



INTERNATIONAL  
TRADE  
ADMINISTRATION

## FACT SHEET

### Commerce Finds Dumping of Imports of Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal and Countervailable Subsidization of Imports of Certain Uncoated Paper from China and Indonesia

- On January 11, 2016, the Department of Commerce (Commerce) announced its affirmative final determinations in the antidumping duty (AD) investigations of imports of certain uncoated paper from Australia, Brazil, China, Indonesia, and Portugal, and the countervailing duty (CVD) investigations of imports of certain uncoated paper from China and Indonesia.
- The AD and CVD laws provides U.S. businesses and workers with a transparent and internationally accepted mechanism to seek relief from the market-distorting effects caused by injurious dumping and unfair subsidization of imports into the United States, establishing an opportunity to compete on a level playing field.
- For the purpose of AD investigations, dumping occurs when a foreign company sells a product in the United States at less than its fair value. For the purpose of CVD investigations, countervailable subsidies are financial assistance from foreign governments that benefit the production of goods from foreign companies and are limited to specific enterprises or industries, or are contingent either upon export performance or upon the use of domestic goods over imported goods.
- In the Australia AD investigation, mandatory respondent Paper Australia Pty. Ltd. notified Commerce that it would not participate in this investigation. As a result, Commerce assigned Paper Australia Pty. Ltd. a final dumping margin of 222.46 percent, based on adverse facts available. All other producers/exporters in Australia received a final dumping margin of 138.87 percent.
- In the Brazil AD investigation, mandatory respondent International Paper do Brasil Ltda. and International Paper Exportadora Ltda. (collectively "International Paper")<sup>1</sup> received a final dumping margin of 41.39 percent and mandatory respondent Suzano Papel e Celulose S.A. received a final dumping margin of 22.16 percent. All other producers/exporters in Brazil received a final dumping margin of 26.95 percent.
- In the China AD investigation, mandatory respondent Asia Symbol (Guangdong) Paper Co., Ltd. (AS Guangdong), Asia Symbol (Shandong) Pulp and Paper Co., Ltd., (AS Shandong), and Greenpoint Global Trading (Macao Commercial Offshore) Ltd. (Greenpoint), (collectively, Asia Symbol)<sup>2</sup> received a final dumping margin of 84.05 percent. Mandatory respondents Shandong Sun Paper Industry Joint Stock Co., Inc. and UPM (China) Co. Ltd., each notified Commerce that they would not participate in this investigation. As a result, they failed to demonstrate eligibility for a separate rate and are considered to be part of the China-wide entity. The final rate for the China-wide entity is 149.00 percent.

<sup>1</sup> In the Brazil investigation, Commerce collapsed several companies with International Paper.

<sup>2</sup> In the China investigation, Commerce collapsed AS Guangdong, AS Shandong, and Greenpoint.

- In the Indonesia AD investigation, mandatory respondent April Fine Paper Macao Commercial Offshore Limited (APRIL Fine Paper) and its affiliates PT Anugerah Kertas Utama (AKU) and PT Riau Andalan Kertas (RAK)<sup>3</sup> received a final dumping margin of 2.05 percent. Mandatory respondents Great Champ Trading Limited (Great Champ) and Indah Kiat Pulp & Paper TBK (IK) and its affiliates Pabrik Kertas Tjiwi Kimia (TK), and PT. Pindo Deli Pulp and Paper Mills (PD)<sup>4</sup> notified Commerce that they would not participate in this investigation. As a result, Commerce assigned these companies a final dumping margin of 17.39 percent, based on adverse facts available. All other producers/exporters in Indonesia received a final dumping margin of 2.05 percent.
- In the Portugal AD investigation, mandatory respondent Portucel S.A. received a final dumping margin of 7.80 percent. All other producers/exporters in Portugal received a final dumping margin of 7.80 percent.<sup>5</sup>
- In the China CVD investigation, Commerce determined that mandatory respondent Asia Symbol (Guangdong) Paper Co., Ltd., and its cross-owned affiliates Asia Symbol (Shandong) Pulp & Paper Co., Ltd. (AS Shandong), Asia Symbol (Guangdong) Omya Minerals Co., Ltd. (AS Omya), and Greenpoint Global Trading (Macao Commercial Offshore) Limited (Greenpoint) (collectively, Asia Symbol Companies) received a final subsidy rate of 7.23 percent. The other mandatory respondents, Shandong Sun Paper Industry Joint Stock Co., Ltd., and Sun Paper (Hong Kong) Co., Ltd. (collectively, Sun Paper Companies), and UPM (China) Co., Ltd. (UPM) withdrew from the investigation. As a result, Sun Paper and UPM received subsidy rates of 176.75 percent based on facts available and adverse inferences following Commerce's final determination that the companies had not fully cooperated in the investigation. All other producers/exporters in China have been assigned a final China-wide subsidy rate of 7.23 percent.
- In the Indonesia CVD investigation, Commerce determined that mandatory respondent APRIL Fine Paper and its cross-owned affiliates (AKU, RAK, PT Intiguna Primatama, PT Riau Andalan Pulp & Paper, and Esensindo Cipta Cemerlang) received a final subsidy rate of 21.22 percent. The other mandatory respondents, Great Champ, IK, and TK failed to respond to Commerce's questionnaire. As a result, Great Champ received a final subsidy rate of 104.00 percent, and IK, TK, and their cross-owned affiliate PD received a final subsidy rate of 109.15 percent, based on facts available and adverse inferences following Commerce's final determination that the companies had not cooperated in the investigation. All other producers/exporters in Indonesia have been assigned a final subsidy rate of 21.22 percent.
- As a result of the affirmative final AD determinations, Commerce will instruct U.S. Customs and Border Protection (CBP) to collect cash deposits equal to the applicable weighted-average dumping margins. Further, as a result of the affirmative final CVD determinations, if the U.S. International Trade Commission (ITC) issues affirmative injury determinations, Commerce will order the resumption of the suspension of liquidation and require a cash deposit for CVD duties equal to the final subsidy rates for the mandatory respondents and all other producers and exporters not selected for investigation; we will also adjust the China and Indonesia AD cash deposit rates by the amount of the CVD export subsidies, where appropriate. If the ITC issues negative injury determinations, the

<sup>3</sup> In the Indonesia AD investigation, Commerce collapsed April Fine Paper, AKU, and RAK.

<sup>4</sup> In the Indonesia AD investigation, Commerce also collapsed IK, TK, and PD.

<sup>5</sup> In the Portugal investigation, Commerce collapsed several companies with Portucel S.A.

investigations will be terminated and no producers or exporters will be subject to future cash deposits for either AD or CVD duties. In such an event, all cash deposits already collected will be refunded.

- Based on an allegation filed in the Australia case, Commerce found that critical circumstances exist for Australia Pty. Ltd. but do not exist for all other producers/exporters. Where critical circumstances are found, CBP will be instructed to impose provisional measures retroactively on entries of certain uncoated paper up to 90 days prior to publication of the preliminary determination Federal Register notice.
- The petitioners for these investigations are the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) (PA); Domtar Corporation (SC); Finch Paper LLC (NY); Packaging Corporation of America (IL); and P.H. Glatfelter Company (PA).
- The merchandise covered by these investigations includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness<sup>6</sup> level of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

Certain Uncoated Paper includes (a) uncoated free sheet paper that meets this scope definition; (b) uncoated groundwood paper produced from bleached chemi-thermo-mechanical pulp that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope are (1) paper printed with final content of printed text or graphics and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered “printed with final content” where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

Imports of the subject merchandise are provided for under HTSUS categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

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<sup>6</sup> One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade. “Colored paper” as used in this scope definition means a paper with a hue other than white that reflects one of the primary colors of magenta, yellow, and cyan (red, yellow, and blue) or a combination of such primary colors.

- In 2014, U.S. imports of uncoated paper from Australia, Brazil, China, Indonesia, and Portugal were valued at an estimated \$61 million, \$211 million, \$54 million, \$200 million, and \$164 million, respectively.

#### NEXT STEPS

- The ITC is scheduled to make its final injury determination on or about February 22, 2016.
- If the ITC makes affirmative final determinations that imports of uncoated paper from Australia, Brazil, China, Indonesia, and/or Portugal materially injure, or threaten material injury to, the domestic industry, Commerce will issue AD and CVD orders. If the ITC makes negative determinations of injury, the investigations will be terminated.

#### FINAL DUMPING MARGINS:

COUNTRY	EXPORTER/PRODUCER	DUMPING MARGINS
Australia	Paper Australia Pty. Ltd.**	222.46%
	All Others	138.87%

\*\* Based on adverse facts available due to the company's failure to participate in the investigation.

COUNTRY	EXPORTER/PRODUCER	DUMPING MARGINS
Brazil	Suzano Papel e Celulose S.A.	22.16%
	International Paper do Brasil Ltda.	41.39%
	All Others	26.95%

COUNTRY	EXPORTER	PRODUCER	DUMPING MARGINS	CASH DEPOSITS
China	Greenpoint Global Trading (Macao Commercial Offshore) Ltd.	Asia Symbol (Guangdong) Paper Co., Ltd., Asia Symbol (Shandong) Pulp and Paper Co., Ltd.	84.05%	83.92%
	China-Wide Rate		149.00%	148.87%

NOTE: The cash deposit rates are adjusted to account for the applicable export subsidy rate of 0.13 percent for Asia Symbol and for the China-Wide rate.

COUNTRY	EXPORTER/PRODUCER	DUMPING MARGINS	CASH DEPOSITS
Indonesia	April Fine Paper Macao Commercial Offshore Limited/PT Anugerah Kertas Utama/PT Riau Andalan Kertas	2.05%	2.05%
	Great Champ Trading Limited**	17.39%	0.00%
	Indah Kiat Pulp & Paper TBK/Pabrik Kertas Tjiwi Kimia/PT. Pindo Deli Pulp and Paper Mills**	17.39%	0.00%
	All Others	2.05%	2.05%

\*\* Based on adverse facts available due to the company's failure to participate in the investigation.

NOTE: The cash deposit rates are adjusted to account for the applicable export subsidy rate of 57.78 percent for Great Champ and APP/SMG. There were no export subsidies found for APRIL and companies covered by the All Others Rate.

COUNTRY	EXPORTER/PRODUCER	DUMPING MARGINS
Portugal	Portucel S.A.	7.80%
	All Others	7.80%

**FINAL SUBSIDY RATES:**

COUNTRY	EXPORTER/PRODUCER	SUBSIDY RATES
China	Asia Symbol Companies	7.23%
	Sun Paper Companies	176.75%**
	UPM	176.75%**
	All Others	7.23%

\*\* Based on adverse facts available due to the company's failure to participate in the investigation.

COUNTRY	EXPORTER/PRODUCER	SUBSIDY RATES
Indonesia	APRIL Fine Paper Macao Commercial Offshore Limited, PT Anugrah Kertas Utama, PT Riau Andalan Kertas, PT Intiguna Primatama, PT Riau Andalan Pulp & Paper, Esensindo Cipta Cemerlang	21.22%
	Great Champ Trading Limited**	104.00%**
	Indah Kiat Pulp & Paper Tbk, Pabrik Kertas Tjiwi Kimia, PT Pindo Deli Pulp and Paper Mills**	109.15%**
	All Others	21.22%

\*\* Based on adverse facts available due to the company's failure to participate in the investigation.

## CASE CALENDAR:

EVENT	CVD INVESTIGATION	AD INVESTIGATIONS
Petitions Filed	January 21, 2015	January 21, 2015
DOC Initiation Date	February 10, 2015	February 10, 2015
ITC Preliminary Determinations	March 9, 2015	March 9, 2015
DOC Preliminary Determinations^	June 22, 2015	August 19, 2015
DOC Final Determinations*	January 8, 2016	January 8, 2016
ITC Final Determinations	February 22, 2016	February 22, 2016
Issuance of Orders**	February 29, 2016	February 29, 2016

NOTE: Commerce preliminary and final determination deadlines are governed by statute. For CVD investigations, the deadlines are set forth in sections 703(b) and 705(a)(1) of the Tariff Act of 1930, as amended (the Act). For AD investigations, the deadlines are set forth in sections 733(b) and 735(a) of the Act. These deadlines may be extended under certain circumstances.

Where the deadline falls on a weekend/holiday, the appropriate date is the next business day.

