS Decision Memorandum”). In *CFS from the PRC*, the Department found that

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

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

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

#### Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (“the Act”), provide that the Department shall apply

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.” See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 at 870 (1994).

#### RZBC—Sulfuric Acid

We requested the respondent companies to provide detailed information on all of their purchases of sulfuric acid during the POR, including the identities of the producers of the sulfuric acid. See, e.g., RZBC new subsidy questionnaire issued by the Department on February 22, 2011, and again in a supplemental questionnaire issued on April 14, 2011. RZBC identified certain producers of the sulfuric acid it purchased. However, for some sulfuric acid purchases, RZBC failed to provide the requested producer information.

We preliminarily determine that RZBC withheld necessary information that was requested of it and, thus, that the Department must rely on “facts available” for these preliminary results. See section 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that RZBC failed to cooperate by not acting to the best of its ability to comply with our request for information.

Consequently, an adverse inference is warranted in the application of facts available. See section 776(b) of the Act.

Due to RZBC's failure to identify the producers of certain sulfuric acid it purchased, we are assuming adversely that these suppliers of sulfuric acid are “authorities” within the meaning of section 771(5)(B) of the Act.

#### GOC—Sulfuric Acid

On February 22, April 14, and May 3, 2011, we requested information from the GOC about the specific companies that produced the sulfuric acid purchased by the mandatory respondents. Specifically, we asked the GOC to provide particular ownership information for these producers so that we could determine whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act. Although the GOC provided some of the requested information, it failed to provide certain necessary information. In particular, for certain suppliers, no information was submitted; for certain other suppliers that had some direct corporate ownership, the GOC failed to provide articles of association for each level of ownership, information as to whether any of the owners, members of the boards of directors or managers were also government officials or Chinese Communist Party (“CCP”) officials, or whether operational and strategic decisions made by the management or boards of directors are subject to government review or approval; and for other suppliers that were directly owned by individuals, the GOC generally failed to address whether any of the owners, members or the boards of directors or managers were also government officials or CCP officials, or whether operational and strategic decisions made by the management or boards of directors are subject to government review or approval.

We preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on “facts available” for these preliminary results. See section 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. The GOC is well aware of the Department's reporting requirements by now, yet, despite being given multiple opportunities, it either stated that it had contacted local authorities for the information or it simply did not submit requested information. Consequently, an adverse inference is warranted in the application of facts available. See section 776(b) of the Act.

<sup>1</sup> For the purposes of the final results, we intend to analyze data for the period January 1, 2008, through December 31, 2008, to determine the subsidy rate for exports of subject merchandise made during the period in 2008 when liquidation of entries was suspended. In addition, we have analyzed data for the period January 1, 2009, through December 31, 2009, to determine the subsidy rate for exports during that period. The 2009 subsidy rate will serve as the cash deposit rate for exports of subject merchandise subsequent to the publication of the final results of this administrative review. See “Programs for Which More Information Is Required,” below.

Due to the GOC's failure to provide the requested ownership information about the producers of the sulfuric acid purchased by the respondents, we are assuming adversely that all of the respondents' suppliers of sulfuric acid are "authorities."

#### *GOC—Steam Coal*

On February 22, April 14, and May 3, 2011, we requested information from the GOC about the specific companies that produced the steam coal purchased by Yixing Union Co.'s parent, Cogeneration. Specifically, we asked the GOC to provide particular ownership information for these producers so that we could determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. Although the GOC provided some of the requested information, it failed to provide certain necessary information. In particular, for certain suppliers, no information was submitted; for certain other suppliers that had some direct corporate ownership, the GOC failed to provide articles of association for each level of ownership, information as to whether any of the owners, members of the boards of directors or managers were also government officials or CCP officials, or whether operational and strategic decisions made by the management or boards of directors are subject to government review or approval; and for other suppliers that were directly owned by individuals, the GOC generally failed to address whether any of the owners, members or the boards of directors or managers were also government officials or CCP officials, or whether operational and strategic decisions made by the management or boards of directors are subject to government review or approval. For one coal supplier directly owned by individuals, the GOC responded that none of the owners was a government or CCP official, but did not address whether managers or board members were.

We preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" for these preliminary results. *See* section 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. The GOC is well aware of the Department's reporting requirements by now, yet, despite being given multiple opportunities, it simply did not submit requested information. Consequently, an adverse inference is

warranted in the application of facts available. *See* section 776(b) of the Act.

Due to the GOC's failure to provide the requested ownership information about the producers of the steam coal purchased by Cogeneration, we are assuming adversely that all of that company's suppliers of steam coal are "authorities."

#### *GOC—RZBC's and Yixing Union's "Other Subsidies"*

The financial statements and tax returns submitted by the responding companies indicated that they received potentially countervailable subsidies in the form of grants. Consequently, we sought further information from the responding companies about these grants, and also asked the GOC to provide information about the programs under which these grants were given. *See, e.g.,* supplemental questionnaires issued to Respondents on February 28, 2011, and the supplemental questionnaire issued to the GOC on April 21, 2011.

For certain programs identified below under "Programs Preliminarily Determined to be Countervailable: Other Subsidies," information submitted by the GOC and/or the company respondents showed that the grants were specific and countervailable. We normally rely on information from the government to assess program specificity, however, the GOC did not submit this information in all instances. Where Yixing Union or RZBC have submitted information about the specificity of programs included in "other subsidies," we have relied upon this information to make our determinations. However, for the remaining grants, addressed under "Programs Preliminarily Determined to be Countervailable: Other Subsidies," the GOC did not provide the requested information about the programs under which they were given and the company-provided information was limited to the amount given, the date of the grant, and the granting authority. Where none of the Respondents has provided information that would allow us to determine the specificity of the "other subsidies" we have relied upon AFA for our determination.

For certain additional programs identified below under "Programs Preliminarily Determined Not to Confer a Measurable Benefit During the POR," the subsidy did not result in a measurable benefit, or the benefit was expensed prior to the POR (*see* 19 CFR 351.524(a)(2)).

We preliminarily determine that the GOC has withheld necessary information that was requested of it and,

thus, that the Department must rely on "facts available" for these preliminary results. *See* section 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act.

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

#### *Subsidies Valuation Information*

##### *Allocation Period*

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

##### *Attribution of Subsidies*

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(iv) direct the Department to attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, or produce an input that is primarily dedicated to the production of the downstream product. In the case of a transfer of a subsidy between cross-owned companies, 19 CFR 351.525(b)(6)(v) directs the Department to attribute the subsidy to the sales of the company that receives the transferred subsidy.

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

between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.

The Court of International Trade ("CIT") has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600–604 (CIT 2001).

### RZBC

RZBC Co. responded to the Department's original and supplemental questionnaires on behalf of itself, RZBC Group, RZBC Juxian and RZBC I&E. RZBC Co., RZBC Juxian, and RZBC I&E are wholly owned by RZBC Group and, hence, are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). RZBC Co. and RZBC Juxian are both producers of subject merchandise; RZBC I&E is an exporter of subject merchandise; and RZBC Group is a headquarters company and does not produce any merchandise. Consequently, the subsidies received by these companies are being attributed according to the rules established in 19 CFR 351.525(b)(6)(ii), (c), and (b)(6)(iii), respectively. Moreover, different cross-owned affiliates among RZBC Co., RZBC Juxian, and RZBC I&E sell merchandise produced by RZBC Co. and RZBC Juxian to unaffiliated parties for both export and domestic sales. Therefore, to attribute properly the benefit from subsidies to RZBC Co. or RZBC Juxian we are preliminarily using the sales of RZBC Co.—or RZBC Juxian—produced merchandise by any of the three cross-owned affiliates to unaffiliated companies.

In its questionnaire responses, RZBC also identified prior owners of the company, *i.e.*, companies that owned RZBC Co. prior to the POR, but since the cut-off date of December 11, 2001. Given the level of these companies' ownership in RZBC Co., we asked that RZBC also respond on their behalf. These responses were submitted on May 10, 2011.

Based on the information provided by RZBC, we preliminarily determine that these prior owners are "cross-owned" with the RZBC companies (*see* 19 CFR 351.525(b)(6)(vi)). However, for these preliminary results we do not have the

correct sales data to attribute certain subsidies the prior owners may have received. Moreover, we will provide the GOC an opportunity to submit information on the programs under which possible subsidies may have been granted. Therefore, with the exception of Shandong Province Policy Loans (for which no further information is required), we intend to address assistance to RZBC's prior owners in a post-preliminary analysis.

Also, RZBC I&E reported that it exports subject merchandise produced by other, unaffiliated companies, but that this merchandise was not exported to the United States during the POR. Although any subsidies to the unaffiliated producers would normally be cumulated with those of the trading company that sold their merchandise pursuant to 19 CFR 351.525(c), the Department has, in some instances, limited the number of producers it examines where their merchandise was not exported to the United States during the POR or accounted for a very small share of respondent's exports to the United States. *See, e.g., Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review*, 66 FR 64214 (December 12, 2001), and accompanying Issues and Decision Memorandum at "Attribution." In this review, we have not sent CVD questionnaires to the unaffiliated producers of citric acid whose merchandise was exported by RZBC I&E because their merchandise was not exported to the United States during the POR. Also, we have removed the sales of these products from RZBC I&E's sales for purposes of calculating countervailable subsidy rates for RZBC.

### Yixing Union

Yixing Union Co. responded to the Department's original and supplemental questionnaires on behalf of itself and its parent and electricity supplier, Cogeneration. Yixing Union Co. and Cogeneration were found to be cross-owned in the investigation. *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 9, 2009) ("*Citric Acid from the PRC*" or "*Investigation*"), and accompanying Issues and Decision Memorandum ("*Citric Acid Decision Memorandum*") at 9–10 and Comment 27.

We continue to find that Yixing Union Co. and Cogeneration are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Further, because Cogeneration is the parent of Yixing Union Co., we are attributing the subsidies received by Cogeneration

according to the rule established in 19 CFR 351.525(b)(6)(iii).