\*The final determinations in the CVD investigations were aligned with the final determinations in the concurrent antidumping duty investigations.

\*\*This will take place only in the event of final affirmative determinations by Commerce and the ITC.

## IMPORT STATISTICS:

AUSTRALIA	2012	2013	2014
Volume (metric tons)	46,300	48,700	75,800
Value (USD)	37,164,000	38,994,000	61,359,000
BRAZIL	2012	2013	2014
Volume (metric tons)	139,000	197,600	218,500
Value (USD)	139,215,000	189,328,000	210,472,000
CHINA	2012	2013	2014
Volume (metric tons)	23,600	37,000	62,400
Value (USD)	22,140,000	32,035,000	54,081,000
INDONESIA	2012	2013	2014
Volume (metric tons)	105,600	116,200	230,600
Value (USD)	99,457,000	104,103,000	200,321,000
PORTUGAL	2012	2013	2014
Volume (metric tons)	141,600	160,200	157,300
Value (USD)	146,180,000	164,297,000	163,593,000

Source: U.S. Census Bureau, accessed through Global Trade Atlas. (HTSUS 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000.)

Imports of certain uncoated paper may also enter under HTSUS subheadings 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. However, these HTSUS subheadings may cover significant amounts of non-subject merchandise. Therefore, these HTSUS subheadings have not been used for purposes of reporting import statistics.





Non-Confidential Attachment B-3.1.1

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## Catalogue for the Guidance of Foreign Investment Industries (Amended in 2011)

February 21, 2012 - 14:51 BJT (03:51 GMT)February 21, 2012 - 14:51 BJT (03:51 GMT) MOFCOMMOFCOM

### Catalogue of Encouraged Foreign Investment Industries

#### I. Farming, Forestry, Animal Husbandry and Fishery Industries

- (1) Planting, development and production of woody edible oil, ingredient and industrial raw material
- (2) Cultivation technologies development and production of green and organic vegetables (including edible fungus, watermelon and melon), dried fresh fruits and tea
- (3) New technology development and production of sugar-yielding crops, fruit trees, forage grass
- (4) Production of flowers and plants, and construction and operation of nursery base
- (5) Planting of rubber, oil palm, sisals and coffees
- (6) Cultivation of traditional Chinese medicines (limited to equity joint venture and contractual joint venture)
- (7) Reusing in fields and comprehensive utilization of straws and stalks of crop, development and production of resources of organic fertilizers
- (8) Planting of forest trees (including bamboo) and cultivation of fine strains of forest trees and cultivation of new breed varieties of polyploid trees
- (9) Breeding of aquatic offspring (excluding precious quality varieties peculiar to China)
- (10) Construction and operation of ecological environment protection projects preventing and treating desertification and soil erosion such as planting trees and grasses, etc.
- (11) Breeding of aquatic products, cage culture in deep water, large-scale breeding of aquatic products and breeding of eco-ocean products

#### II. Mining and Quarrying Industries

- (1) Prospecting, exploitation and utilization of coal-bed gas (limited to equity joint venture and contractual joint venture)
- (2) Pure prospecting and exploitation of petroleum, natural gas (limited to equity joint venture and contractual joint venture)
- (3) Exploitation of oil and gas deposits (fields) with low osmosis (limited to equity joint venture and contractual joint venture)
- (4) Development and application of new technologies that can increase the recovery factor of crude oil (limited to equity joint venture and contractual joint venture)
- (5) Development and application of new technologies for prospecting and exploitation of petroleum, such as geophysical prospecting, well drilling, well-logging and downhole operation, etc. (limited to equity joint venture and contractual joint venture)
- (6) Prospecting and exploitation of such conventional oil resources as oil shale, oil sand, heavy oil and super heavy oil (limited to equity joint venture and contractual joint venture)
- (7) Prospecting, exploitation, and beneficiation of iron ores and manganese ores
- (8) Development and application of new technologies for improving the utilization of tailings and the comprehensive utilization of recovery technology of the mine ecology
- (9) Prospecting and exploitation of unconventional natural gas resources such as shale gas and submarine natural gas hydrate (limited to equity joint venture and contractual joint venture)

#### III. Manufacturing Industries 1. Farm Products Processing Industry

- (1) Development and production of biology feeds, straws and stalks feeds and aquatic feeds
- (2) Aquatic products processing, seashell products cleansing and processing, and development of function food made from seaweed

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- (11) Production of fluororesin, fluorine film materials, fluorine-containing intermediate products for medical use, environment-friendly cryogen and detergent
- (12) Production of fluorine recycling from phosphorus chemicals and aluminum smelting
- (13) Development and production of new technology and products for the forestry chemicals
- (14) Development and production of inorganic, organic and biologic films for environment protection
- (15) Development and production of new-type fertilizer: biologic fertilizer, high-density fertilizer, compound fertilizer, controlled release fertilizer, compound microbial inoculant, Compound microbial manure, degradation agent for stalks and garbage and microbial preparation of special functions
- (16) Development and production of effective, safe and environment-friendly new varieties, new formulations, special-purpose intermediates and accessory ingredients of pesticides; and development and application of relevant clean production processing (methylene technology for producing acetochlor, method for paraquat by ammoniacal cyanide process, aqueous phase synthesis of chlorpyrifos, recycling chloromethane during production of glyphosate, production of oriented synthesis chiral pesticides and cubic pesticides, and synthesis technology for diethyl thiophosphoryl chloride)
- (17) Development and production of biopesticide and bio-control products: microbial insecticide, microbial fungicide, agricultural antibiotic, insect pheromone, enemy insect and microbial herbicide
- (18) Comprehensive utilization and disposal of exhaust gas, discharge liquid, waste residue
- (19) Production of organic polymer material: covering film for plane, rare earth cerium sulphide red dye, lead-free in electronic packages, serials of special sizing agent by photoetching for color Plasma Display Panel, small diameter and large specific surface area superfine fibre, high precision fuel filter paper, and Li-ion battery membrane

#### 11. Jical and Pharmaceutical Products Industry

- (1) Production of new type compound medication of active composition medication (including bulk drug and preparation)
- (2) Production of amino acids: tryptophan prepared by zymotechnics, histidine, methionine for feed
- (3) Production of new anti cancer medication, new cardio-cerebrovascular medication and new nervous system using medication
- (4) Production of new type medication using bioengineering technology
- (5) Production of AIDS vaccine, hepatitis C vaccine, contraceptive vaccine, and new vaccines such as cervical cancer vaccine, malaria vaccine, and hand-foot-mouth disease vaccine
- (6) Production of biology vaccine
- (7) Exploitation and production of marine drug
- (8) Drug preparation: production of new formulation using new technologies of sustained-release, release, targeting and percutaneous absorption
- (9) Exploitation and production of new type of pharmaceutical adjuvant
- (10) Production of antibacterial active pharmaceutical ingredients for animals (including antibiotics and chemosynthesis drugs)
- (11) Exploitation and production of animal using antibacterial drug, insect repellent, pesticide, anticoccidial drug and new formulation
- (12) Production of new diagnosis reagent

#### 12. Manufacturing Industry of Chemical Fiber

- (1) Production of hi-tech chemical fiber (excluding viscose fiber) of differential chemical fiber, aramid, carbon fiber, polyethylene of high-strength and high-modulus, polyphenylene sulfide(PPS) and so on
- (2) Production of new style of fiber and non-fiber polyester: PTT, PEN, PCT, and PETG
- (3) Production of biopolymer fiber by using new renewable resources and environment-friendly processing: lyocell, cellulose made from bamboo and hemp, PLA, chitin fiber, PHA and plant and animal protein fiber
- (4) Production of polyamide, single line production capacity of 150 ton a day
- (5) Production of meridian tyre aramid fiber and tyre cord

#### 13. Industry of Plastic Products

- (1) Development and production of new-type multi-functional photo-biological broad agricultural films
- (2) Digestion and recycle of waste plastics
- (3) Exploitation and production of new technology and new production of plastic soft package (high barrier, multi-function film and material)

#### 14. Non-metal Mineral Products Processing Industry

- (1) Development and production of energy-saving, environment-protecting, lightweight and high-intensity, high-performance and multi-functional architecture materials
- (2) Use plastic to replace steel and wood, energy-saving and high-efficient chemical architecture material production
- (3) Production of elastomer, plastic changeable asphaltum waterproof coiled materials, broad (more than 2 meters) waterproof EPDM coiled materials and matched materials, broad (more than 2 meters) waterproof PVC coiled material, and TPO waterproof coiled materials with a production capacity of more than 10,000,000 sq.m.

## 16. Metal products industry

- (1) Research, development and manufacturing of new lightweight and environment-friendly materials for aviation, aerospace, automobiles and motorcycles (special-purpose aluminum sheets, aluminum-magnesium alloy materials, and aluminum alloy motorcycle frames and so on)
- (2) Development and production of high-grade hardware for construction, hot-water heating equipment and hardware parts.
- (3) Production and processing (including painting and processing inner and outer surface of the products) of metal packing products (thickness < 0.3mm) used to pack all kinds of grain, oil and food, fruits, vegetables, beverages, daily using materials and such contents.
- (4) Manufacturing of nickel-saving stainless steel products

## 17. General Machine-building Industry

- (1) Manufacturing of numerically controlled machine tools of high level and key spare parts: numerically controlled machine tools which exceed quintuple linkage, digital control coordinate spindle processing centre, digital control system which exceeds quintuple linkage and servomechanism installations, high-speed and super-strong knives for exact digital control manufacturing.
- (2) Manufacturing of multi-station forging forming machine of 1000 tons or more
- (3) Manufacturing of equipments for braking up and smashing retired cars
- (4) Manufacturing of soft FTL product line
- (5) Manufacturing of vertical articulated industrial robots, welding robots and welding equipments thereof
- (6) Manufacturing of special processing machines: complete sets of laser cutting and welding equipments, exact processing laser equipments, digital-control and low-speed wire-cuts, submicron cracker
- (7) Manufacturing of wheel or crawler crane of 300 tons or more (limited to equity joint ventures or contractual joint ventures)
- (8) Design and manufacturing of high pressure plunger pumps of pressure(35-42MPa) and engine, design and manufacturing of low-speed big torque engine of pressure(35-42MPa)
- (9) Manufacturing of integrated hydraulic-pressure multiple unit valve with working pressure≥ 25MPa and electro-hydraulic proportional servo elements.
- (10) Design and manufacturing of valve terminal, pneumatic solenoid valve of less than 0.35W and high-frequency electrically-controlled gas valve of 200Hz or more
- (11) Design and manufacturing of hydrostatic drive device
- (12) Development and manufacturing of non-contacting gas film seal of pressure more than 10MPa, dry gas seal of pressure more than 10MPa (including experience device)
- (13) Development and manufacturing of macromolecule material device for automobiles(rub piece, changed phenol aldehyde plunger, non-metal liquid pressure mother pump and so on)
- (14) Manufacturing of car boss axletree of 3 and 4 generation(function elements of boss axletree of flange and transducer inside or outside of the axletree, digital control machine tool or processing centre axletree of high or mid class(the processing center should have more than three axis interlocking function and 3-4μm repeated precision) , high-speed wire or board rolling mill axletree(assistant axletree and roller axletree of single-wire rolling mill of more than 120m/s and of thin-board rolling mill of more than 2mm) , high-speed railway axletree(with speed of more than 200km/h) , low-noise axletree of vibration of less than Z4(Z4, Z4P, V4, V4P) , level P4, P2 axletree of various axletree
- (15) Manufacturing of high-density, high-precision and complex-shaped powder metallurgical parts and chains used for automobile, engineering machinery, etc
- (16) Manufacturing of gear transmission for wind power, high-speed train, gear transmission agent with adjustable blades for vessels, and large-sized and heavy-loaded gear boxes
- (17) Manufacturing of high binding spares of 12.9 level or more
- (18) Development and manufacturing of accumulator bladders and rubber and plastic seals for hydropneumatic use
- (19) Remanufacturing of machine tools, spare parts of cars(except five matured varieties)and project machines.
- (20) Manufacturing of miniature precision transmission joint pieces (clutches)
- (21) Manufacturing of coupling shaft for heavy rolling mills
- (22) Remanufacturing of machinery such as machine tools, engineering machinery and railway locomotives and remanufacturing of automotive parts and components

## 18. Special Equipment Manufacturing

- (1) Manufacturing of mine trolley mining, loading and transporting device: mechanical drive tipper for mine of 100 tons or more, mobile crusher, wheeled digger of 3000m<sup>3</sup>/h or more, loading machine for mine of 5 m<sup>3</sup> or more, electric driving mining machine of 2000 kw or more and so on
- (2) Manufacturing of geophysical, logging equipment: MEME geophone, digital telemetry seismograph, digital imaging, computerized logging system, horizontal wells, directional wells, drilling rig equipment and apparatus, MWD logging while drilling
- (3) Manufacturing of equipment for oil exploration, drilling, collection and transportation: floating drilling systems and floating production systems with an operating water depth of more than 1500 meters and the supporting subsea oil extraction, collection and transportation equipment

- equipment : 5-grade plus high efficient fruit juice condensation equipment; equipment for Disinfection of powder food in Media; Aseptic packaging equipment for Semi-solid and solid food; Packaging Materials for Aseptic packaging, DVS Bacteria Starter for Dairy Production, Disc-type Separation centrifuges
- (39) Manufacturing of Agricultural machinery: facility agriculture equipment(greenhouse Automatic irrigation equipment, Autocontrol configuration and fertilization Equipment of Nutritious Liquid, Efficient vegetable nursery equipment, Soil nutrient analysis instruments ), Tractor and associated farm tools with 120 Kilowatts and above Matching engine power, Low fuel consumption, low noise and low-emission diesel engine, Spray Machines with Residual fog tablets Recovery Unit matching of large tractor, High-performance rice transplanter, Cotton harvesting machine, Adapted to a variety of row-spacing Self-moving Maize Reaping Machine(Hydraulic drive or mechanical drive)
- (40) Manufacturing of new technical forestry equipment
- (41) Manufacturing of equipment for reusing in fields and comprehensive utilization of straws and stalks of crop, Manufacturing of equipment for comprehensive utilization of Rice Husk
- (42) Manufacturing of equipment for comprehensive utilization of waste agriculture products and waste fowl and livestock products which are bred in scale
- (43) Manufacturing of festival fertilizer, pesticide section, water-saving technical Agriculture equipment
- (44) Manufacturing of cleaning equipment for electromechanical wells and equipments for Laundering drug production
- (45) Manufacturing of electronic endoscopes
- (46) Manufacturing of Fundus Cameras
- (47) Manufacturing of Medical imaging equipments' Key components(high magnetic field intensity and superconduct MRI, CT, X-ray computed tomography, type-B ultrasonic )
- (48) Manufacturing of Medical Ultrasonic Transducer(3D)
- (49) Manufacturing of boron neutron capture therapy equipments
- (50) Manufacturing of X-ray Stereotactic Radiotherapy System
- (51) Manufacturing of Hemodialysis, Blood Filter
- (52) Manufacturing of multi-layer co-extruded water-cooled blown film equipment for non-PVC medical infusion bags
- (53) New techniques of quality control of medicine products and new equipment manufacturing (54) New analytical techniques and extraction technologies, and equipment development and manufacturing for the effective parts of traditional Chinese medicines
- (55) Producing and manufacturing of new packing materials, new containers for medicine, and advanced medicine producing equipment
- (56) Development and Manufacturing of equipment of new type of knitting machines, Key parts and Textile testing, laboratory equipment
- (57) Manufacturing of water pollution prevention and control equipment: horizontal spiral centrifugal dehydrators, membrane and membrane materials, ozone generators with a capacity of more than 50kg/h, chlorine dioxide generators with a capacity of more than 10 kg/h, ultraviolet disinfection devices, small domestic sewage treatment equipment used in rural areas, and heavy metal wastewater treatment equipment
- (58) Manufacturing of solid waste treatment and disposal equipment: sewage plant sludge disposal and resource utilization equipment, complete sets of refuse incineration equipment with a daily treatment capacity of 500 tons or more, landfill leachate treatment technology and equipment, anti-seepage geomembranes in landfills, building waste treatment and resource recovery utilization equipment, devices for disposal of hazardous waste, devices for biogas power generation in landfills, scrap steel treatment equipment, and remediation equipment for contaminated soil
- (59) Development and manufacturing of equipment for the comprehensive utilization of red mud from aluminum industry
- (60) Manufacturing of equipment for the comprehensive utilization of mine tailings
- (61) Manufacturing of Waste plastics, electronics, rubber, battery Recycling Equipments
- (62) Manufacturing of reclamation equipment for used and waste textiles
- (63) Manufacturing of equipment for the remanufacturing of waste mechanical and electrical products
- (64) Manufacturing of special Meteorological observation and analysis equipments
- (65) Development of Seismic station, Seismic Network, and Mobile seismological observation technology System, and Manufacturing of equipments
- (66) Manufacturing of portable assembling water purification equipment
- (67) Unconventional water treatment, recycling equipment and water quality monitoring instruments
- (68) Leak test equipment and instruments for industrial water pipeline networks and equipment (appliances)
- (69) Manufacturing of preparation, storage and transportation equipment and inspection systems of hydrogen energy
- (70) Manufacturing of new Heavy residue gasification Atomization Nozzle, Steam leakage rate of 0.5 percent and below efficient Steam Traps, 1000 ° C and above high-temperature ceramic heat exchanger manufacturer
- (71) Development of Seismic station, Seismic Network, and Mobile seismological observation technology System, and Manufacturing of equipments
- (72) Manufacturing of three-drum radial tire building machines

comprehensive testing equipment for machines, special equipment for aeronautic manufacturing, equipment for pilot manufacturing aeronautic materials, ground receiving and applying equipment for civil aircraft, ground testing equipment for rocket launcher, equipment for dynamic and environmental experience for rocket launcher

(16) Manufacturing of mechanical and electrical products for aircrafts, temperature control products for aircrafts, test equipment for planet products and structure and organization products for aircrafts

(17) Manufacturing of light gas-turbine engine

(18) Design of luxury cruise and equipment for deep-water(over 3000 meters) ocean project(limited to equity joint ventures or contractual joint ventures)

(19) Manufacturing and maintaining of equipment for ocean project(including stages)(Chinese part shall hold the majority of shares)

(20) Design of diesel engine in low or medium speed for vessel (limited to equity joint ventures or contractual joint ventures)

(21) Manufacturing of diesel engine in low and medium speed for vessel as well as crankshafts (Chinese part shall hold the majority of shares)

(22) Design and manufacturing of machinery for vessel compartment(Chinese part shall hold the relative majority of shares)

(23) Design and manufacturing of communication and directing systems for vessels: communication systems, electronic directing equipment, vessel radar, electric compass automatic pilot, public broadcasting systems inside vessels and so on

(24) Design and manufacturing of cruiser (limited to equity joint ventures or contractual joint ventures)

## 20. Electric Machinery and Equipment Manufacturing Industries

(1) Manufacturing of key auxiliary equipment used for 1 million KW ultra supercritical fire-electricity generating set(limited to equity joint ventures and cooperative joint ventures): safety valve and control valve

(2) Manufacturing of the equipment of coal-fired power plant and denitrification technology for sintering machine in steel industry

(3) Design and manufacturing of seal parts for fire-electricity equipment

(4) Manufacturing of large scale castings and forgings used for coal-fired power plant and hydropower station

(5) Manufacturing of key auxiliary equipment used for hydroelectric generating set

(6) Manufacturing of power transmitting and transforming equipment (limited to equity joint ventures and cooperative joint ventures): amorphous alloy transformer, operator used for high-voltage switch of 500KV or more, arc extinguishing device, large-scale disk type insulator(over 1000KV and 50KA), outlet device used for transformer of 500KV or more, casing pipe(AC:500KV,750KV,1000KV and all DC specifications), voltage regulating switch(loaded and unloaded voltage regulating switch for AC 500KV,750KV and 1000KV), dry-type smoothing reactor used for DC transmission, more or less 800KV converter valve used for DC transmission(water cooling equipment and DC field equipment), electrical apparatus contact material as well as non-Pb and non-Cd solders accorded with EU command of RoHS

(7) Manufacturing of complete sets of or key new energy equipments for electricity power generation: photovoltaic power generation, geothermal power generation, tidal power generation, wave power generation, rubbish power generation, methane power generation and wind power generation of 2.5MW or above

(8) Manufacturing of large pumped-storage power units of 350MW power ratings or more(limited to equity joint ventures and cooperative joint ventures): pump turbines and speed controller, large-scale reversible pump-turbine units with varied speed, power generator and excitation, launching apparatus and other accessory equipments

(9) Manufacturing of Stirling generating set

(10) Development and manufacturing of straight line and plane motor and drive system

(11) Manufacturing of high-tech green battery: dynamic Ni-Mh battery, zinc and nickel storage cell, zinc and silver storage cell, lithium-ion battery, solar battery, fuel battery and so on(excluding high power battery for new energy vehicles)

(12) Electric motor is manufactured by refrigerating and air-conditioning compressors adopting DC speed adjustment technology or CO2 natural refrigerants, and by refrigerating and air-conditioning equipments applying renewable energy(air source, water source and geothermal source)

(13) Manufacturing of solar air conditioning, heating system and solar dryer apparatus

(14) Manufacturing of biomass drying pyrolysis system and biomass gasification unit

(15) Manufacturing of AC-FM voltage regulation drawbar

## 21. Communication Equipment, Computer and Other Electronic Equipment Manufacturing

(1) Manufacturing of HD digital video camera and digital sound-playing equipment

(2) Manufacturing of flat panel display such as TFT-LCD, PDP and OLED, and materials of flat panel display (excluding TFT-LCD glass substrate of the 6th generation or below)

(3) Manufacturing of such key parts as optical engine, light source, projection screen, high-resolution projection tube and LCOS module used in large screen color projection display

(4) Manufacturing of digital audio and visual coding or decoding equipment, digital broadcasting TV studio equipment, digital cable TV system equipment, digital audio broadcasting transmission equipment, digital television converter, digital television broadcasting Single Frequency Network(SFN), satellite digital TV up-linking station and front-end equipment of SMATV

(5) Design of integrate circuit, and manufacturing of large digital integrate circuit with its wire width of 0.18 micron or below, manufacturing of

- (4) Manufacturing of wattless power automatic compensation equipment
- (5) Manufacturing of new instrument and equipment for safety production
- (6) Manufacturing of VXI bus automatic test system (in accordance with IEEE1155 international standards)
- (7) Development and manufacturing of comprehensive management system for under-mine monitoring and disaster-forecasting apparatus and coal safety measurement
- (3) Manufacturing of the equipment for engineering measurement and global geographical observation: digital triangle surveying system, digital programmed system for three-dimensional topography model (acreage>1000×1000mm, horizontal error<1mm, altitude error <0.5mm), ultral wideband seismograph( $\varphi$ <5cm, frequency band0.01-50HZ, equivalent quaking speed noise<10-9m/s), integrated earthquake data processing system, extensive under-well earthquake and auspice observation apparatus, sophisticated controllable epicenter system, engineering velocity measuring system, high-precision GPS receiver(precision 1mm+1ppmm), INSAR graphics receiving and processing system, absolute gravimeter with the precision less than 1 microgal, satellite gravimeter, Doppler weather radar adopting coherent technology or double polarization technology, visibility measuring apparatus, meteorological sensor, (including temperature, pressure, humidity, wind, precipitation, cloud, visibility, radiation, frozen earth and depth of snow), anti lightning stroke system, multilevel soot and dust sampler, three-dimensional supersonic anemoscope, high-precision intelligent total station machine, three-dimensional laser scanner, high performance diamond bit used for drilling, laser rangefinder without cooperative target, wind profiler(affixed with RASS), GPS electronic probe system, CO<sub>2</sub>/H<sub>2</sub>O general observation system, boundary layer laser doppler radar, granule chromatography(3nm-20 $\mu$ m), high-performance data collector and under-water glider
- (9) Manufacturing of environment motoring apparatus: SO<sub>2</sub> automatic sampler and calcimeter, NO<sub>x</sub> or NO<sub>2</sub> automatic sampler and calcimeter, O<sub>3</sub> automatic monitor, CO automatic monitor, sampler and sample cutter for soot and Pm<sub>2.5</sub> dust, portable calcimeter for harmful and toxic gas, automatic analyzer for organic pollutants in the air, COD automatic online monitor, BOD automatic online monitor, automatic online monitor for turbidity, DO automatic online monitor, TOC automatic online monitor, automatic online monitor for ammonia nitrogen, radiation dose monitor, ray analyzer, heavy metal online monitoring equipment, online warning and monitoring equipment for biological toxicity of water quality
- (10) Manufacturing of instrument and equipment for hydrological data collecting, processing, transmitting and flood warning
- (11) Manufacturing of ocean exploring apparatus and equipment: underwater video camera and underwater camera in mesopelagic zone, multi-beam explorer, shallow and deeper subbottom profiler, navigation warm-salt profiler, fluxgate compass, hydraulic wire line winch, underwater airproof electronic connector, energy recycle device used in filtration-proof seawater desalination with its efficiency more than 90%, marine ecosystem inspection buoy, section probing buoy, disposable measuring instrument of electrical conductivity, temperature and depth (XCTD), on-the-spot water quality measuring apparatus, intelligent chemical transducer for measuring the water quality of the ocean(continues work for 3-6 months), electromagnetic current meter sensor, navigating acoustic Doppler current profiler(self-contained, direct-read, used-in-ship), electricity conductivity rate deep-section profiler, acoustic responding emancipator, far deep sea tide measuring system(set deep into the ocean)
- (12) Manufacturing of digital camera of over 10 million pixels
- (13) Office machinery manufacturing: multifunctional integration office equipment(copying, printing, facsimile and scanning), color printing equipment, color printer head with high resolution of 2400dpi or above
- (14) Manufacturing of film machinery: 2K or 4K digital cinema projector, digital movie camera as well as digital image production and editing device