### Benchmarks and Discount Rates

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

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

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. However, for the reasons explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. *See CFS Decision Memorandum at Comment 10.* Because of this, any loans received by respondents from private Chinese or foreign-owned banks in the PRC would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, because of the Chinese government's significant presence in the banking sector, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external, market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) ("*Softwood Lumber from*

Canada”), and accompanying Issues and Decision Memorandum (“Softwood Lumber Decision Memorandum”) at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC* and more recently updated in *LWTP from the PRC*. See *CFS Decision Memorandum* at Comment 10; *Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (“*LWTP from the PRC*”), and accompanying Issues and Decision Memorandum (“*LWTP Decision Memorandum*”). See also *LWTP Decision Memorandum* at “Benchmarks and Discount Rates.” This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes (“GNIs”) similar to the PRC. The benchmark interest rate takes into account a key factor involved in interest rate formation (*i.e.*, the quality of a country’s institutions), which is not directly tied to the state-imposed distortions in the banking sector discussed above.

Following the methodology developed in *CFS from the PRC*, we first determined which countries are similar to the PRC in terms of GNI, based on the World Bank’s classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries.<sup>2</sup> As explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund and 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 duty purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any

country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L’Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for the calculation of the inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.

Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondent’s interest payments for inflation. This was done using the PRC inflation rate as reported in the IFS.

**Benchmark for Long-Term RMB Denominated Loans:** The lending rates reported in the IFS represent short- and medium-term lending, and there are no sufficient publicly available long-term interest rate data upon which to base a robust long-term benchmark. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. See *LWTP Decision Memorandum* at “Benchmarks and Discount Rates.” In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. See *Citric Acid Decision Memorandum* at Comment 14. Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

**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 LIBOR, plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. See *LWTP Decision Memorandum* at 10. 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.

**Uncreditworthiness Benchmark:** As discussed below, the Department is

preliminarily finding that Yixing Union was uncreditworthy in 2009. To construct the uncreditworthy benchmark rate for those years, we used the long-term rates described above as the “long-term interest rate that would be paid by a creditworthy company” in the formula presented in 19 CFR 351.505(a)(3)(iii).

**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.

For the calculated benchmark and discount rates, see Memorandum to the File from Shane Subler, International Trade Compliance Analyst, Office 1, AD/CVD Operations, regarding “Benchmark Interest Rates” (March 28, 2011).

### Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. See 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i)(A)–(D), the Department normally examines the following four types of information: (1) Receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm’s financial health; (3) present and past indicators of the firm’s ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm’s future financial position. If a firm has taken out long-term loans from commercial sources, this will normally be dispositive of the firm’s creditworthiness. However, if the firm is government-owned, the existence of commercial borrowings is not dispositive of the firm’s creditworthiness. This is because, in the case of a government-owned firm, a bank is likely to consider that the government will repay the loan in the event of a default. See *Countervailing Duties: Final Rule*, 63 FR 65348, 65367 (November 25, 1998). For government-owned firms, we will make our creditworthiness determination by examining receipt by the firm of comparable commercial long-term loans

<sup>2</sup> See The World Bank Country Classification, <http://econ.worldbank.org/>.

and the other factors listed in 19 CFR 351.505 (a)(4)(i).

### Yixing Union

Petitioners alleged that Yixing Union was uncreditworthy for the period 2004 through 2009. For purposes of these preliminary results, we have limited our analysis to 2009. As discussed below, the Department has preliminarily determined that Yixing Union received countervailable national policy loans in that year. During the years 2006–2008, neither Yixing Union Co. nor Cogeneration received countervailable loans or allocable subsidies. For 2004 and 2005, as discussed below in the “Programs for Which More Information is Required” section, the Department requires additional information related to Cogeneration in order to complete its creditworthiness analysis.

Based on our analysis of the information described in 19 CFR 351.505(a)(4)(i)(A)–(D), we preliminarily determine that Yixing Union Co. was uncreditworthy in 2009. Yixing Union Co. did not receive commercial long-term loans in that year; its financial information indicated that the company could have problems meeting its costs and financial obligations with its cash flow, making it a significant credit risk to lenders; and there was no record evidence to suggest that the health of the citric acid industry or Yixing Union was due to improve in the near future. For further analysis, see Memorandum from Austin Redington, International Trade Compliance Analyst, through Yasmin Nair, Program Manager, to Susan Kuhbach, Senior Office Director, “Preliminary Creditworthiness Determination for Yixing-Union Biochemical Co., Ltd. and Yixing-Union Cogeneration Co., Ltd.,” dated May 31, 2011.

### RZBC

As noted above in the “Background” section, Petitioners filed an allegation that RZBC Co., RZBC I&E, and RZBC Juxian were uncreditworthy in years 2006 through 2009. We intend to address this allegation following the issuance of these preliminary results and will provide the parties with an opportunity to comment on our finding.

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

##### A. Government Policy Lending

In the *Investigation*, the Department found that the Shandong Provincial government supported its citric acid industry with policy loans, *i.e.*, that loans made by policy banks and SOCBs in Shandong province conferred a

subsidy on citric acid producers in Shandong. We also found that there was not a national program or a Jiangsu Province program of policy lending to citric acid producers. See Citric Acid Decision Memorandum at Comment 5. In this review, Petitioners provided new evidence that caused the Department to examine again allegations of national and Jiangsu provincial policy lending programs. See NSA Memorandum (February 10, 2011).

As explained below, we preliminarily determine that a national level policy lending program exists for citric acid as part of China’s “light industry” and that there is not a Jiangsu Province policy lending program for citric acid. Because no information has been provided that would cause us to reach a different determination from the *Investigation* for Shandong Province, we preliminarily determine that the Shandong government’s policy lending program continues.

##### National Policy Lending

In the *Investigation*, the Department concluded that there was not substantial evidence of policy lending to the citric acid industry at the national level because record evidence indicated that citric acid was not considered to be a “new biochemical product” targeted for support in the *Decision No. 40* and the *Catalogue on Readjustment of Industrial Structural Adjustment*. See Citric Acid Decision Memorandum at Comment 5, pages 52–53. In their new subsidy allegations for this administrative review, Petitioners provided evidence in the form of the USDA report concerning GOC support of industrial corn processors and GOC key product and high and new technology enterprise certificates held by a citric acid respondent company. Petitioners argue that the USDA report identifies industrial corn processors, including citric acid producers as a “key industry” for government support in 2000 and also indicates that “the industry was singled out for support in China’s five-year plans for 2000–05 and 2009–10.” Petitioners also argue that the special certificates held by RZBC that recognize it as a producer of a national key new product and recognize RZBC as a high and new technology enterprise reinforce the Petitioners’ arguments from the investigation that citric acid is part of the encouraged new biochemical and food additive product categories. See Petitioners’ Additional Subsidy Allegation (December 15, 2010) (“PNSA2”) at 18–19.

In its initial new subsidy allegation questionnaire response, dated March 18, 2011 (“GNSAQR”), the GOC states that

citric acid is not considered a “new biochemical product” in the PRC, but instead “is classified as light industry product as most citric acid is consumed by the food and beverage industry with only 10% of citric acid produced is used in the chemical industry”.<sup>3</sup> See GNSAQR at 17. In response to further questions on what constitutes a “new biochemical product,” the GOC stated that there are no official criteria that the National Development and Reform Commission (“NDRC”) uses to determine what constitutes a, “new biochemical product,” other than it is not citric acid. The GOC provided a letter from the NDRC reiterating the preceding points and stating that “citric acid does not constitute a ‘new biochemical product.’” See GOC New Subsidy Allegation First Supplemental Questionnaire Response (Part 1), (April 27, 2011) (“GNSAQR1, Part 1”) at 6–7 and Exhibit 1. The NDRC letter also stated that “given that China’s citric acid manufacturing technology is well-developed and the production capacity is redundant, relevant government agencies have placed constraints on the development of the industry since 2005.”

The GOC also dismissed Petitioners’ claims regarding the responding company’s certificates, stating that RZBC’s “national key new product” certificate was specific to the production of a specialized medical grade citric acid, and that it expired at the end of 2008. See GOC Comments on Petitioners’ Additional New Subsidy Allegation, (December 27, 2010) (“GOC NSA Comments”) at 11–12. With regard to RZBC’s high and new technology designation, the GOC has reported that this certificate was provided under the auspices of the program for “Reduced Income Tax Rate for High or New Technology Enterprises,” also addressed in the GOC’s responses. See GOC Questionnaire Response (November 15, 2010) (“GQR”), at 16–24 and Exhibits I–8 and I–9; GOC Supplemental Questionnaire Response (February 28, 2011) (“GSQR”), at 6.

To document citric acid’s classification as a light industry, the GOC provided a copy of the *Notice of the State Council on Light Industry Adjustment and Revitalization Plan* (“Light Industry Plan”) and the *Guiding Category for Phasing-out outdated manufacturing devices and Products of Certain Industries (2010 edition)* (“2010 Phase-out Plan”). See GNSAQR (March

<sup>3</sup> We have requested that GOC clarify what is included in the 10% portion of citric acid used by the chemical industry, but to date the GOC has not responded to this.

18, 2011) at Exhibits 11 and 12. The GOC argues that Chinese government planners consider citric acid to be a developed industry with redundant and outdated production capacity and, thus, it is counterintuitive that it would also be included with the encouraged industry categories in the plans and catalogues. The GOC points to specific statements in the *Light Industry Plan*, the *2010 Phase-out Plan*, the *2007 On Healthy Development of the Corn Industrial Processing Industry* (“*Corn Processor Plan*”), at GNSAQR (March 18, 2011) at Exhibit 8, and *2006 Urgent Strengthening the Administration of Corn Deep Processing Projects*, which note overcapacity in citric acid production and which mandate the elimination of outdated citric acid operations and the reduction of citric acid development projects.

As in the *Investigation*, we do not have any government plans or other policy directives on the record that lay out objectives or goals for developing the citric acid industry *per se*. In particular, while the GOC reports that citric acid production is a light industry, that product is not specifically named in the *Light Industry Plan*. Nonetheless, the evidence on the record supports the GOC’s statement.