## 23. Handicraft and Other Manufacturing Industries

- (1) Development and utilization of clean-coal technical product as well as equipment manufacturing (coal gasification, coal liquefaction, water-coal and industrial lump-coal)
- (2) Coal ore dressing by washing as well as comprehensive utilization of powered coal(including desulphurized plaster) and coal gangue
- (3) Production of the all biodegradable material
- (4) Recovery and treatment of waste electrical appliances and electronic product, automobiles, electrical and mechanical equipment, rubber, metal and battery

## IV. Production and Supply of Power, Gas and Water

1. Construction and operation of electricity power by employing the clean fuel technology of integral gasification combined circulation(IGCC), circulating fluidized bed over of 0.3 million KW or above, pressurized fluidized bed combustion combined cycle(PFBC)of 0.1 million KW or above
2. Construction and operation of back pressure heat power plant
3. Construction and management of hydropower station with the main purpose of power generating
4. Construction and management of nuclear power plant (Chinese partner shall hold the majority of shares)
5. Construction and management of new energy power plant (solar energy, wind energy, geothermal energy, tide energy, wave energy and

## I. Farming, Forestry, Animal Husbandry and Fishery Industries

1. Breeding and seeds developing production of new train crop breed (Chinese party shall hold the majority of shares)
2. Processing of the logs of precious varieties of trees (limited to equity joint ventures or contractual joint ventures)
3. Cotton (raw cotton) processing

## II. Mining Industries

1. Exploring and mining of special and scarce coals exploration (Chinese partner shall hold the majority of shares)
2. Exploring and mining of barite (limited to equity joint ventures or contractual joint ventures)
3. Exploring and mining of precious metals (gold, silver, platinum families)
4. Exploring and mining of precious non-metals such as diamond
5. Exploring and cradling of phosphonite
6. Production of butadiene rubber (high cis butadiene rubber), the emulsion polymerization of styrene butadiene rubber, thermoplastic styrene-butadiene rubber.
7. Production of acetylene process PVC, and the following scale ethylene and post-processing products.
8. Production of Backward process, contain harmful substances, and pigments and paint production
9. Mining of szaibelyite and szaibelyite iron ores
10. Organic salts production with great resource consumption and serious environmental pollution using outdated technologies

## III. Manufacturing Industries

1. Farming Subsidiary Foodstuff Industry
  - (1) Processing of soybean, rapeseed edible oil (Chinese partner shall hold the majority of shares), deep-processing of corn
  - (2) Manufacturing of biology liquid fuel
2. Beverage Manufacturing Industries
  - (1) Processing of green tea and special tea with China's traditional crafts
  - (2) Carbonic acid beverage manufacturing
3. Tobacco Industries
  - (1) Manufacturing of threshing and curl tobacco leaf
4. Printing and Copy of Recording Vehicle
  - (1) Print of publication (Chinese partner shall hold the majority of shares, except packing and presentation)
5. Petroleum Processing and Coking Industries
  - (1) Construction and management of refineries which annual produce less than 800 ten thousand tons
6. Chemical Raw Material Products Manufacturing Industry
  - (1) Sodium hydroxide and potash production
  - (2) Production of sensitive materials
  - (3) Production of benzidine
  - (4) Production of chemical products from which narcotics are easily made (ephedrine, 3, 4-idene dihydro phenyl-2-acctonc, phenylacetic acid, 1-phenyl-2-acetone, heliotropin, safrole, isosafrole, acetic oxide)
  - (5) Production of fluorine-chlorocardon, hydrogen- fluorine-chlorocardon, tetrafluoroethylene, fluorination-aluminum and hydrofluoric acid
  - (6). Production of butadiene rubber (except for high cis-butadiene rubber), emulsion polymerization of styrene butadiene rubber and thermoplastic styrene-butadiene rubber
  - (7). Production of PVC with acetylene process and small-scale production of ethylene and post-processed products
  - (8). Small-scale production of paint with obsolete process and hazardous substances
  - (9). Processing of baron, magnesium, iron ores
  - (10). Production of inorganic salts using outdated process with big resource consumption and serious environmental pollution.
7. Medical and Pharmaceutical Products Industry
  - (1) Production of chloramphenicol, penicillin G, lincomycin, gentamicin, dihydrostreptomycin, amikacin, tetracycline hydrochloride, oxytetracycline, medemycin, kitasamycin, ilotylin, ciprofloxacin and ofloxacin
  - (2) Production of analgin, paracetamol, Vitamin B1, Vitamin B2, Vitamin C, Vitamin E
  - (3) Production of immunity vaccines included in the state plan
  - (4) Production of material medicines for addiction narcotic and A class psychoactive drug (Chinese partner shall hold the majority of shares)

which have more than 30 branch stores and sale different kinds and brands of commodities from multi-suppliers)

#### VII. Banking and Insurance Industries

1. Banks, finance companies, trust investment companies, currency brokerage companies
2. Insurance companies (the share of life-insurance companies is less than 50%)
3. Security companies (confined to A share consignment-in, B share, H share and government and company bonds consignment-in and transaction, the foreign-capital is less than one-third), security investment fund management companies (the foreign-capital is less than 49%)
4. Insurance brokerage companies
5. Futures companies (Chinese should hold the majority of shares)

#### VIII. Real Estate Industry

1. Development of pieces of land (limited to equity joint ventures or contractual joint ventures)
2. Construction and operation of high-ranking hotels, villas, high-class office buildings and international exhibition centers
3. Real estate transaction in second-grade market and medium and brokerage companies

#### IX. Leasing and Commercial Service Industry

1. Legal consulting
2. Market Research (limited to equity joint ventures or contractual joint ventures)
3. Status enquiry and grade service companies

#### X. Scientific Research and technical Services Industries, Geological Prospecting

1. Mapping companies (Chinese partner shall hold the majority of shares)
2. Inspection, verification and attestation companies for imported and exported goods
3. Photography service (including trick photography like airphotograph, except mapping aerial photography, limited to equity joint ventures)

#### XI. Education 1. Common high school education mechanism

#### XII. Art, Sports and Entertainment Industries

1. Production and publication of broadcasting and TV programs and film-making (limited to contractual joint ventures)
2. Construction and operation of cinemas (Chinese partner shall hold the majority of shares)
3. Construction and operation of large theme park
4. Brokering agency of stage performances
5. Operation of entertainment places (limited to joint venture and contractual joint venture)

#### XIII. Other industries restricted by the State or international treaties that China has concluded or taken part in

#### Catalogue of Prohibited Foreign Investment Industries

##### I. Farming, Forestry, Animal Husbandry and Fishery Industries

1. Cultivation of China's rare precious breeds (including fine genes in plants industry, husbandry and aquatic products industry)
2. Production and development of genetically modified plants' seeds
3. Fishing in the sea area within the Government jurisdiction and in in-land water

##### II. Mining and Quarrying Industries

1. Exploring and mining of tungsten, molybdenum, tin, antimony, fluorite
2. Exploring, mining and dressing of radioactive mineral products



## X. Art, Sports and Entertainment Industries

1. News agencies
2. Business of publishing, producing, master issuing, and importing of books, newspaper and periodical
3. Business of publishing, producing, master issuing and importing of audio and visual products and electronic publications
4. Radio stations, TV stations, radio and TV transmission networks at various levels (transmission stations, relaying stations, radio and TV satellites, satellite up-linking stations, satellite receiving stations, microwave stations, monitoring stations, cable broadcasting and TV transmission networks)
5. Companies of publishing and playing of broadcast and TV programs
6. Companies of films making, issuing, business
7. News website, network audiovisual service, on line service location, internet art management
8. Construction and management of golf course
9. Gambling industry (including gambling turn)
10. Eroticism

## XI. Other Industries

1. Projects that endanger the safety and performance of military facilities

## XII. Other industries restricted by the State or international treaties that China has concluded or taken part in

## Note:

1. In case Mainland and Hong Kong Closer Economic Partnership Arrangement and its supplementary agreements, the Mainland and Macao Closer Economic Partnership Arrangement and its supplementary agreements, the Cross-Straits Economic Cooperation Framework Agreement and its supplementary agreements, and free trade agreements signed between China and other countries have made provisions otherwise, the provisions shall prevail.

2. In case special provisions and industrial policy of the State Council have made provisions otherwise, the provisions shall prevail.

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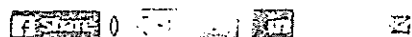
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## China Drives Global Growth for Calcium Carbonate Demand



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LONDON, May 10, 2012 /PRNewswire/ --

### Ground and Precipitated Calcium Carbonate: Global industry markets and outlook, 2012 (1st Edition)

The focus of the calcium carbonate industry is changing. Demand and production levels are rising in Asia and the more traditional markets of Europe and North America face their own challenges. Asia is now the fastest growing regional market for ground calcium carbonate (GCC) and precipitated calcium carbonate (PCC), mainly driven by the expansion in the Chinese paper and plastics sectors. According to the latest report from Roskill, in total, the region consumed almost half of the GCC and PCC global demand of 74Mt in 2011, with China alone taking over 20%.

#### Paper remains the primary market

The use of calcium carbonate by the paper industry has grown significantly in recent years, in part reflecting an overall increase in paper production. Paper output in Asia rose by nearly 6%py over the past decade aided by the construction of new large scale paper mills. Demand for GCC and PCC also grew because of increased mineral loadings in paper to reduce consumption of more expensive pulp and to meet the rising demand for high-brightness paper.

The plastics industry is the second largest market for calcium carbonate and the Asian region leads the world in terms of consumption. Roskill estimates that just under 60% of global GCC consumption in plastics is in Asia and for PCC, this share is even higher at over 85%. These figures reflect the increasing concentration of the plastics industry in Asia and the fact that PCC has been used in the Chinese industry for far longer than GCC.

#### PVC providing growth momentum in China

Both minerals are widely used as fillers in rigid PVC, which is produced in large amounts (over 36Mt in 2010) and often has high mineral loadings. Growth in PVC demand in industrialised countries was adversely affected by the recession in the construction industry in the late 2000s. Chinese PVC production, however, has risen by an average of 17%py over the last decade and by 2010, Chinese companies accounted for over 40% of world PVC capacity.

#### GCC capacity widespread

Global combined capacity for GCC and PCC is over 100Mtpy. GCC capacity is estimated to exceed over 80Mtpy and located in 70 countries, reflecting the wide availability of marble and limestone raw materials. Capacity exceeds 2Mtpy in only eight countries and is highest in China (20Mtpy) and the USA (>14Mtpy), followed by Spain (3.7Mtpy) and Norway (3.2Mtpy). PCC capacity is more concentrated than that of GCC on a national level, with the total PCC capacity identified by Roskill as over 17Mtpy, with China accounting for nearly half and the USA for a further 17%.

The calcium carbonate industry is characterised by a few multinational producers and thousands of often very small producers. Twelve companies control around half of global GCC and PCC capacity. The three leading producers (Omya, Imerys and MTI) together holding over 40% of GCC capacity and 35% of PCC capacity.

#### China leading growth in output

Growth in GCC and PCC output in recent years has been led by China. GCC production did not start in China until the 1990s but its share of global calcium carbonate output is forecast to rise to over 70% in the next few years. Combined production of GCC and PCC in China grew by 7%py between 2008 and 2011, equally divided between the two forms. Much of the recent increase in output was of dry ground calcium



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## China Development Bank Backs Indonesian Pulp and Paper Sector in Landmark Deal With APP

*China Development Bank Backs Indonesian Pulp and Paper Sector in Landmark Deal With APP*

- Investment by China's state bank reflects confidence in Indonesia's pulp and paper industry
- New APP mill to use the most advanced environmental technology and adhere to APP's 'No Deforestation' policy
- Investment provides much needed boost to local economy in South Sumatra, providing 10,000 jobs

JAKARTA, 3 October 2013 – APP, through PT. OKI Pulp & Paper Mills (OKI), today completes a \$1.8 billion loan transaction with China Development Bank (CDB) for the development of what will be Indonesia's largest pulp mill.

The transaction, which was witnessed by Indonesian and Chinese Presidents, Susilo Bambang Yudhoyono and Xi Jin Ping, is one of the largest ever single transactions between the two countries. The total investment in the new mill, located in South Sumatra, is \$2.6 billion, most of which is funded through the CDB loan, with the remaining \$800 million funded by capital raised by the shareholders.

The Government of Indonesia has declared Pulp and Paper as one of the priority industries in its National Industry Policy. It hopes that Indonesia will grow to be the fifth largest producing country by 2025, in line with the Indonesian Economy Acceleration and Development Expansion Masterplan.

Trade Minister, Gita Wirjawan, said: "Pulp and Paper is part of the foundation of the Indonesian economy and we believe that the sector can grow in a way that will benefit the people of Indonesia, while also protecting our forests. We are glad that the China Development Bank shares this view and is providing capital to give the industry an economic boost."

The OKI mill will be constructed in an under-developed part of South Sumatra province and will

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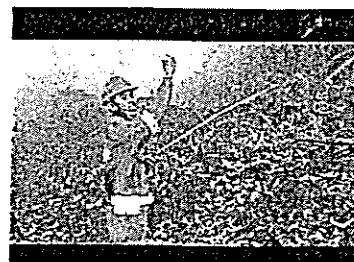
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IMPLEMENTATION PLAN:  
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have a projected annual capacity of 2 million tones of pulp and 500,000 tonnes of tissue. As is the case with all APP mills, PT. OKI Pulp & Paper Mills will only use plantation wood for its raw materials, and is committed to zero deforestation in its supply chain. APP will also apply the principles of Free, Prior and Informed Consent (FPIC) as part of the mill's development process. This commitment was launched by APP's Chairman, Teguh Ganda Wijaya, in February 2013 as part of APP's Forest Conservation Policy.

Mr. Wijaya said: "The Indonesian Government wants our sector to grow and we are committed to supporting them in this aim to cement the country's position as a global player in pulp and paper. We are investing in the best technology available to create the world's most advanced pulp and paper mill, manufacturing our products as efficiently as possible with the lowest possible environmental impact.

"We also hope our mill will give a boost to the people of South Sumatra, for many of whom there are currently very limited employment prospects." The OKI mill is projected to create 10,000 new jobs. The mill will use the most advanced environmental technology and standards available in the world today. Clean and self-sufficient energy generated from the pulp production process and other production waste such as wood bark will power the mill.

Local South Sumatra authorities have estimated that the investment will increase South Sumatra's output by more than 36%, or an overall GDP growth of 9%. The investment is also welcomed by local authorities because strategically the development will include supporting infrastructure that improves access to the remote area. Additionally, local communities will have opportunities to be employed locally instead of having to migrate to other areas to look for jobs.

For more information and comments, please contact:

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## ABOUT APP

Asia Pulp & Paper Group (APP) is a trade name for a group of pulp and paper manufacturing companies in Indonesia and China. The APP Group of companies is one of the world's largest vertically integrated pulp and paper companies, with an annual combined pulp, paper, and converting products capacity of over 18 million tons. APP-Indonesia and APP-China currently market their products in more than 120 countries across six continents. The majority of APP's production facilities are Chain-of-Custody certified by SVLK, LEI and PEFC.

APP launched its Sustainability Roadmap Vision 2020 in June 2012 and its Forest Conservation policy in February 2013, to further improve its environmental performance, biodiversity conservation, and protection of community rights. More information can be found at [www.asiapulppaper.com](http://www.asiapulppaper.com)

##

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**INDONESIA'S FORESTRY LONG TERM  
DEVELOPMENT PLAN 2006-20025**

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**THE MINISTRY OF FORESTRY OF INDONESIA**  
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## CHAPTER IV. FORESTRY LONG TERM DEVELOPMENT DIRECTION, 2006-2025

### IV.1. Main objectives

The long term goal of the forestry sector is to increase the people's prosperity in a sustainable and equitable manner. In accordance with this goal and the forestry development vision for 2006 to 2025, the following main objectives have been established:

a. The creation of a strong institutional framework for forestry development. This will be demonstrated by:

- 1). The establishment of efficient, cost-effective and accountable forest management institutions. This covers government, private, and community institutions at the central, province and region/village levels. Also the establishment of a forest management unit which is in line with the distribution of forest resources for the sustainable benefit of national forest resource functions and potential.
- 2). The development of sufficient competent and professional human resources in the forestry sector. These human resources will be located in the most appropriate areas.
- 3). The proportional increase of society's role in the forestry sector.
- 4). The synergistic institutionalization of roles, rights, responsibilities, and connections between communities and forest management institutions. This would be supported by laws and regulations that provide for the interests of all forestry stakeholders.

b. Increased value and sustainable productivity of forest resources. This will be demonstrated by:

- 1). Guaranteeing the existence of the Forest Area at an optimal size. This will be achieved by increased legal provisions and legitimization of the Forest Area at a sufficient area that is proportionally distributed, a decrease in forest degradation, and an increase in forested areas and expansion of planted forest.
- 2). Optimization of the hydrological services of watersheds to ensure:
  - a). Increased forest ecosystem quality;
  - b). Maintenance of ground water supplies, stable river flows, and continued clean water supplies to meet the needs of society and downstream economic activities;
  - c). Prevention of land slides, flooding, and drought.
- 3). Conservation of biodiversity in conservation areas and Forest Area with other functions. Renching a stable conservation area which is comprised of National Parks (TN), Nature Parks (TWA), Forest Parks (TAMURA), Game Parks (TB), and Preservation Areas (CA). Conservation of forest resources will be supported by appropriate policies and regulations as well as through the use of biological resources for research and commercial purposes.
- 4). Optimal utilization of forest resources for forest products (timber and non-timber), recreational activities, and environmental services to enhance the forestry sector's

contributions to the national economy, employment, and to contribute to reducing poverty by at least 50% near the Forest Area and nationally, by 2025.

c. Forestry products and services that are environmentally friendly and competitive, and that have a high added value. This will be demonstrated by:

- 1). A forestry contribution to GDP three times as large as the contribution in 2005 which was 1.3% of GDP. The increased contribution to GDP will be achieved through an increase in the market value of forestry products and services in line with: increased timber production from plantation forests; increased rattan, resin, honey and silk production; growth in the seed and seedling industry; and greater utilization of forests for recreation and environmental services. This will lead to a more diverse source of national non-tax forest revenue.

2). A structure and performance of Indonesia's forest industry that is more competitive and environmentally friendly. The priority of Indonesia's forestry industry structure will be on sawn timber, panels, moulding, furniture, plywood, and pulp and paper, with the use of advanced technology and adjustment of raw material supply derived from forest plantation and community forest, at an international standard.

- 3). Development of innovative forestry products as a result of research and development conducted by public and private forestry research institutions with a more efficient, effective and environmentally friendly management system.

d. An enabling forestry investment climate. This will be demonstrated by:

A safe and profitable industry that benefits investors and the public, and contributes to national economic growth and employment. As markets for environmental services and non-timber forest products develop, the forestry industry, including SMEs, will benefit.

e. Promotion of forestry products and services. This will be achieved through a consistent promotion of Indonesia's forestry products and services in all activities related to forest products trade.

f. An active role of society in supporting responsible and equitable forest management. This will be demonstrated by:

- 1). Guaranteed increase of revenue to communities through a profit sharing system that is transparent and equitable using the tripartite approach between the government, private, and community in determining a good profit sharing system.
- 2). Community independence in forest management through clearly defined management rights for the Forest Area, through community group empowerment, and through multi-stakeholder participation. Communities will have a clear understanding of their rights and responsibilities in managing forests which will be according to applied norms and principles.
- 3). Increase of area of independent and sustainable private forests (*hutan rakyat*) which support the forest's contribution to community livelihoods.
- 4). Resolution of social conflict related to forest management so that communities are able to do sustained forest management and obtain lasting benefits.



## ARD Learning Exchange 2012

Forests, Trees and Landscape - Synergy, Tradeoffs, Challenges  
6-11 May 2012



Day 5 - Friday, 11 May 2012

### New round of pulp and paper expansion in Indonesia: What do we know and what do we need to know?

Prepared by Krystof Obidzinski and Ahmad Dermawan

#### Introduction

Since the late 1980s, Indonesia's pulp and paper industries have expanded rapidly to push the country into the ranks of the world's top 10 producers. Indonesia's pulp production capacity grew from 606,000 to 7.9 million metric tons per year between 1988 and 2010, while the paper industry's processing capacity rose from 1.2 million to 12.2 million tons per year. In the same period, pulp production has increased from 368,000 to 7 million tons, and paper production increased from 930,000 tons to 10.5 million tons (APK 1997, Ministry of Industry 2011). In 2010, pulp and paper products generated US\$5.7 billion in export earnings. The industry accounts for approximately 1 percent of Indonesia's GDP. In 2010, the industry provided approximately 250,000 jobs excluding those in the timber plantation subsector (Ministry of Industry 2011).

Despite the economic potential, literature sources indicate some long standing structural problems in the pulp and paper sector. Since its establishment in the late 1980s, the pulp and paper industry has been heavily reliant on the natural forest for timber (Barr 2001). The high growth that has occurred in the pulp and paper industry has proceeded far more rapidly than efforts to secure a sustainable supply of raw materials through the development of pulpwood plantations (Cossalter 1998). To date, Indonesia's pulp mills have relied heavily on unsustainable and much of which is obtained through the clear-cutting of natural forests. As of 2010, key pulp and paper producers in Riau, Sumatra sourced more than half of their raw material from the conversion of natural forest (IWGFP 2011). Although extensive timber plantation development programs have been implemented over the years, the supply of timber available from these plantations remains to be insufficient. As a result, the pulp and paper industry has been associated with negative environmental impacts. The development of timber plantation has often been carried out by displacing forest communities, resulting in conflict (Human Rights Watch 2003).

The growth of Indonesia's pulp and paper industries has involved an aggregate capital investment of at least US\$16 billion by 2010 (Ministry of Industry 2011). The fact that Indonesian companies have made investments on this scale without first securing a legal and sustainable raw material supply, however, suggests that many of these projects carry a substantial degree of financial risk. To a significant degree, Indonesian pulp and paper companies have been motivated to invest such large sums in high-risk projects because their owners have been able to avoid much of the financial risk involved. The Indonesian government has provided substantial capital subsidies to pulp and paper producers, including the provision of pulpwood fiber at costs well below its stumpage value. The government's weak regulation of the nation's financial system has enabled pulp and paper companies to employ a variety of illegal practices to obtain discounted finance. Also, international financial institutions have helped Indonesian producers to borrow billions of dollars from offshore investors without rigorously assessing either the long-term viability of those firms' fiber supplies or the legality of their financial practices (Barr 2001).