A central guideline of the *Light Industry Plan*, which reflects general objectives from the national 11th Five Year Plan for Economic and Social Development,<sup>4</sup> is to “focus on promoting structural adjustment and industrial upgrading by accelerating self-directed innovation implementing technological reform, building our own brand and eliminating the backward productions.” See GNSAQR (March 18, 2011) at Exhibit 11 (*Light Industry Plan* at Section 2.A). As a basic principle, the *Light Industry Plan* states that it will “focus on key industries” and “nurture key enterprises”. See *Light Industry Plan* at 2(B)b. Under the section outlining the “main tasks” of the plan, the GOC states it will “promote technological innovation and industrialization” by establishing a “public service platform for technological innovation of key sectors” including “the technology innovation alliance of paper, fermentation, wine, sugar and leather industries.” (emphasis added)

<sup>4</sup> See *Guidelines of the 11th Five Year Plan for Economic and Social Development at Chapter 3*, “Major Objectives of Economic and Social Development. These major objectives include ‘{o}ptimization and upgrading of industrial structure.’” See Memorandum To File from David Layton: Placement of Guidelines of the 11th Five Year Plan for Economic and Social Development on the Record, (May 26, 2011), attached English translation of the guidelines at 4–5.

We know from the *Corn Processor Plan* that the GOC considers citric acid producers to be part of the fermentation industry. See GNSAQR (March 18, 2011) at Exhibit 8 (hereafter citations are to the page numbers of the English translation in Exhibit 8). The *Corn Processor Plan* includes two different tables in which citric acid is specifically referenced as one of several “fermented goods” or as part of the “fermentation” industry. See *Corn Processor Plan* at 14, “Box2”; 16, “Box3.”; and 22 at item 2 of “Notes of related terms.”

To accomplish the objectives of the *Light Industry Plan*, the GOC states in the “Policies and Measures” section that it will “{i}ncrease financial support,” and “encourage financial institutions to increase credit support for light industry enterprises.” See *Light Industry Plan* at 4(F). It will also “encourage guarantee institutions to provide credit guarantee and financing services for small and medium sized light industry enterprises and “help light industry enterprises to facilitate trade finance \* \* \*.” *Id.*

Finally, the *Light Industry Plan* states that it will “{s}trengthen guidance of industrial policy. Develop industrial policy and access condition of fermentation, grain, oil, leather, batteries, lighting appliances, household glass, plastic sheeting and others as soon as possible” and “{a}djust the ‘Guiding Catalogue of Industrial Structural Adjustment’ and ‘Catalogue for the Guidance of Foreign Investment Industries’ at appropriate times.” The Department reviewed the 2005 edition of *Structural Adjustment Catalogue* in force during the POR and found no pre-existing specific reference to the fermentation industry. However, this section of the *Light Industry Plan* suggests that the GOC would consider adjustment of the *Structural Adjustment Catalogue* to recognize industries encouraged by that plan.<sup>5</sup>

In response to our request for additional “Light Industry Plans” that cover the periods before 2009–2011 (the period covered by the *Light Industry Plan* submitted on this record), the GOC stated that no previous light industry plans exist. Accordingly, we have examined the 2007 *Corn Processor Plan* to determine whether it lays out objectives or goals for developing the citric acid industry and calls for lending to support these objectives or goals in the period prior to 2009. We found that while the *Corn Processor Plan* clearly articulates national government support for the measured development of

<sup>5</sup> We understand that a new edition of the *Structural Adjustment Catalogue* was published in March 2011. See GNSAQR1, Part 1 at 6.

industrial corn processors (or the “corn deep processing industry” as it is translated), and is equally clear that citric acid producers are part of this group, the plan does not provide a mandate for lending to support these objectives. Without a directive to support the plan’s objectives through credit or loans, this document does not provide a basis for finding a program of national policy lending to the citric acid industry.

Therefore, we preliminarily determine that the GOC has a policy in place to encourage and support the restructuring and updating of the fermentation industry, as one of a limited number of selected key sectors of light industry specifically identified in the *Light Industry Plan*. The *Light Industry Plan* expressly outlines a number of measures to support the fermentation industry, including the encouragement of financial institutions to provide credit. Moreover, consistent with *CFS from the PRC*, we preliminarily determine that loans from policy banks and SOCBs in the PRC constitute a direct financial contribution from the government under section 771(5)(D)(i) of the Act and that 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. Finally, we preliminarily determine that the loans are *de jure* specific because of the GOC’s policy, as illustrated in the *Light Industry Plan*, to encourage and support the restructuring and updating of the fermentation industry of which citric acid is a part. As the *Light Industry Plan* became effective in 2009, the Department will only consider loans provided on or after January 1, 2009, to be provided pursuant to the GOC’s national policy lending program.

To calculate the benefit, we used the benchmarks described in the “Benchmarks and Discount Rates” section above and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit by Yixing Union Co.’s total sales and Yixing Union’s consolidated sales, in accordance with 19 CFR 351.525(b)(6)(iii).

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 1.65 percent *ad valorem* in 2009. We are treating RZBC’s loans as having been given under the Shandong Policy Loan Program discussed next.

Shandong Province Policy Loans Program

As explained in the *Investigation*, the *Shandong Province Development Plan*

of Chemical Industry during “Tenth Five-Year Plan” Period (“Shandong Province Tenth Five-Year Chemical Plan”) identifies objectives and goals for development of the citric acid industry and calls for lending to support these objectives and goals. Moreover, loan documents reviewed by the Department stated that because the food-use citric acid industry “has characteristics of capital and technology concentration and belongs to high and new technology \* \* \* the State always takes positive policy to encourage its development.” See Memorandum to File: Placing Government of China Verification Reports from the CVD Investigation of Citric Acid and Certain Citrate Salts from People’s Republic of China into the Record of the First Administrative Review, (February 28, 2011) and attached “Government of the People’s Republic of China, Anqiu City and Shandong Province Verification Report, at 8.

In this administrative review, the GOC claims that no policy loan program was in effect in Shandong Province during the POR. See GQR (November 15, 2010) at 8. Specifically, the GOC argues that the *Shandong Province Tenth Five-Year Chemical Plan* has been replaced by the *Shandong Province Eleventh Five-Year Petro-Chemical Plan* (“*Shandong Eleventh Five-Year Chemical Plan*”). Additionally, the GOC maintains that the *Shandong Eleventh Five-Year Chemical Plan* is not government policy because it was compiled by the Shandong Province Petro-Chemical Industry Association, which the GOC identifies as a “non-governmental organization.” *Id.* at 9.

The *Shandong Eleventh Five-Year Chemical Plan* (covering the period 2006–2010) was on the *Investigation* record. Despite the fact that the period covered by the *Investigation* (2007), fell within the time span covered by the *Shandong Eleventh Five-Year Chemical Plan*, the Department concluded that actual loan documentation supported a finding of a policy lending program in Shandong Province.<sup>6</sup> Accordingly, the GOC has not provided us with new evidence on the record of this review that demonstrates that the Shandong Policy Loan Program has changed.

Consistent with the *Investigation*, we preliminarily determine that the Shandong Province policy loans constitute a direct financial contribution from the government under section 771(5)(D)(i) of the Act and that 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. We also preliminarily determine that the loans are *de jure* specific because of the Government of Shandong’s policy to develop the citric acid industry.

To calculate the benefit, we used the benchmarks described in the “Benchmarks and Discount Rates” section above and the methodology described in 19 CFR 351.505(c)(1) and (2). Because of the manner in which the RZBC companies reported their loans, we are not able to calculate separate rates for the periods September 19, 2008, through December 31, 2008, and January 1, 2009, through December 31, 2009, except for the loans received by RZBC Co.’s prior owners, Shandong Province High-Tech Investment Co. Ltd. (“HTI”) and Sisha Co., Ltd. (“Sisha”). Therefore, we are calculating a single rate for the loans received by the RZBC companies and applying it to both years, while the loans to HTI and Sisha are being added to the rate for 2008, the year in which their ownership of RZBC Co. ended.

For loans to Sisha, we divided the benefit by the sum of Sisha’s consolidated 2008 sales and the 2008 sales denominator for RZBC Co. (as described above in the “Subsidies Valuation Information” section), in accordance with 19 CFR 351.525(b)(6)(iii). For loans to HTI, we divided the benefit by the sum of HTI’s 2008 consolidated sales, Sisha’s 2008 consolidated sales, and the 2008 sales denominator for RZBC Co., in accordance with 19 CFR 351.525(b)(6)(iii).

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.69 percent *ad valorem* in 2008 and 0.42 percent in 2009.

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

RZBC reported receiving loans from the Export-Import Bank of China (“EXIM”) under the Export Seller’s Credit Program. The supporting loan documentation for the loans shows that they were provided under EXIM’s “Export Seller’s Credit for High- and New Tech Products.”

In the *Investigation*, the Department found that loans under this program conferred a countervailable subsidy and the GOC has responded that there were no changes to this program during the POR. Therefore, consistent with the *Investigation*, we preliminarily determine that the loans provided by the GOC under this program constitute financial contributions under sections

771(5)(B)(i) and 771(5)(D)(i) of the Act. The loans also provide a benefit under 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(A)–(B) of the Act.

To calculate the subsidy, we used the benchmark interest rates described in the “Benchmarks and Discount Rates” section above and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit by RZBC Co.’s and RZBC I&E’s export sales during the POR.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.82 percent *ad valorem* in 2008 and 0.82 in 2009.

#### C. Reduced Income Tax Rates to FIEs Based on Location

This program was created June 15, 1988, pursuant to the *Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Development Zone* issued by the Ministry of Finance. The March 18, 1988 *Circular of State Council on Enlargement of Economic Areas* enlarged the scope of the coastal economic areas and the July 1, 1991 *FIE Tax Law* continued this policy.