#### Long term vision of Indonesia's forestry sector and the role of pulp and timber plantations

Despite these shortcomings, the pulp and paper and timber plantation sectors are seen as the cornerstone of the future of Indonesia's forestry sector. Indonesia's National Long Term Forestry Plan envisages that by 2025 timber plantations will cover 14.5 million hectares and will annually produce

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over 300 million m<sup>3</sup> of timber (Ministry of Forestry 2006). A large part of this volume is expected to support the growth in the pulp and paper sector. As a result, timber plantation and pulp mill investments continue receive priority consideration by the government. In April 2011, the Ministry of Forestry (MoF) announced several large investments in the pulp and timber plantation sector (*Bisnis Indonesia* 2011). The new investment plan envisages the construction of 7 new pulp mills with the capacity of nearly 5 million tons and nearly 2 million hectares of new timber plantations (HTF) with the overall cost of USD 14 billion. The plan is to be implemented by 2017.

The new investment in timber plantations and pulp mills is presented by MoF as a policy step that will help to bring about the transformation of Indonesia's wood-working sector from one that is currently in decline and suffers from shortages of timber to one that is a major contributor to the Indonesian economy and is based entirely on timber plantations. The expansion program is a key element in MoF's long-term plan to revitalize forest industries, but it also is expected to reduce rural poverty, create jobs, and stimulate economic development.

While the timber plantation and pulp industry are broadly seen as an important part of the future of Indonesia's forestry sector, the current expansion plans raise a number of concerns. The new expansion comes at the time when the wood industry in Indonesia still faces serious shortages of raw material.

According to CIFOR estimates, in 2008, Indonesia's wood processing sector had a deficit of at least 5 million m<sup>3</sup> of timber. This level of deficit already is a significant improvement in comparison to earlier years. More effective government measures to curb illegal logging have contributed to this success. Another main cause was a dramatic increase in the production of plantation timber in 2007 and 2008, as reported by the Ministry of Forestry. The significant increase in the production of plantation timber is a remarkable achievement. However, there are concerns about the accuracy of the sudden increase of timber production in these years because of a decline in the plantation establishment rate 7-8 years prior (2000, 2001) when plantation timber coming online in 2007 and 2008 would have been planted. It may be that plantation timber volume in these two years increased dramatically due to the cumulative effect of planting over a longer period of time. However, it is not clear how these estimates have been arrived at. It is therefore likely that natural forest clear cuts continue to be an important source of timber for the pulp industry. Indeed, MoF statistics show that timber production from wood utilization permits (IPK), or clear cuts, has quadrupled from 1.6 million m<sup>3</sup> in 2004 to 6.6 million m<sup>3</sup> in 2009. Similarly, a recent report by the Indonesian Working Group on Forest Finance (IWGFP) shows that in 2010 more than half of the pulp and paper sector's timber supplies in Riau came from natural forests.

The *Bisnis Indonesia* article also shows the new expansion plans for timber plantations and pulp mills largely targets Kalimantan and Papua. This is a cause for concern as well. There are ample areas of degraded land that could be used for timber plantations in Kalimantan (East Kalimantan alone has 9.6 million ha of degraded land). But the fact that large plantation areas are aimed for Papua is worrisome because degraded land there is scarce. This implies that some natural forest may be cleared for timber plantations. As a result, because the capacity expansion of new pulp industries would prolong the timber supply-demand gap, and because there is uncertainty about whether or not new plantations can be developed soon enough, it would be prudent to close the existing supply-demand gap first before adding additional industrial capacity.

Problems with sustainable supplies of timber from plantations  
One of the most fundamental problems facing the pulp sector, and other wood-processing industries, in Indonesia today is the uncertainty over the extent of available wood fiber from industrial and smallholder plantations. According to Ministry of Forestry (MoF) statistics, the sourcing of timber from plantations has increased dramatically since 2007.

	HTR Planted Area (ha)	Cumulative Area (ha)	HTR Log production (m3)
2000	82,317	2,610,872	3,783,604
2001	67,472	2,686,344	5,567,282
2002	118,508	2,804,852	4,242,532
2003	124,691	2,929,543	5,325,772
2004	131,914	3,061,457	7,329,828
2005	163,125	3,224,582	12,818,199
2006	237,099	3,461,681	11,451,249
2007	412,921	3,874,602	20,614,209
2008	305,465	4,180,067	22,321,885
2009	279,959	4,460,026	18,953,930
2010	457,239	4,917,265	18,566,254
2011*	107,319	5,024,584	5,429,290

Source: Ministry of Forestry (2011a,b) Note: \* figures by second quarter of 2011

While impressive, this growth is problematic. If indeed the area of productive timber plantations reached 4.9 million hectares in 2010 with a conservative Mean Annual Increment of 15 m3 per hectare per year, this means that Indonesia should have mature, ready to harvest, standing stock of about 73.5 million m3 of timber that year. The reported production is significantly lower and calls into question the veracity of forestry statistics.

Perhaps recognizing the above mis-match early, in 2006 the MoF announced an ambitious plan to accelerate the development of timber plantations with their long-term strategic plan for 2006-2025. The main focus of this plan is the revitalization of Indonesia's forest industries (Ministry of Forestry 2006). Under this new policy, the government planned to establish 9 million hectares of new timber plantations by 2016 (Sinar Harapan 2006). Of this total, approximately 5.4 million hectares will be smallholder community ventures called HTR (*Hutan Tanaman Rakyat*, community plantation forest). The remaining 3.6 million hectares will be developed. The main component of this new policy, HTR, was planned for 102 districts in eight provinces in Kalimantan and Sumatra Islands (Ministry of Forestry 2007), but it was soon thereafter extended to all of Indonesia (Supriatno 2007). By 2010, it was targeted that 5.4 million hectares of land would have been allocated, and 1.97 million hectares would have been actually planted. Once productive, these new plantations are expected to produce enough raw materials to spur growth in the timber industry sector (Kompas, 2006).

However, after nearly four years of implementation, only a handful of HTR applications have been approved by the Ministry. By mid 2011, the Ministry has allocated 650,000 ha of land for HTR concessions in 26 provinces, while approved HTR permits covered only 127,000 ha (Ministry of Forestry 2011). These figures fall far short of the official target of 5.4 million hectares of land that should have been allocated, and nearly 1.97 million hectares that should have been planted according to the original plan. This slow pace of development is puzzling because the industry and community timber cooperatives initially responded enthusiastically to the policy.

Although timber plantations are undoubtedly crucial for the long-term sustainability of Indonesia's forestry industries, there are several challenges that hinder the development of HTR. First, the financial feasibility of HTR – especially those growing fiber for pulp and paper mills – is less attractive (Schneck 2009). It is not clear if the government guarantee on the marketing of timber will be

implemented, and how it will work. HTR is also less attractive compared to other options, such as oil palm and rubber (Rohadi *et al.* 2010). Second, the amount of degraded production forest unencumbered by any proprietary claims seems available on paper only. For example, the land designated for HTR in Riau Province is slightly over 350,000 ha for the period of 2007-2016. However, according to the Provincial Forestry Office, only about 4,000 ha are considered clean and clear while the rest of the land is claimed by local communities or encroached upon by migrants. A related problem is that any land that can be found for HTR plantations is likely to be fragmented and scattered. If the land is dispersed, transportation cost will increase, lowering the profit from HTR for the smallholders. Third, HTR has not provided business certainty. Once community group receive the permit, it cannot be traded, transferred or inherited, thus seriously limiting household management options. Fourth, although HTR is backed by huge financial support, the application for funding under HTR program has to be submitted in Jakarta. This means that local applicants will need to team up with companies and individuals with a knowledge and access to appropriate channels at the Ministry of Forestry. Finally, while one of the officially stated objectives of HTR policy is to rehabilitate degraded natural forest, it is not clear what "degraded natural forest" means and what criteria are to be used to locate it on the ground. In practice, it may lead to significant removal of residual natural forest cover before planting is implemented. This is because the term degraded production forest is often equated with logged over forests (Obidzinski and Darnawan 2010).

### Implications and ways forward

Industrial timber plantations in Indonesia play an important economic and environmental role and their significance will grow in the future. They feed the pulp and other wood-working industries. They also help regenerate deforested areas. Likewise, the capital intensive and technologically advanced pulp and paper sector plays a major role in the future of Indonesia's timber sector.

However, the fact remains that currently nearly half of the wood fiber demand in the pulp sector continues to be met with timber sources from natural forest clear-cuts. Therefore the size of the recently proposed expansion, the plan for rapid implementation, not entirely clear contribution to policy objectives of reducing poverty, creating jobs, and stimulating economic growth, and potentially negative impacts on forests, call for additional time and care to be taken to study these aspects of the proposed investment program.

Care must be taken to ensure that new timber plantation investments are developed on degraded, non-forested land to ensure that the recently announced moratorium on the conversion of primary forests and peatlands is not undermined by the demand for industrial fiber. The Indonesian public needs to know more about plantation and mill investment plans as many people in rural areas will be affected by them.

Greater disclosure of information is also needed given the large size of this expansion and vast financial resources to be invested (USD 14 billion). The financing agencies that are expected to support this expansion program need to have a clear understanding not only of the potential economic returns but also of the costs, impacts, and trade-offs.

They need to know where and how the land will be acquired and what kind of arrangements will be made with local land users. Finally, more policy options are needed to create incentives for rural communities to make tree planting an economically feasible pursuit. This information is urgently needed to inform the current pulp and timber expansion plans so they do not aggravate the problems but contribute to a better future for Indonesian forestry.

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**Pulp Based On Monthly Weighted-Average Prices**

*Comment 13:* If the Department Continues to Calculate Monthly Weighted-Average Prices for Donghae Pulp, Certain Methodological Corrections Are Required

*Comment 14:* Hansol's Arguments that Donghae Pulp is Owned or Controlled by the GOK

*Comment 15:* The Benefit Calculation for Donghae Pulp's Sale of Pulp Must Account for Prevailing Market Conditions

*Comment 16:* Whether Usance and Document Acceptance Loans Provided Outside of the ACCL Program Are Countervailable

*Comment 17:* Whether the Department Should Pro-Rate Benefits on D/A Loans Under the Korea Export Import Bank (KEXIM) Program

*Comment 18:* Source Data of the Benchmark To Be Applied to D/A Loans Under the KEXIM Rediscount Program and Usance Loans Issued by GOK Authorities

*Comment 19:* Calculation of Benchmark To Be Applied to D/A Loans Under the KEXIM Rediscount Program

*Comment 20:* Whether Commercial Paper and Corporate Procurement Loans are Countervailable

*Comment 21:* Use of Company-Specific Benchmark to Measure the Benefit to Hansol Under KEXIM's Export and Import Credit Financing Program

*Comment 22:* Use of Non-Company-Specific Benchmarks for KEXIM's Import and Export Credit Financing Program

*Comment 23:* Whether Hansol Received Countervailable Benefits Through the KDB's Placement of its Corporate Bonds

*Comment 24:* Whether Loans from the Industrial Base Fund (IBF) Constitute Countervailable Export Subsidies

*Comment 25:* Benchmark Rates for Long-Term Korean Won-Denominated Loans

### XIII. RECOMMENDATION

[FR Doc. E7-21036 Filed 10-24-07; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

International Trade Administration  
C-560-821

### Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (the Department) has reached a final

determination that countervailable subsidies are being provided to producers and exporters of coated free sheet paper (CFS) from Indonesia. For information on the countervailable subsidy rates, please see the "Final Determination" section of this notice.

EFFECTIVE DATE: October 25, 2007.

FOR FURTHER INFORMATION CONTACT: Sean Carey, Nicholas Czajkowski, or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3964, (202) 482-1395, or (202) 482-3586, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Case History

On April 9, 2007, the Department published *Coated Free Sheet Paper from Indonesia: Notice of Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17498 (April 9, 2007) (*Preliminary Determination*). Since the issuance of the *Preliminary Determination*, the following events have occurred. On April 10 and May 18, 2007, the Department issued supplemental questionnaires to the Government of Indonesia (GOI) and to PT. Pabrik Kertas Tjiwi Kimia Tbk. (TK) and Pindo Deli Pulp and Paper Mills (PD) (the respondent companies). On April 20 and May 24, 2007, the Department issued initial and supplemental questionnaires to the GOI and to the respondent companies regarding the petitioner's December 15, 2007 additional allegations concerning debt forgiveness. Both parties submitted timely responses to all of the Department's questionnaires and supplemental questionnaires.