In the *Investigation*, the Department found that Yixing Union Co. paid a reduced tax rate under this program. Yixing Union Co.’s 2007 tax return (filed in 2008) indicates that it continued to pay the reduced rate in that year. The program was not used by any responding company for the tax returns filed in 2009.

Consistent with our finding in the *Investigation*, we preliminarily determine that the reduced tax rates paid by FIEs under this program confer a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue foregone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine preliminarily that the reduction afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Yixing Union Co. as a recurring benefit, consistent with 19 CFR 351.524(c)(1),

<sup>6</sup> *Id.* at 2–7.

and divided the company's tax savings received during the POR by Yixing Union Co.'s sales during the POR, pursuant to 19 CFR 351.525(b)(6)(i). To compute the amount of the tax savings, we compared the tax rate Yixing Union Co. paid to what it would have paid in the absence of the program (30 percent).

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.21 percent *ad valorem* under this program in 2008.

#### D. "Two Free, Three Half" Program

Under Article 8 of the *FIE Tax Law*, an FIE that is productive and scheduled to operate for more than 10 years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years.

In the *Investigation*, the Department found that Yixing Union Co. paid a reduced tax rate under this program. Yixing Union Co.'s 2007 tax return (filed in 2008) indicates that it continued to pay the reduced rate in that year. The program was not used by any responding company for the tax returns filed in 2009.

Consistent with our finding in the *Investigation*, we preliminarily determine that the reduced tax rates paid by FIEs under this program confer a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue foregone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine preliminarily that the exemption/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.

To calculate the benefit, we treated the income tax savings enjoyed by Yixing Union Co. as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POR by Yixing Union Co.'s sales during the POR, pursuant to 19 CFR 351.525(b)(6)(i). To compute the amount of the tax savings, we compared the tax rate Yixing Union Co. paid to what it would have paid in the absence of the program.

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.41 percent *ad valorem* under this program in 2008.

#### E. Local Income Tax Exemption/Reduction Program for "Productive" FIEs

Under Article 9 of the *FIE Tax Law*, the provincial governments have the

authority to exempt FIEs from the local income tax of three percent or to reduce the rate applicable to them. Yixing Union Co.'s and Cogeneration's 2007 tax returns (filed in 2008) indicate that they used this program. The program was not used by any responding company for the tax returns filed in 2009.

Consistent with prior determinations,<sup>7</sup> we preliminarily determine that the exemptions/reduced rates afforded to FIEs under this program confer a countervailable subsidy. The exemptions/reduced rates are a financial contribution in the form of revenue foregone by the GOC and provide a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine preliminarily that the exemption/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.

To calculate the benefit, we treated the income tax savings enjoyed by Yixing Union Co. and Cogeneration as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the companies' tax savings received during the POR by Yixing Union Co.'s sales during the POR, pursuant to 19 CFR 351.525(b)(6)(i), and by Yixing Union's consolidated sales during the POR, pursuant to 19 CFR 351.525(b)(6)(iii). To compute the amount of the tax savings, we compared the tax rate Yixing Union Co. and Cogeneration paid to what they would have paid in the absence of the program (3 percent).

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.34 percent *ad valorem* under this program in 2008.

#### F. Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs

Under Article 7.3 of the *FIE Tax Law* and Article 73 of the *Implementation Rules for the Foreign Invested Enterprise and Foreign Enterprise Income Tax Law*,

<sup>7</sup> *See, e.g., Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010) ("*Seamless Pipe from the PRC*"), and accompanying Issues and Decision Memorandum ("*Seamless Pipe Decision Memorandum*") at 26–27; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010) ("*Certain Coated Paper from the PRC*"), and accompanying Issues and Decision Memorandum ("*Certain Coated Paper Decision Memorandum*") at 14–15.

FIEs located in designated areas and meeting technology-intensive and knowledge-intensive criteria could enjoy a reduced income tax rate of 15 percent. This program terminated when the *Enterprise Income Tax Law of the People's Republic of China* ("EITL") came into effect on January 1, 2008. However, pursuant to Article 57 of the EITL and the *Notice of the State Council on the Implementation of the Transitional Preferential Policies in Respect of Enterprise Income Tax* (GUOFA {2007} Number 39), enterprises that enjoyed a reduced income tax rate of 15 percent under the terminated program are permitted a five-year grace period to transition to the new EITL rate of 25 percent. Thus, for example, companies that faced the 15 percent rate on their 2007 tax return (filed in 2008) would pay 18 percent on their 2008 return (filed in 2009).

In the *Investigation*, the Department found that Cogeneration received benefits under this program. Cogeneration's 2007 tax return (filed in 2008) indicates that it continued to pay the reduced rate in that year. For the 2008 tax return (filed in 2009), Cogeneration paid income tax at a rate of 18 percent. We continue to find that this program provides a financial contribution in the form of revenue foregone and provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a). Further, the program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Cogeneration as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POR by Yixing Union's consolidated sales during the POR, pursuant to 19 CFR 351.525(b)(6)(iii). To compute the amount of the tax savings, we compared the rate Cogeneration would have paid in the absence of the program (30 percent in 2008 for the 2007 return and 25 percent in 2009 for the 2008 return).

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 1.20 percent *ad valorem* under this program in 2008 and 0.18 in 2009.

#### G. Reduced Income Tax Rate for High or New Technology Enterprises

Article 28.2 of the EITL authorizes a reduced income tax rate of 15 percent for high- and new-technology enterprises ("HNTEs"). The criteria and procedures for identifying eligible

HTNEs are provided in *Measures on Recognition of High and New Technology Enterprises (GUOKEFAHUO {2008} No. 172)* (“*Measures on Recognition of HNTes*”) and the *Guidance on Administration of Recognizing High and New Technology Enterprises (GUOKEFA HUO {2008} No.362)*. Article 8 of the *Measures on Recognition of HNTes* provides that the science and technology administrative departments of each province, autonomous region and municipality directly under the central government or cities under separate state planning shall collaborate with the finance and taxation departments at the same level to recognize HTNEs in their respective jurisdictions. Article 10 of the *Measures on Recognition of HNTes* outlines the general requirements for recognition as a HNTe qualified for this tax reduction. Among these requirements, applicant enterprises must have the following: (1) Independent intellectual property of core technologies in its key products or services obtained in the past three years; (2) products that fall in the categories prescribed in the “High and New Technology Field under Key Support of the State;” (3) scientific and technical personnel with a junior college education or higher that account for 30 percent of the employees at the enterprise; (4) research and development personnel that account for at least ten percent of the employees; (5) an active research and development program aimed at substantially improving products during the past three years (the proportion of minimum R&D expenditure to sales depends on the overall size of the enterprise’s sales); and (6) the percentage of total revenue represented by sales of new and high technology products must be at least 60 percent during the current year.

The annex of the *Measures on Recognition of HNTes* lists eight high- and new-technology areas selected for the State’s “primary support:” (1) Electronics and Information Technology; (2) Biology and New Medicine Technology; (3) Aerospace Industry; (4) New Materials Technology; (5) High-tech Service Industry; (6) New Energy and Energy-Saving Technology; (7) Resources and Environmental Technology; and (8) High-tech Transformation of Traditional Industries.

RZBC Co. reported that it paid the reduced income tax rate of 15 percent on its 2008 tax return (filed in 2009) under this program. The GOC contends that the eight high- and new-technology areas designated for support cover wide-ranging, diverse and non-conforming areas of the Chinese economy.

We preliminarily determine that the reduced income tax rate applied to RZBC Co. is a financial contribution in the form of revenue foregone by the GOC, and it provides a benefit to the recipient in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in *Measures on Recognition of HNTes*, and, hence, is specific under section 771(5A)(D)(i) of the Act. Both the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.

To calculate the benefit, we treated the income tax savings enjoyed by RZBC Co. as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company’s tax savings received during the POR by RZBC Co.’s, RZBC I&E’s, and RZBC Juxian’s sales during the POR, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c). To compute the amount of the tax savings, we compared the rate RZBC Co. would have paid in the absence of the program (25 percent).

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.29 percent *ad valorem* under this program in 2009.

#### H. Income Tax Credits on Purchases of Domestically Produced Equipment

According to the *Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation {Projects}* (CAI SHU ZI {1999} No. 290), a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. 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 reported that this program terminated when the *EITL* came into effect on January 1, 2008, but pursuant to Article 57 of the *EITL*, enterprises that were previously eligible for income tax credits under this program may continue to claim the credits for five years after the *EITL*’s effective date.

RZBC Co. claimed credits under this program on the 2007 and 2008 tax returns filed respectively in 2008 and

2009. RZBC Juxian claimed credits under this program on the 2008 tax return filed in 2009. No other companies used this program during the POR.

Consistent with prior determinations,<sup>8</sup> we preliminarily determine that income tax credits for the purchase of domestically produced equipment are countervailable subsidies. The tax credits are a financial contribution in the form of revenue foregone by the government and provide a benefit to the recipients in the amount of the tax savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by RZBC Co. and RZBC Juxian as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the companies’ tax savings by RZBC Co.’s, RZBC I&E’s, and RZBC Juxian’s sales during the POR, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c).

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.20 percent *ad valorem* under this program in 2008 and 1.38 percent in 2009.

#### I. Value-Added Tax (“VAT”) and Duty Exemptions on Imported Equipment

Enacted in 1997, the *Circular of the State Council on Adjusting Tax Policies on Imported Equipment (GUOFA No. 37)* exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in production so long as the equipment does not fall into prescribed lists of non-eligible items. Qualified enterprises receive a certificate either from the NDRC or its provincial branch. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. To receive the exemptions, qualified enterprises must adequately document both the product eligibility and the

<sup>8</sup> See, e.g., *Certain Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (“*OCTG from the PRC*”), and accompanying Issues and Decision Memorandum (“*OCTG Decision Memorandum*”) at 18; see also *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), and accompanying Issues and Decision Memorandum at 25–26.

eligibility of the imported article to the local Customs.