On May 2, 2007, the Department aligned the final determination in this countervailing duty investigation with the final determination in the companion antidumping duty investigation. See *Coated Free Sheet Paper from Indonesia, the People's Republic of China, and the Republic of Korea: Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations*, 72 FR 24277 (May 2, 2007). On May 10, 2007, NewPage Corporation (the petitioner) requested a hearing pursuant to 19 CFR 351.310(c) and the Department's *Preliminary Determination*.

On June 18 and June 19, 2007, the petitioner and the respondent companies submitted new factual information concerning the Department's investigation of the "GOI

Provision of Standing Timber for Less than Adequate Remuneration," or "stumpage." On June 28, 2007, the petitioner submitted rebuttal comments regarding the respondent companies' new factual information submission.

From June 25 through July 13, 2007, the Department conducted verification of the questionnaire responses provided by the GOI and the respondent companies. On July 13, 2007, the petitioner filed an upstream subsidy allegation, claiming, in accordance with section 771A(a) of the Tariff Act of 1930, as amended, (the Act), that (1) a subsidy, other than an export subsidy, has been paid or bestowed on an input product that is used in the manufacture or production of merchandise subject to a countervailing duty proceeding; (2) the subsidy bestows a competitive benefit on the merchandise; and (3) the subsidy has a significant effect on the cost of manufacturing or producing the merchandise. On July 23, 2007, the respondent companies filed rebuttal comments, and on August 10, 2007, the petitioner filed surrebuttal comments on this allegation.

The Department issued verification reports on August 24, 2007: see Memoranda to the File, *Countervailing Duty Investigation of Coated Free Sheet (CFS) Paper from Indonesia: Verification of the Questionnaire Responses Submitted by Ministry of Forestry and the Ministry of Finance; Countervailing Duty Investigation of Coated Free Sheet Paper from Indonesia: Verification of Cross-Ownership and Debt Restructuring for the Asia Pulp and Paper/Sinar Mas Group; Countervailing Duty Investigation of Coated Free Sheet Paper from Indonesia: Verification of PT Pindo Deli Pulp & Paper Mills and PT. Pabrik Kertas Tjiwi Kimia (Paper Producers/Exports) and PT Cakrawala Mega Indah (trading company); Countervailing Duty Investigation of Coated Free Sheet (CFS) Paper from Indonesia: Verification of the Questionnaire Responses Submitted by Pulp Producers PT. Lontar Papyrus Pulp and Paper and Indah Kiat Pulp and Paper Tbk.; and, Countervailing Duty Investigation of Coated Free Sheet (CFS) Paper from Indonesia: Verification of the Questionnaire Responses Submitted by Forestry Companies PT. Arara Abadi, PT. Wirakarya Sakti, PT. Finnantara Intiga, and PT. Riau Abadi Lestari.*

On September 5 and September 6, 2007, the petitioner, the GOI, the respondent companies, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Services Workers International Union, AFL-CIO, CLC

(USW), a domestic interested party to this proceeding, timely filed case briefs regarding our *Preliminary Determination*. On September 11, 2007, the petitioner, the GOI, the respondent companies, and the USW each filed rebuttal comments regarding our *Preliminary Determination*. At the Department's request, the petitioner, the GOI, and the respondent companies removed what the Department determined to be new factual information from their comments and rebuttal comments regarding the Department's *Preliminary Determination*, and resubmitted those comments to the Department on September 18 and September 19, 2007.

On September 7, 2007, the Department issued the interim analysis of two additional subsidy allegations. We explained in the *Preliminary termination* that because we had only recently initiated investigations of these two programs, there was not sufficient time to gather information and analyze the countervailability of the programs for the purposes of the *Preliminary Determination*. See the Memorandum to David M. Spooner, Assistant Secretary for Import Administration from Barbara E. Tillman, Director, Office 6, AD/CVD Operations, *Countervailing Duty Investigation: Coated Free Sheet Paper from Indonesia; Post-Preliminary Analysis of Two New Subsidy Allegations (Post-Preliminary Analysis)*. The Department set a separate briefing schedule for parties to file comments and rebuttal comments on our *Post-Preliminary Analysis*. On September 18, 2007, such comments were filed by the GOI and the respondent companies. The petitioner filed rebuttal comments regarding the Department's *Post-Preliminary Analysis* on September 25, 2007. The petitioner withdrew its request for a hearing on September 10, 2007.

#### Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2005 through December 31, 2005, which corresponds to the most recently completed fiscal year for the respondent companies. See 19 CFR 351.204(b)(2).

#### Scope of the Investigation

The merchandise covered by this investigation includes coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. Coated free sheet paper is produced from not-more-than 10 percent by weight mechanical or combined chemical/mechanical fibers. Coated free sheet paper is coated with

kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating. Coated free sheet paper may be surface-colored, surface-decorated, printed (except as described below), embossed, or perforated. The subject merchandise includes single- and double-side-coated free sheet paper; coated free sheet paper in both sheet or roll form; and is inclusive of all weights, brightness levels, and finishes. The terms "wood free" or "art" paper may also be used to describe the imported product.

Excluded from the scope are: (1) Coated free sheet paper that is imported printed with final content printed text or graphics; (2) base paper to be sensitized for use in photography; and, (3) paper containing by weight 25 percent or more cotton fiber.

Coated free sheet paper is classifiable under subheadings 4810.13.1900, 4810.13.2010, 4810.13.2090, 4810.13.5000, 4810.13.7040, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.7040, 4810.19.1900, 4810.19.2010, and 4810.19.2090 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

#### Scope Comments

On January 12, 2007, the respondent companies filed a request to exclude cast-coated free sheet paper from the scope of the investigations of CFS from Indonesia, Korea, and the People's Republic of China. The petitioner submitted comments on the respondent companies' request on January 19, 2007. The Department analyzed both parties' comments and denied the respondent companies' request to exclude cast-coated free sheet paper from the scope of these investigations. See the Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, *Request to Exclude Cast-Coated Free Sheet Paper from the Antidumping Duty and Countervailing Duty Investigations on Coated Free Sheet Paper*, dated March 22, 2007, which is on file in the Central Records Unit (CRU), Room B099 of the main Commerce building.

On August 20, August 28, and September 10, 2007, the petitioner requested that the Department clarify the scope of the antidumping and countervailing duty investigations of CFS paper from Indonesia, Korea and the People's Republic of China (PRC). Specifically, the petitioner asked the Department to "clarify that the scope of

the investigation includes coated free sheet paper containing hardwood BCTMP."

Because this was a general issue pertaining to all six investigations, the Department set up a general issues file to handle this scope request. A hearing on the scope request was held on September 26, 2007. The hearing comprised a public session, a closed session for the antidumping investigation from Korea, and a closed session for the countervailing duty investigation from the PRC. After considering the comments submitted by the parties to these investigations, we have determined not to adopt the scope clarification sought by the petitioner. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, entitled "Scope Clarification Request: NewPage Corporation" dated concurrently with this notice, which is appended to "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China."

#### Initiation and Deferral of Upstream Subsidy Investigation

On July 13, 2007, the petitioner filed an upstream subsidy allegation, claiming, in accordance with section 771A(a) of the Act, that (1) a subsidy, other than an export subsidy, has been paid or bestowed on an input product, i.e., pulpwood, that is used in the manufacture or production of merchandise subject to a countervailing duty proceeding, i.e., CFS paper; (2) the subsidy bestows a competitive benefit on the merchandise; and (3) the subsidy has a significant effect on the cost of manufacturing or producing the merchandise. See 19 CFR 351.523. The respondent companies filed rebuttal arguments on July 23, 2007, and the petitioner filed additional comments and clarifications of its allegation on August 13, 2007.

After fully considering all of these submissions, we have determined that the threshold requirements set forth in the Act and the Department's regulations for initiation of an upstream subsidy investigation have been met. However, we have simultaneously decided to defer the conduct of the upstream subsidy investigation until the first administrative review, if a countervailing duty order is issued and such a review is requested. See section 703(g)(2)(B)(i) of the Act. A complete discussion of our decisions to both initiate an upstream investigation and defer the conduct of such investigation can be found in the "Issues and

Decision Memorandum" from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated concurrently with this notice (*Decision Memorandum*) and hereby adopted by this notice.

#### Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised by interested parties in their case briefs and rebuttal briefs on the *Preliminary Determination* and the *Post-Preliminary Analysis*, are discussed in the *Decision Memorandum*. A list of the subsidy programs and of the issues which parties have raised is attached to this notice as Appendix I. Parties can find a complete discussion of all of the

subsidy programs, and issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the CRU. A complete version of the *Decision Memorandum* is available at <http://www.trade.gov/ia> under the heading "Federal Register Notices." The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

#### Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we have determined a single subsidy rate for the two cross-owned producers/exporters of the subject merchandise. We determine the total countervailable subsidy rate to be:

Producer/Exporter	Rate
Pabrik Kertas Tjiwi Kimia Tbk/PT. Pindo Deli Pulp and Paper Mills .....	22.48%
All Others .....	22.48%

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, we have set the all-others rate as the rate for TK/PD because it was the only producer/exporter under investigation.

#### Suspension of Liquidation

In accordance with our affirmative *Preliminary Determination*, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of CFS from Indonesia, which were entered or withdrawn from warehouse, for consumption on or after

April 9, 2007, the date of the publication of our *Preliminary Determination* in the Federal Register. In accordance with section 703(d) of the Act, we instructed CBP to discontinue

the suspension of liquidation for merchandise entered on or after August 7, 2007, but to continue the suspension of liquidation of entries made on or after April 9, 2007 and before August 7, 2007.

If the International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, reinstate suspension of liquidation under section 706(a) of the Act for all entries, and require a cash deposit of estimated countervailing duties for such entries of merchandise at the rates indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

#### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

#### Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Failure to comply is a violation of the APO.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: October 17, 2007.

David M. Spooner,  
Assistant Secretary for Import  
Administration.

#### Appendix I: Issues and Decision Memorandum

##### I. Summary

##### II. Background

##### III. Initiation and Deferral of Upstream Subsidy Investigation

##### IV. Subsidies Valuation Information

##### A. Cross-Ownership

- B. Attribution of Subsidies Provided to Cross-Owned Input Suppliers
- C. Allocation Period
- D. Loan Benchmark and Discount Rate
- E. Creditworthiness

##### V. Application of Facts Available and Use of an Adverse Inference

##### VI. Analysis of Programs

##### A. Programs Determined to Be Countervailable

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2. GOI's Log Export Ban
3. Subsidized Funding for Reforestation (Hutan Tanaman Industri or HTI Program): "Zero Interest" Rate Loans
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Subsidized Funding for Reforestation (Hutan Tanaman Industri or HTI Program): Government Capital Infusions into Joint Venture Forest Plantation

##### C. Program Determined To Be Not Used Subsidized Funding for Reforestation (Hutan Tanaman Industri or HTI Program): Commercial Rate Loans

##### VII. Analysis of Comments

*Comment 1:* Whether the Department Should Find that SMG/APP Received Upstream Subsidies on Purchases of Timber from Non-Cross Owned Entities and Consider the Legality Under which This Timber was Harvested

*Comment 2:* Whether the Department's Cross-Ownership Regulations Provide for the Attribution of Upstream Subsidies to Cross-Owned Companies

*Comment 3:* Cross-Ownership of AA

and WKS with IK, Lontar, TK and PD

*Comment 4:* Widjaja Family Interest In Purinusa and Cross-Ownership

*Comment 5:* Cross-Ownership Between AA and WKS

*Comment 6:* Cross-Ownership Between WKS and Purinusa

*Comment 7:* Cross-Ownership Between AA and Purinusa

*Comment 8:* Cross-Ownership of Certain Additional Companies That Were Preliminarily Found to be Cross-

Owned with Companies in the APP/SMG CFS Group

*Comment 9:* Whether the Provision of Standing Acacia is the Provision of a Good by the GOI to the SMG/APP Forestry Companies

*Comment 10:* Specificity of the GOI's Provision of Standing Timber for Less Than Adequate Remuneration





October 17, 2007

MEMORANDUM TO:

David M. Spooner  
Assistant Secretary  
for Import Administration

FROM:

Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT:

Issues and Decision Memorandum for the final Affirmative  
Countervailing Duty Determination: Coated Free Sheet Paper  
from Indonesia

## I. Summary

On March 29, 2007, the Department of Commerce (the Department) issued Coated Free Sheet Paper from Indonesia: Preliminary Affirmative Countervailing Duty Determination 72 FR 17498 (April 9, 2007) (Preliminary Determination). Subsequent to the Preliminary Determination, the Department issued a memorandum containing our preliminary analysis of the two new subsidy allegations on debt forgiveness. See Memorandum to the David M. Spooner, Assistant Secretary for Import Administration, through Stephen J. Claeys, Deputy Assistant Secretary, for Import Administration, from Barbara E. Tiltman, Director, AD/CVD Operations, Office 6, Countervailing Duty Investigation: Coated Free Sheet Paper from Indonesia: Post-Preliminary Analysis of Two New Subsidy Allegations, dated September 7, 2007 (Post-Preliminary Analysis).