The GOC states that this program has been partially terminated. Pursuant to *Announcement No. 103 of the General Administration of Customs* {2008}, since January 1, 2009, enterprises importing equipment that is eligible for preferential import tax treatment under *Circular of the State Council on Adjusting Tax Policies on Imported Equipment* (GUOFA No. 37) can no longer import equipment free of VAT, though they may continue to import equipment free of duties. However the GOC reports that there is a transitional arrangement for projects that were certified under Certificate for State Encouraged Projects on or before November 19, 2008, which permits equipment related to those projects to be exempted from original VAT and customs duties provided the equipment is declared to customs on or before June 30, 2009.

RZBC Co., RZBC Juxian, Yixing Union Co. and Cogeneration received VAT and duty exemptions in various years since December 11, 2001.

In the *Investigation*, the Department found that the VAT and duty exemptions under this program conferred a countervailable subsidy. Therefore, consistent with the *Investigation*, we preliminarily determine that the VAT and duty exemptions provided by the GOC under this program constitute financial contributions in the form of revenue foregone under section 771(5)(D)(ii) of the Act, and that they confer a benefit in the amount of the exemption (*see* 19 CFR 351.510(a)(1)). We further determine preliminarily that the VAT and duty exemptions under this program are specific under section 771(5A)(D)(i) because the program is limited to FIEs and certain domestic enterprises.

Normally, we treat exemptions from indirect taxes and import charges as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits to the year in which 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).

Where the VAT and duty exemptions in a given year were less than 0.5 percent of the companies' sales, we expensed the exemptions in the year in which they were received, consistent with 19 CFR 351.524(a). For those years in which the VAT and duty exemptions

were greater than 0.5 percent of the companies' sales for that year, we are treating the exemptions as non-recurring benefits, consistent with 19 CFR 351.524(c)(2)(iii), and allocating the benefits over the AUL.

To calculate the benefit, we used the methodology for non-recurring benefits described in 19 CFR 351.524(b). Specifically, we used the discount rate described above in the "Benchmarks and Discount Rates" section to calculate the amount of the benefit for the POR. Next, we divided the amount allocated to the POR by the relevant sales in that period. VAT and duty exemptions received by RZBC Co. and RZBC Juxian were divided by the combined sales of RZBC Co., RZBC Juxian, and RZBC I&E. The exemptions received by Cogeneration were divided by Yixing Union's consolidated sales and, the exemptions received by Yixing Union Co. were divided by Yixing Union Co.'s total sales.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2008. Yixing Union's countervailable subsidies in those years were 0.74 percent and 0.29 percent, respectively.

#### J. Provision of Sulfuric Acid for LTAR

The Department is investigating whether the PRC government provided sulfuric acid to producers of the subject merchandise for LTAR. As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are preliminarily relying on AFA to determine that the producers of the sulfuric acid purchased by RZBC and Yixing Union were "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily determine that citric acid producers have received a financial contribution from the government in the form of the provision of a good. *See* section 771(5)(D)(iii) of the Act.

To determine whether the government's provision of sulfuric acid conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, we relied on 19 CFR 351.511(a)(2) to identify an appropriate, market-determined benchmark for measuring the adequacy of remuneration. Potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government

price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. *See* Softwood Lumber Decision Memorandum at "Market-Based Benchmark" section.

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

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

*See Preamble 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 review, the GOC reported that Chinese state-controlled and collectively-controlled sulfuric acid producers accounted for 56 percent of sulfuric acid production volume in 2008 and 54 percent of domestic sulfuric acid production in 2009.<sup>9</sup> *See* GOC New Subsidy Allegation First Supplemental Questionnaire Response (Part 2) (May 4, 2011) ("GNSASQR1, Part 2") at 3. In addition, the GOC reports that in 2008 and 2009, respectively, Chinese domestic production accounted for 97.09 and 95.47 percent of domestic consumption of sulfuric acid. *See* GNSAQR (March 18, 2011) at 3. The fact that Chinese SOEs were responsible for such a large percentage of domestic production volume and that imports accounted for such a small share of domestic consumption, makes it reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market. *See Preamble*, 63 FR at 65337. As further evidence of the government's involvement in the Chinese sulfuric acid market, the GOC reports that it imposed a temporary export tax on

<sup>9</sup> As we have explained elsewhere, these reported ownership percentages may understate the share of production accounted for by SOEs and collectives because of the GOC's method of classifying possible SOEs as FIEs. *See, e.g.*, Certain Coated Paper Decision Memorandum at 22.

sulfuric acid from February 2008 to June 2009. *See* GNSASQR1, (Part 2) (May 8, 2011) at 8. Such an export restraint can discourage exports and increase the supply of sulfuric acid in the domestic market, and possibly result in domestic prices that are lower than they would be otherwise. *See* Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009) ("*Racks from the PRC*"), and accompanying Issues and Decision Memorandum ("*Racks Decision Memorandum*") at 15. For these reasons, we preliminarily determine that domestic prices in the PRC cannot serve as viable, tier-one benchmark prices. For the same reasons, we determine that import prices into the PRC cannot serve as a benchmark.

Turning to tier two benchmarks, *i.e.*, world market prices available to purchasers in the PRC, Petitioners have placed on the record export values for sulfuric acid from Canada, the European Union, Thailand, India, and the United States in 2009 taken from trade statistics compiled by Canadian Customs, Eurostat, Thai Customs, the Department, the U.S. International Trade Commission, and Global Trade Atlas. *See* PNSA2 at 7–8 and Exhibit 18; *see also* Petitioners' Submission: Submission of Factual Information (April 15, 2011) ("*Benchmark Submission*") at 3 and Exhibit 4. The average of the export prices provided by the Petitioners represents an average of commercially-available world market prices for sulfuric acid that would be available to purchasers in the PRC. We note that the Department has relied on similar pricing data from export statistics in other recent CVD proceedings involving the PRC.<sup>10</sup> Also, 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, we have averaged the prices to calculate a single benchmark by month.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier 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, we averaged the international freight rates from Canada, the European Union, Thailand, India and the United States to Shanghai, submitted by Petitioners. *See* PNSA2 at 6 and Exhibit 18, and Benchmark Submission at 4 and Exhibits 2 and 5. We also added inland freight in the PRC based on RZBC respondents' sulfuric acid purchase information,<sup>11</sup> import duties as reported by the GOC, and the VAT applicable to imports of sulfuric acid into the PRC,<sup>12</sup> as both RZBC and Yixing Union reported their prices to the Department inclusive of inland freight and VAT.

In deriving the benchmark we did not include marine insurance. In prior CVD investigations involving the PRC, the Department has found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges. *See, e.g., Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010) ("*PC Strand from the PRC*"), and accompanying Issues and Decision Memorandum ("*PC Strand Decision Memorandum*") at Comment 13. Further, we have not added separate brokerage, handling, and documentation fees to the benchmark because we find that such costs are already reflected in the ocean freight cost from Maersk Line that is being used in these preliminary results. *See* Petitioners' Benchmark Submission at Exhibit 4.

The submitted benchmarks covered calendar year 2009. Therefore, we used the benchmark calculated for January 2009 in our calculations for 2008.

Comparing the adjusted benchmark prices to the prices paid by the respondents for their sulfuric acid, we preliminarily determine that the GOC provided sulfuric acid for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark and what the respondents paid. *See* 19 CFR 351.511(a).

Finally, with respect to specificity, the third subsidy element specified under the Act, the GOC has provided a list of industries that purchase sulfuric acid directly. Using the Industrial Classification for National Economic

Activities published by the National Bureau of Statistics, the GOC identifies users in three major industrial categories: Mining, Manufacturing and Electric Power, Gas and Water Production and Supply. *See* GNSAQR at Exhibit 2. The three major industrial categories include 44 more specific categories, 37 of which fall under Manufacturing. These more specific product categories include such items as special chemical manufacturing and manufacture of household chemicals. 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, within the meaning of section 771(5A)(D)(iii)(I) of the Act. *See Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review*, 75 FR 57456 (September 21, 2010) ("*LWRP from the PRC*"), and accompanying Issues and Decision Memorandum ("*LWRP Decision Memorandum*") at Comment 7; *see also* Racks Decision Memorandum at "Provision of Wire Rod for Less Than Adequate Remuneration."

Based on the above, we preliminarily determine that the GOC conferred a countervailable subsidy on RZBC and Yixing Union through the provision of sulfuric acid for less than adequate remuneration. To calculate the subsidy, we took the difference between the delivered world market price and what each respondent paid for sulfuric acid, including delivery charges, during the POR.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 4.83 percent *ad valorem* in 2008 and 0.59 percent *ad valorem* in 2009. Yixing Union's countervailable subsidies in those years were 10.05 percent and 12.17 percent, respectively.

As explained below under "Programs for Which More Information is Required," we will be requesting RZBC's and Yixing Union's purchases of sulfuric acid for the period January 2008–August 2008 in order to calculate a subsidy rate for 2008 using annual data.

#### K. Provision of Steam Coal for LTAR

The Department is investigating whether Chinese government provided steam coal to producers of the subject merchandise for LTAR. As discussed

<sup>10</sup> *See, e.g., Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination Seamless Pipe*, 75 FR 9163, 9174 (March 1, 2010); *OCTG from the PRC*, CWP Decision Memorandum at 11, and LWRP Decision Memorandum at 9.

<sup>11</sup> *See* RZBC Respondents' New Subsidy Allegation Supplemental Questionnaire Response (May 3, 2011) at 3–4 and Exhibits 5 and 6.

<sup>12</sup> *See* GNSASQR at A5.

under “Use of Facts Otherwise Available and Adverse Inferences,” above, we are preliminarily relying on AFA to determine that the producers of the steam coal purchased by Cogeneration were “authorities” within the meaning of section 771(5)(B) of the Act.<sup>13</sup> Therefore, we preliminarily determine that citric acid producers have received a financial contribution from the government in the form of the provision of a good. See section 771(5)(D)(iii) of the Act.

To determine whether the government’s provision of steam coal conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act we relied on 19 CFR 351.511(a)(2) to identify an appropriate, market-determined benchmark for measuring the adequacy of remuneration. Potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. See *Softwood Lumber Decision Memorandum* at “Market-Based Benchmark” section.

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

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

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

In the instant review, the GOC reported that Chinese wholly state-owned or state controlled coal

producers accounted for 60.59 and 61.94 percent of gross industry revenue in 21008 and 2009, respectively. The GOC also reported that domestic coal production accounted for 98.47 and 96.11 percent of all domestic consumption respectively in 2008 and 2009. The fact that Chinese SOEs were responsible for such a large percentage of domestic production volume, as reflected in their share of gross industry revenue, and that imports accounted for such a small share of domestic consumption, makes it reasonable to conclude that actual transaction prices are significantly distorted as a result of the government’s involvement in the market. See *Preamble*, 63 FR at 65337. As further evidence of the government’s involvement in the Chinese steam coal market, the GOC reported that the GOC imposed export quotas and export taxes on all types of coal, including steam coal during the POR. Such export restraints can discourage exports and increase the supply of steam coal in the domestic market, and result in domestic prices that are lower than they would be otherwise. See, *e.g.*, *Racks Decision Memorandum* at 15. The GOC also reported that it imposed a temporary price ceiling on steam coal for power plant use over six months of 2008, including the 3 ½ months included in the POR, which would also tend to make domestic prices lower than they would be otherwise.<sup>14</sup> For these reasons, we preliminarily determine that domestic prices charged by privately-owned steam coal producers based in the PRC may not serve as viable, tier-one benchmark prices. For the same reasons, we determine that import prices into the PRC cannot serve as a benchmark.

Turning to tier two benchmarks, *i.e.*, world market prices available to purchasers in the PRC, we received benchmark data from Petitioners and from Yixing Union. Petitioners submitted monthly steam coal data published by the International Monetary Fund (“IMF”) for Australia and South Africa, as well as data from Platts International Coal Report, Issue 986 at 1 (August 30, 2010) (“Platts Report”) for Colombia, Poland, Russia, Australia, Japan and Korea. See *Benchmark Submission* and Yixing Union Submission. These monthly benchmark data cover the entire 2009 calendar year. Yixing Union placed on the record monthly steam coal export data for Indonesia obtained from the World Trade Atlas, which covers the entire POR. Regarding the IMF and Platts price data, we note that the Department has

relied on pricing data from industry publications in prior CVD proceedings involving the PRC. See, *e.g.*, *Seamless Pipe from the PRC*, *OCTG from the PRC*, CWP Decision Memorandum at 11, and LWRP Decision Memorandum at 9.

Our regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, where more than one benchmark price was submitted for a given month, we averaged those prices to calculate the single benchmark price for that month. For the remaining months where only one benchmark price was on the record, we used that price for that month.

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. Accordingly, in deriving the benchmark prices, we ensured that ocean freight and inland freight were included. The ocean freight rates we used were an average of the freight rates submitted on the record by both Yixing Union and Petitioners. Yixing Union provided estimated ocean freight rates for steam coal from Indonesia to Guangzhou, China. See Yixing Union’s April 15, 2011 submission (“Yixing Union April Submission”) at Exhibit 7. Petitioners placed on the record ocean freight pricing data from Platts and the Baltic Exchange pertaining to shipments of steam coal from Australia to China. See PNSA2 at 14 and Exhibit 29. We averaged the two sets of freight rates to derive the amount included in our benchmark. For inland freight, we relied on information submitted by Petitioners and Yixing Union. Petitioners provided inland freight charges based on the transportation costs calculated from the Shanghai Deepwater Port (“SDP”) to Yixing. In deriving these monthly inland freight charges, Petitioners used data collected from Haver Analytics Report, China National Bureau of Statistics, freight costs of another energy producer in China, and Google Maps. See *Benchmark Submission* at Exhibit 3. Yixing Union disputed the distance between the SDP and Yixing provided by Petitioners and submitted its own value to represent this distance. We averaged the two distances for our calculation and added the applicable VAT rate to arrive at the total inland shipping charge. We also included import duties and the VAT applicable to

<sup>13</sup> The RZBC companies did not purchase steam coal during the POR.

<sup>14</sup> See GNSAQR at 15.

imports of steam coal into the PRC as reported by the GOC.

In deriving the benchmark we did not include marine insurance. In prior CVD investigations involving the PRC, the Department has found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges. *See, e.g.*, PC Strand Decision Memorandum at Comment 13. Further, we have not added separate brokerage, handling, and documentation fees to the benchmark because we find that such costs are already reflected in the ocean freight costs submitted by Petitioners and Yixing Union.

Comparing the adjusted benchmark prices to the prices paid by Cogeneration for its steam coal, we preliminarily determine that the GOC provided steam coal for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. *See* 19 CFR 351.511(a).

Finally, with respect to specificity, the third subsidy element specified under the Act, the GOC provided a list of industries that purchase steam coal directly. Using the Industrial Classification for National Economic Activities published by the National Bureau of Statistics, the GOC identifies users in the PRC that purchase steam coal directly in the six major industrial categories of Mining; Manufacturing; Electric Power, Gas and Water Production and Supply; Construction; Transport, Storage and Post; and finally Wholesale and Resale Trades, Hotels and Catering Services. Distributed among the first three major categories are 40 more specific categories including Production and Supply of Electric Power and Heat Power under the major category of Electric Power, Gas and Water Production and Supply. 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 Decision Memorandum at Comment 7; *see also* Racks Decision Memorandum at “Provision of Wire Rod for Less Than Adequate Remuneration.”

Based on the above, we preliminarily determine that the GOC conferred a

countervailable subsidy on Yixing Union through the provision of steam coal for less than adequate remuneration. To calculate the subsidy, we took the difference between the delivered world market price and what Cogeneration paid for steam coal, including delivery charges, during the POR.

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.78 percent *ad valorem* in 2008 and 21.51 percent *ad valorem* in 2009.

As explained below under “Programs for Which More Information is Required,” we will be requesting Cogeneration’s purchases of steam coal for the period January 2008–August 2008 in order to calculate a subsidy rate for 2008 using annual data.

#### L. Land-Use Rights Extension in Yixing City

In 1996, Yixing Heat and Power Plant (“HPP”) (Cogeneration’s predecessor) contributed land-use rights as part of its investment in the establishment of a joint venture, Cogeneration. HPP received its shares in the company and continued to hold the land-use rights. In 2003, Cogeneration applied to the Land Resources Bureau to have the land-use rights transferred and received a granted land-use rights certificate. The certificate that was issued set the term of the land-use rights as 50-years from 2003 (*i.e.*, until 2053) rather than 50 years from 1996, the year in which the land-use rights were contributed to the joint venture.

In the *Investigation*, the Department found the additional seven years of land-use rights conferred a countervailable subsidy on Cogeneration. In this review, Yixing Union and the GOC responded that there have not been any changes in the operation of this program since it was last analyzed. *See* Cogeneration’s November 8, 2011, Initial Questionnaire Response at 14, and GQR at 15. Therefore, consistent with the *Investigation*, we preliminarily determine that Cogeneration received a financial contribution in the form of revenue foregone by the GOC on the seven additional years included on the land-use rights certificates, and a benefit in the amount of the foregone revenue. *See* section 771(5)(D)(ii) of the Act. Further, because industrial land-use rights in the PRC are granted for 50 years and Cogeneration received its rights for 57 years, we preliminarily determine the additional seven years to be specific to Cogeneration within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit, we divided the initial value of the land by 50 years to derive a per-year amount paid for the land-use rights. We then multiplied this amount by seven years and treated the result as the amount of the revenue foregone. In accordance with 19 CFR 351.524(b)(2), we conducted the “expense” test by dividing the grant amount by Yixing Union Co.’s and Cogeneration’s total sales in 2003, and found that the benefit was greater than 0.5 percent.<sup>15</sup> Accordingly, we are allocating the benefit over the ten-year AUL, using the discount rate described in the “Benchmarks and Discount Rates” section above. We divided the allocated amount by Yixing Union’s consolidated sales during the POR, pursuant to 19 CFR 351.525(b)(6)(iii).

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.07 percent *ad valorem* in 2008 and 0.06 percent in 2009.

#### Other Subsidies Received by RZBC

As discussed above under “Use of Facts Otherwise Available and Adverse Inferences: GOC—RZBC’s and Yixing Union’s Other Subsidies,” the financial statements and tax returns submitted by the responding companies indicated that they received grants. Further, for certain of the programs, information submitted by the GOC and/or the responding companies was sufficient to analyze the programs’ specificity. Where the information was not sufficient, we are employing an adverse inference and preliminarily determining the programs to be specific.

For RZBC, we identified 16 different grant programs with measurable benefits during the POR among these “other subsidies.”

We preliminarily determine that these grants are direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act and that they providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a). Our specificity findings are described below.

#### M. Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products

This program was established on July 25, 2007, pursuant to the *Provisional Measures on the Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products*. The purpose of the program is to optimize the import

<sup>15</sup> We note that we did not have inter-company sales between Yixing Union and Cogeneration in 2003 to subtract. However, the result would not have changed.

and export structure of high and new technology products. According to the GOC, the program is administered by the national Ministries of Finance and Commerce.

Although the GOC responded that export performance or potential is not considered, the implementing measures state, *inter alia*, that they (the measures) are being formulated “to improve the quality and benefits of exports. Also, RZBC’s March 28, 2011 response states with respect to the two grants it received under this program that “the company must be an exporting company and have export products” (at first Section III, App 1). Therefore, we preliminarily determine that the program is specific within the meaning of section 771(5A)(B) of the Act.

To calculate the benefit, we divided the grants by RZBC Co. and RZBC I&E’s export sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.03 percent *ad valorem* in 2008 and a subsidy of 0.02 percent *ad valorem* in 2009.

#### N. International Market Development Fund Grants for Small and Medium Enterprises (“SMEs”)

This program was established on October 24, 2000, pursuant to the *Measures for Administration of International Market Developing Funds of Small- and Medium-sized Enterprises* (Cai Qi No. 467 of 2000) and implemented under the *Rules for the Implementation of the Measures for Administration of International Market Developing Funds of Small- and Medium-sized Enterprises* (Wai Jing Mao Ji Cai Fa (2001) No. 270). The program provides funds for supporting the international market exploration of small- and medium-sized enterprises. According to the GOC, the program is administered by the national Ministries of Finance and Commerce.

Although the GOC responded that the export performance or potential are not considered, the establishing measures clearly include export promotion: “to encourage small- and medium-sized enterprises to join in the competition of international markets” and the funds are to be “used to help the small- and medium-sized enterprises open up the international markets.” Moreover, the Department found this program to be a countervailable export subsidy in *Narrow Woven Ribbons from the PRC*. See *Narrow Woven Ribbons with Woven*

*Selvage from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 41801 (July 19, 2010). Therefore, we preliminarily determine that the program is specific within the meaning of section 771(5A)(B) of the Act.

To calculate the benefit, we divided the amount approved by RZBC Co.’s and RZBC I&E’s export sales in the year of receipt and found that the amount was less than 0.005 percent. Therefore, the subsidy yields no measurable benefit.

#### O. Shandong Province: Special Fund for the Establishment of Key Enterprise Technology Centers

The fund was established pursuant to *Development Guidelines of Shandong on New Type Industrialization and Opinion on Incubation of One Hundred Key Enterprises’ Technical Centers and Improvement of their Initiatives*, with distributions occurring under the *Interim Measures on the Special Fund for the Establishment of Key Enterprise Technology Centers in Shandong Province*. It is administered by the Shandong Finance Department and the Shandong Economic and Trade Commission. The fund’s purpose is to support the establishment of technical centers by key enterprises by providing funds for the purchase of equipment, training, technical cooperation and communication.

Because the fund is limited to “key enterprises,” with the establishing legislation indicating there would only be 100, we preliminarily determine that the program is specific within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit, we divided the amount approved by RZBC Co.’s, RZBC I&E’s, and RZBC Juxian’s combined sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.13 percent *ad valorem* in 2008.

#### P. Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River

This program was established pursuant to the State Council’s *Comprehensive Work Plan on Energy Conservation and Emission Reduction* (Guo Fa 2007 No. 7115) and the State Council’s mandate to “strengthen pollution control of Three Rivers, Three Lakes, and the Songhua River.” It was implemented under the *Provisional*

*Measure on Special Fund for Pollution Control of Three Rivers, Three Lakes and the Songhua River* promulgated by the Ministry of Finance on November 23, 2007. According to the GOC, the program is administered by the Shandong Finance Department and the Shandong Environmental Protection Bureau. The purpose of the program is to enhance pollution control efforts by financing projects affecting the Huaihe River, Haihe River, Liaohe River, Taihu Lake, Chaohu Lake, Dianchi Lake and the Songhua River.

Because the fund is limited to enterprises located in these designated areas, we preliminarily determine that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we divided the amount approved by RZBC Co.’s, RZBC I&E’s, and RZBC Juxian’s sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.31 percent *ad valorem* in 2009.

#### Q. Rizhao City: Subsidies to Encourage Enterprise Expansion

According to RZBC it received grants from Rizhao City the purpose of which is to encourage enterprise expansion in order to increase tax revenues. Each grant is linked to a specific area of achievement and the approval documents name the companies that received the grants.

Because the grants were given to a limited number of enterprises, we preliminarily determine that the program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

To calculate the benefit for 2008, for RZBC Group, we divided the amount approved by the combined sales of RZBC in the year of approval and found that the amount was less than 0.5 percent. For 2008, for RZBC Co., we divided the amount approved by RZBC Co.’s, RZBC I&E’s, and RZBC Juxian’s sales in the year of approval and found that the amount was less than 0.5 percent. For 2009, for RZBC Co., we divided the amount approved by RZBC Co.’s, RZBC I&E’s, and RZBC Juxian’s sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.05 percent *ad valorem* in 2008 and 0.04 in 2009.

#### R. Rizhao City: Subsidy for Antidumping Investigations

According to RZBC, it received grants from Rizhao City due to RZBC's involvement in foreign antidumping investigations. RZBC's response indicates that in awarding the grants, the government considered whether the company made export sales and cooperated in the antidumping investigations. In its March 28, 2011 supplemental questionnaire response at Exhibit CVDS2-40, RZBC submitted an approval document from a local authority that demonstrates this program targets firms that cooperate in antidumping investigations.

Because the grants were contingent upon exportation, we preliminarily determine that this program is specific within the meaning of section 771(5A)(B) of the Act.

To calculate the benefit, we divided the amount approved by RZBC Co.'s and RZBC I&E's export sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2008.

#### S. Shandong Province: Subsidy for Antidumping Investigations

As with the Rizhao City program relating to antidumping investigations, RZBC stated that that in awarding the grants, the government considered whether the company made export sales and cooperated in the antidumping investigations. In its March 28, 2011, supplemental questionnaire response at Exhibit CVDS2-24, RZBC submitted an approval document from a local authority that demonstrates this program targets firms that cooperate in antidumping investigations.

Because the grants were contingent upon exportation, we preliminarily determine that this program is specific within the meaning of section 771(5A)(B) of the Act.

To calculate the benefit, we divided the amount approved by RZBC Co.'s and RZBC I&E's export sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.04 percent *ad valorem* in 2008.

#### T. Subsidy for Technique Improvement

The grant approval documents describing this program are proprietary information. See Memorandum from Seth Isenberg to File: RZBC Preliminary Calc Memo, dated May 31, 2011, for further discussion.

To calculate the benefit, we divided the amount approved by RZBC Co.'s and RZBC I&E's relevant sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.04 percent *ad valorem* in 2008.

For the programs listed below, the submitted information was not sufficient to conduct a specificity analysis.

#### U. Fund for Energy-Saving Technological Innovation

This program was established on August 10, 2007, pursuant to the *Circular on the Issuance of Interim Measures on Financial Award Funds to Energy-saving Technological Innovation*. Under the program, enterprises whose energy-saving innovation project results in energy savings that exceed 10,000 tons of coal will receive an award. The standard award is RMB 200 per ton of coal for the eastern Chinese provinces and RMB 250 per ton of saved coal for the mid-western provinces. The purpose of the program is to encourage reduced energy consumption. According to the Circular, the program was set to terminate on December 31, 2010. The program is administered by the national Ministry of Finance and the NDRC.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.10 percent *ad valorem* in 2009.

#### V. Shandong Province: Award Fund for Industrialization of Key Energy-saving Technology

This program was established pursuant to the *Provisional Measures Shandong Special Fund for Energy and Water Saving*, and implemented on November 8, 2007, under the Circular of the Shandong Finance Department and Shandong Economic and Trade Commission establishing *Provisional Measures on Shandong Award Fund for Industrialization of Key Energy-saving Technology (Lu Cai Jian {2007} No. 68)*. The purpose of the program is to encourage reductions in energy consumption and to accelerate the industrialization of key energy-saving technologies in Shandong Province. According to the GOC, the program is administered by the Shandong Finance Department.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.07 percent *ad valorem* in 2008.

#### W. Shandong Province: Environmental Protection Industry R&D Funds

This program was established on September 24, 2007, under the *Circular on the Issuance of Administrative Rules on Special Funds for Technology R&D Projects of the Environmental Protection Industry of Shandong Province*. It is administered by Shandong Province Finance Department and Shandong Environmental Protection Bureau. The purpose of the program is to promote pollution-preventing technologies and environmental product development, and to strengthen the innovation capability and market competitiveness of the environmental protection industry in Shandong Province.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.03 percent *ad valorem* in 2008.

*X. Rizhao City: Special Fund for Enterprise Development*

No further descriptive information was submitted.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.04 percent *ad valorem* in 2009.

*Y. Rizhao City: Technological Innovation Grants*

No further descriptive information was submitted.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2008.

*Z. Rizhao City: Technology Research and Development Fund*

No further descriptive information was submitted.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2009.

*AA. Shandong Province: Waste Water Treatment Subsidies*

No further descriptive information was submitted.

To calculate the benefit, we divided the amounts approved for each year by the RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales for each the year of approval. We found that for all years but 2009, each amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.02 percent *ad valorem* in 2009.

*Other Subsidies Received by Yixing Union*

As discussed above under "Use of Facts Otherwise Available and Adverse Inferences: GOC—RZBC's and Yixing Union's Other Subsidies," the financial statements and tax returns submitted by the responding companies indicated that they received grants. Further, for certain of the programs, information submitted by the GOC and/or the responding companies was sufficient to analyze the programs' specificity. Where the information was not sufficient, we are employing an adverse inference and preliminarily determining the programs to be specific.

For Yixing Union, we identified three different grant programs with measurable benefits during the POR among these "other subsidies."

We preliminarily determine that these grants are direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act and that they provide a benefit in the amount of the grant. See 19 CFR 351.504(a). Our specificity findings are described below.

*BB. Yixing City: Leading Enterprise Program*

According to Yixing Union, it received grants from Yixing City because it is a leading enterprise.

Because the grants were given to "leading" enterprises, we preliminarily determine that the program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

To calculate the benefit, we divided the amount approved by Yixing Union Co.'s sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.01 percent *ad valorem* in 2009.

*CC. Yixing City: Tai Lake Water Improvement Program*

According to Yixing Union, grants under this program are limited to companies located around Tai Lake.

Because the grants under this program are limited to enterprises located in a designated geographic area, we preliminarily determine that the programs is specific within the meaning of section 771(5)(D)(iv).

To calculate the benefit, we divided the amount approved by Yixing Union's

consolidated sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.01 percent *ad valorem* in 2009.

For the program listed below, the submitted information was not sufficient to conduct a specificity analysis.

*DD. Jiangsu Province Energy Conservation and Emissions Reduction Program*

No further descriptive information was provided.

To calculate the benefit, we divided the amount approved by Yixing Union's consolidated sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.05 percent *ad valorem* in 2009.

*II. Programs Preliminarily Determined To Be Not Countervailable*

*Jiangsu Province Policy Lending*

In this administrative review, the Department has re-examined an allegation made in the investigation that a program of policy lending to the citric acid exists in Jiangsu Province. As with their allegation of a national policy lending program, Petitioners contend that the GOC itself considers citric acid to be a "new biochemical product" or otherwise among food additive and fine chemical products encouraged by various plans. With regard to lending in Jiangsu Province, Petitioners claim that citric acid is among the "biochemical products" and "special fine chemicals" encouraged in the *Jiangsu Province 11th Five Year Plan—Chemical* ("Jiangsu Chemical FYP").

The GOC and Yixing Union deny that there is preferential lending program in Jiangsu Province that benefits citric acid producers. As discussed above regarding the national policy lending program, the GOC states that while there are no official criteria that the NDRC uses to determine what constitutes a "new biochemical product," the NDRC has indicated that citric acid "is not considered a new biochemical product because it has been in existence for years." See GNSASQR1, Part 1 (April 27, 2011) at 6. The GOC states that if the

NDRC expressly interprets plans in a certain way, the local authorities must follow the interpretation. However, if no NDRC interpretation exists, the GOC indicates that local officials might make their own interpretation of what is covered in plan. *Id.*

With respect to the question of how the Jiangsu provincial government classifies citric acid, we asked Yixing Union to report any product certifications it had received from either local or national governments. Yixing Union reported receiving a "High Technology Product Certificate" in 2009. See Supplemental Questionnaire Response of Yixing Union Biochemical Co., Ltd. and Yixing Union Cogeneration Co., Ltd. (May 16, 2011) at 1–2 and Exhibit 1. Yixing Union stated that it did not receive any benefit as a result of receiving the certificate other than the intangible benefits of improving its reputation. *Id.*

Moreover, because of possible ambiguity in the product coverage of the Jiangsu Chemical FYP, we examined closely a sample of loan documentation obtained from Yixing Union. These documents provide no indication that any of the provincial plans were a factor in awarding the loans to Yixing Union.

Accordingly, we preliminarily determine that Jiangsu Province does not provide policy loans to the citric acid industry there.

We note that beginning in 2009, we are countervailing loans received by Yixing Union based on our preliminary determination that a national policy lending program exists for the fermentation industry (see "National-Level Government Preferential Lending Program," above).

### III. Programs Preliminarily Determined Not to Confer a Measurable Benefit During the POR

Regarding programs listed below, benefits from these programs result in net subsidy rates that are less than 0.005 percent *ad valorem* or constitute benefits that were fully expensed prior to the POR. Consistent with our past practice, we therefore have not included these programs in our net countervailing duty rate calculations. See, e.g., CFS Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE."

- A. Special Funds for Energy Saving and Recycling Program (Yixing Union)<sup>16</sup>

- B. Water Resource Expense Reimbursement Program (Cogeneration)<sup>17</sup>
- C. Shandong Province: Energy-Saving Award

### IV. Programs Preliminarily Determined Not To Be Used<sup>18</sup>

- A. Discounted Loans for Export-Oriented Industries
- B. Loans Provided to the Northeast Revitalization Program
- C. State Key Technology Renovation Project Fund
- D. National Level Grants to Loss-Making SOEs
- E. Income Tax Exemption Program for Export-Oriented FIEs
- F. Tax Benefits to FIEs for Certain Reinvestment of Profits
- G. Preferential Income Tax Rate for Research and Development at FIEs
- H. Preferential Tax Programs for Encouraged Industries
- I. Preferential Tax Policies for Township Enterprises
- J. Reduced Income Tax Rates for Encouraged Industries in Anhui Province
- K. Income Tax Exemption for FIEs Located in Jiangsu Province
- L. VAT Rebate on Purchases by FIEs of Domestically Produced Equipment
- M. Provincial Level Grants to Loss-Making SOEs
- N. "Famous Brands" Program—Yixing City
- O. Funds for Outward Expansion of Industries in Guangdong Province
- P. Administration Fee Exemption in the Yixing Economic Development Zone ("YEDZ")
- Q. Tax Grants, Rebates, and Credits in the YEDZ
- R. Provision of Construction Services in the YEDZ for LTAR
- S. Grants to FIEs for Projects in the YEDZ
- T. Provision of Land in the YEDZ for LTAR
- U. Provision of Electricity in the YEDZ for LTAR
- V. Provision of Water in the YEDZ for LTAR
- W. Provision of Land in the Zhuqiao Key Open Park for LTAR
- X. Provision of Land in Anhui Province for LTAR
- Y. Provision of Land to SOEs for LTAR
- Z. Exemption from Land-use Fees and Provision of Land for LTAR in Jiangsu Province for LTAR
- AA. Torch Program—Grant
- BB. Anqui City Energy and Water Savings Grant

<sup>17</sup> Yixing SQR1 at 10 and Exhibit SS–14.

<sup>18</sup> In this section we refer to programs preliminarily determined to be not used by the two participating respondent companies.

- CC. Provision of Land in the Anqui Economic Development Zone ("AEDZ") for LTAR

### V. Programs for Which More Information Is Required

In our questionnaires, we requested partial data for 2008 for the various lending programs and the sulfuric and steam coal LTAR programs. For the final results, we intend to request and analyze full-year data for 2008, consistent with the Department's practice in this regard. See, e.g., *Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India*, 69 FR 26549 (May 13, 2004), and accompanying Issues and Decision Memorandum at page 1, footnote 1. We will also request that Respondents report separately their interest payments for 2008 and 2009.

Further, as discussed above, the Department is investigating RZBC's creditworthiness and will be seeking information from the RZBC. The Department also intends to seek additional information regarding potential subsidies to RZBC Co.'s prior parent companies, the ownership of Cogeneration during the 2004 and 2005 calendar years, and further clarification regarding the responding companies' notes payable. Finally, for the Shandong Province: Construction Fund for Promotion of Key Industries program, RZBC reported that it received assistance from fund aimed at "key enterprises." We need additional sales information from RZBC to calculate the subsidy conferred by this program.

The Department plans to issue a post-preliminary analysis, as warranted, presenting its analysis of issues not addressed in these preliminary results.

### Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated individual subsidy rates for RZBC and Yixing Union, the producers covered by this administrative review. We preliminarily determine that the total estimated net countervailable subsidy rate for RZBC for 2008 is 6.96 percent *ad valorem* and for 2009 is 4.04 percent *ad valorem*. We preliminarily determine that the total estimated net countervailable subsidy rate for Yixing Union for 2008 is 13.80 percent *ad valorem* and for 2009 is 35.93 percent *ad valorem*.

If these preliminary results are adopted in our final results of this review, 15 days after publication of the final results of this review the Department will instruct CBP to liquidate shipments of citric acid by RZBC and Yixing Union entered or

<sup>16</sup> Yixing SQR1 at 9 and Exhibit SS–8.

withdrawn from warehouse, for consumption from September 19, 2008, through Jan 16, 2009, and May 29, 2009, through December 31, 2009, at the applicable rates. Entries during the period January 17, through May 29, 2009, were not suspended for CVD purposes due to the termination of provisional measures.

#### Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts calculated for year 2009. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Public Comment

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

Interested parties may request a hearing within 30 days after the date of publication of this notice. Unless otherwise specified, the hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

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

Dated: May 31, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011-14027 Filed 6-6-11; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration [C-570-978]

#### High Pressure Steel Cylinders From the People's Republic of China; Initiation of Countervailing Duty Investigation

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

**DATES:** *Effective Date:* June 8, 2011.

**FOR FURTHER INFORMATION CONTACT:** Scott Holland and Yasmin Nair, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-1279 and (202) 482-3813, respectively.

#### SUPPLEMENTARY INFORMATION:

##### The Petition

On May 11, 2011, the Department of Commerce ("Department") received a countervailing duty ("CVD") petition concerning imports of high pressure steel cylinders ("steel cylinders") from the People's Republic of China ("PRC") filed in proper form by Norris Cylinder Company ("Petitioner"). See The Petitions for the Imposition of Antidumping and Countervailing Duties Against High Pressure Steel Cylinders from the People's Republic of China, dated May 11, 2011 ("the Petition"). On May 17, 2011, the Department issued requests to Petitioner for additional information and for clarification of certain areas of the CVD Petition. Based on the Department's requests, Petitioner filed a supplement to the Petition regarding general issues on May 20, 2011 ("Supplement to the AD/CVD Petitions").

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended ("Act"), Petitioner alleges that producers/exporters of steel cylinders from the PRC received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, and threaten further material injury to, an industry in the United States.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because Petitioner is an interested party, as defined in section 771(9)(C) of the Act, and has demonstrated sufficient industry support with respect to the investigation that it requests the Department to initiate (see "Determination of Industry Support for the Petition" below).

#### Period of Investigation

The period of investigation is January 1, 2010, through December 31, 2010.

#### Scope of Investigation

The products covered by the scope of this investigation are steel cylinders from the PRC. For a full description of the scope of the investigation, see the "Scope of the Investigation," in Appendix I of this notice.

#### Comments on Scope of the Investigation

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. As a result, the "Scope of Investigation" language has been modified from the language in the Petition to reflect these clarifications. See Memorandum to the File from Meredith A.W. Rutherford regarding Petitions for the Imposition of Antidumping Duties and Countervailing Duties on High Pressure Steel Cylinders from the People's Republic of China; Conference Call with Petitioner, May 24, 2011.

Moreover, as discussed in the preamble to the regulations (see *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period of time for interested parties to raise issues regarding product coverage. The Department encourages interested parties to submit such comments by Monday, June 20, 2011, which is twenty calendar days from the signature date of this notice. All comments must be filed on the records of both the PRC antidumping duty investigation as well as the PRC CVD investigation. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

#### Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on May 16, 2011, the Department invited representatives of the Government of the PRC ("GOC") for consultations with respect to the CVD petition. On May 25, 2011, the Department held consultations with representatives of the GOC via conference call. See Ex-Parte Memorandum on Consultations regarding the Petition for Imposition of Countervailing Duties on High Pressure