Since the issuance of the Preliminary Determination, the Department issued supplemental questionnaires to the Government of Indonesia (GOI) and to PT. Pabrik Kertas Tjiwi Tbk. (TK) and Pindo Deli Pulp and Paper Mills (PD) (together, "respondent companies" or "SMG/APP CFS paper producers"). The Department also issued initial and supplemental questionnaires to the GOI and to the respondent companies regarding the December 15, 2007 additional allegations concerning debt forgiveness. Both parties submitted timely responses to all of the Department's questionnaires and supplemental questionnaires.

Parties submitted two sets of briefs and rebuttal briefs, one in response to the Preliminary Determination and the other in response to the Post-Preliminary Analysis. Comments were submitted by NewPage Corporation (Petitioner), United Steel, Paper and Forestry, Rubber

Manufacturing, Energy, Allied and Industrial Service Workers International Union, AFL-CIO-CLC (USW), and the GOI and TK and PD (Respondents).

The "Subsidies Valuation Information" and the "Analysis of Programs" sections below, set forth our determinations with respect to the programs under investigation as well as the methodologies applied in analyzing these programs. We have also analyzed the comments submitted by parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the briefs. We recommend that you approve the positions described in this memorandum.

Below is a complete list of issues raised by the interested parties in their case and rebuttal briefs:

- |             |  |
|-------------|--|
| Comment 1:  | Whether the Department Should Find that SMG/APP Received Upstream Subsidies on Purchases of Timber from Non-Cross Owned Entities and Consider the Legality Under which This Timber was Harvested |
| Comment 2:  | Whether the Department's Cross-Ownership Regulations Provide for the Attribution of Upstream Subsidies to Cross-Owned Companies  |
| Comment 3:  | Cross-Ownership of AA and WKS with TK, Lontar, TK and PD   |
| Comment 4:  | Widjaja Family Interest in Purmasa and Cross-Ownership   |
| Comment 5:  | Cross-Ownership Between AA and WKS   |
| Comment 6:  | Cross-Ownership Between WKS and Purmasa  |
| Comment 7:  | Cross-Ownership Between AA and Purmasa   |
| Comment 8:  | Cross-Ownership of Certain Additional Companies That Were Preliminarily Found to be Cross-Owned with Companies in the SMG/APP CFS Group  |
| Comment 9:  | Whether the Provision of Standing Acrea is the Provision of a Good by the GOI to the SMG/APP Forestry Companies  |
| Comment 10: | Specificity of the GOI's Provision of Standing Timber for Less Than Adequate Remuneration  |
| Comment 11: | Use of Malaysian Export Statistics as the Starting Point for Deriving Stumpage Benchmarks  |
| Comment 12: | The Stumpage Rate Calculation Provided by Respondents in their Expert's Report   |
| Comment 13: | Calculation of Species-Specific Benchmarks   |
| Comment 14: | Whether to Adjust the Benchmark for Movement Expenses  |
| Comment 15: | Whether to Use Monthly Exchange Rates  |
| Comment 16: | Whether to Adjust the Benchmark for Export Royalty Fees and G&A Expenses   |
| Comment 17: | Profit Adjustment to the Benchmark   |
| Comment 18: | Use of Actual Versus Accrued Stumpage Payments   |
| Comment 19: | Use of the FAO's Conversion Factors  |
| Comment 20: | Whether to Adjust WKS' Log Harvest   |
| Comment 21: | Adjustments to the Sales Denominator   |
| Comment 22: | Treatment of Alleged Illegal Logging in Indonesia  |

- Comment 23: Indications of Illegal Logging Practices in Subsidizing Indonesian's CFS Paper Industry
- Comment 24: Examination of Log Purchases from Non-Cross Owned Entities Under the Log Export Ban
- Comment 25: The Legality of the WTO's Findings on Export Restraints
- Comment 26: Whether Respondent Companies Cured Any Deficiency with Respect to Selling Debt with COIs
- Comment 27: Specificity of IBRA's Acceptance of BII Shares and COIs for the Repayment of SMG/A/PP Debt
- Comment 28: The Effect of IBRA's Outright Debt Forgiveness on the Specificity of the Acceptance of COIs for SMG/A/PP Debt
- Comment 29: Benefit from IBRA's Acceptance of COIs as Settlement of Debt
- Comment 30: Whether an Adverse Inference Can be Applied in Determining that Orleans was Affiliated with SMG/A/PP
- Comment 31: Specificity of IBRA's Sale of SMG/A/PP Debt to an Affiliate of the Original Debtor
- Comment 32: Whether the Information the Department Relied Upon Was Speculative and Circumstantial
- Comment 33: Procedural Abnormalities in IBRA's Sale of the SMG/A/PP Debt and Specificity
- Comment 34: Effect of the Lack of Retention in Debt on the Countervailability of the Sale of SMG/A/PP's Debt to Orleans
- Comment 35: The Appropriateness of the Department's Reliance on Facts Available with an Adverse Inference
- Comment 36: Whether A Government Can Provide a Financial Contribution When the Act is Illegal

## 11. Background

On April 9, 2007, the Department published Preliminary Determination. Since the issuance of the Preliminary Determination, the Department issued supplemental questionnaires to the GOI and to TK and PD. The Department also issued initial and supplemental questionnaires to the GOI and to TK and PD regarding the December 15, 2007 additional allegations concerning debt forgiveness. Both parties submitted timely responses to all of the Department's questionnaires and supplemental questionnaires.

The Department aligned the final determination in this countervailing duty investigation with the final determination in the companion antidumping duty investigation. See Coated Free Sheet Paper from Indonesia, the People's Republic of China, and the Republic of Korea: Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations, 72 FR 24277 (May 2, 2007). On May 10, 2007, New Page Corporation (Petitioner) requested a hearing pursuant to 19 CFR 351.310(c) and the Department's Preliminary Determination.

On June 18 and June 19, 2007, the petitioner and the respondent companies submitted new factual information concerning the Department's investigation of the "GOI Provision of Standing Timber for Less than Adequate Remuneration," or "stumpage." On June 28, 2007, the petitioner submitted rebuttal comments regarding the respondent companies' new factual information submission.

The Department conducted verification of the questionnaire responses provided by the GOI and the respondent companies from June 25 to July 13, 2007. On July 13, 2007, Petitioner filed an upstream subsidy allegation, claiming, in accordance with section 771A(b) of the Tariff Act of 1930, as amended, (the Act), that (1) a subsidy, other than an export subsidy, has been paid or bestowed on an input product that is used in the manufacture or production of merchandise subject to a countervailing duty proceeding; (2) the subsidy bestows a competitive benefit on the merchandise; and (3) the subsidy has a significant effect on the cost of manufacturing or producing the merchandise. On July 23, 2007, the respondent companies filed rebuttal comments, and on August 10, 2007, Petitioner filed supplemental comments on this allegation.

The Department issued verification reports on August 24, 2007. The Department issued the Post-Preliminary Analysis on September 7, 2007. Parties timely filed briefs and rebuttal briefs regarding our Preliminary Determination. Respondents timely filed a brief and Petitioner timely filed a rebuttal brief regarding the Post-Preliminary Analysis. The petitioner withdrew its request for a hearing on September 10, 2007.

On August 20, August 28, and September 10, 2007, Petitioner requested that the Department clarify the scope of the antidumping and countervailing duty investigations of CFS paper from Indonesia, Korea and the People's Republic of China to include coated free sheet paper containing hardwood BCTMP. Because this request affected all six investigations, the Department set up a general issues file to handle this scope request. After considering the comments submitted by the parties to these investigations, we have determined not to adopt the scope clarification sought by Petitioner. See Memorandum to Stephen J. Chapp, Deputy Assistant Secretary for Import Administration, entitled "Scope Clarification Request: NewPage Corporation" (Scope Memorandum), which is appended to the "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China." All comments submitted by the parties to all six investigations are addressed in the Scope Memorandum.

## 11. Initiation and Deferral of Upstream Subsidy Investigation

On July 13, 2007, Petitioner filed an upstream subsidy allegation, claiming, in accordance with section 771A(b) of the Act, that (1) a subsidy, other than an export subsidy, has been paid or bestowed on an input product that is used in the manufacture or production of merchandise subject to a countervailing duty proceeding; (2) the subsidy bestows a competitive benefit on the merchandise; and (3) the subsidy has a significant effect on the cost of manufacturing or producing the merchandise. See also 19 CFR 351.523. In the allegation, Petitioner states that, if

## VI. Analysis of Programs

### A. Programs Determined to Be Countervailable

#### 1. GOI Provision of Standing Timber for Less Than Adequate Remuneration

According to the GOI, virtually all harvestable forest land in Indonesia is owned by the National Government. See Cont'd Free Sheet Paper from Indonesia: Response by the Government of Indonesia to the Department's November 30, 2006 Questionnaire, (March 2, 2007) (Rebuttal Response) (GOI Questionnaire Response), at page 13 (there are 57 million hectares of public harvestable forest land; the 23,811 hectares of private forest land account for 0.4 percent of the total harvestable forest land in Indonesia). The GOI allows timber to be harvested from the government-owned land under two main types of licenses: "HPT" licenses to harvest timber in the natural forest; and "HTT" licenses to establish and harvest timber from plantations. HTT license holders pay "cash stumpage fees" known as PSDI royalty fees which are paid per unit of timber harvested. In addition to paying PSDI fees, HPT license holders pay a per-unit Rehabilitation Fee ("dana reboisasi" or "DR") for timber harvested from the natural forest.<sup>1</sup> License holders in Jambi province also pay a PSDA fee for harvest from plantations. Based on Petitioner's allegations that the stumpage rates charged by the GOI for harvesting government-owned timber are less than the market value of the stumpage, the Department initiated an investigation for the Provision of Standing Timber For Less Than Adequate Remuneration. See Notice of Initiation of Countervailing Duty Investigations: Cont'd Free Sheet Paper from the People's Republic of China, Indonesia, and the Republic of Korea, 71 FR 68346, (November 27, 2006) (CFS Initiation).

In the Preliminary Determination, 72 FR at 17503, the Department found that the "provision of standing timber" (which is also referred to as stumpage) by the GOI was countervailable because the provision: (1) was specific under section 771(5A)(D)(iii) of the Act (limited to a group of industries); (2) provided a financial contribution under section 771(5)(D)(iii) of the Act (provision of goods or services other than general infrastructure); and (3) provided a benefit under section 771(5)(E)(iv) of the Act (goods or services are provided for less than adequate remuneration).

The Department found that the provision of standing timber by the GOI was specific, in accordance with section 771(5A)(D)(iii) of the Act, because it is available to a limited group of industries. Information provided by the GOI indicated that standing timber was provided by the GOI to five industries during the POI. These five industries compare to the 23 industries identified by the GOI that existed in Indonesia at the same level of industrial classification (large and medium manufacturing activities) in which the GOI classified the industries that harvest or consume timber. As such, we found that these five industries constitute a limited group of industries within the universe of 23 industries identified by the GOI. Therefore, we determined

that the provision of standing timber by the GOI was de facto specific in accordance with section 771(5A)(D)(iii) of the Act.

The Department found that the provision of standing timber provided a financial contribution as described in section 771(5)(D)(iii) of the Act. Specifically, the SMG/APP CFS forestry companies were provided goods (pulp timber) by the GOI. The Department preliminarily determined that the provision of timber provided a benefit as described in section 771(5)(E)(iv) of the Act, to the extent that the GOI received less than adequate remuneration, when measured against the market benchmark for stumpage. To measure the adequacy of remuneration for the Preliminary Determination, based on the criteria stipulated in 19 CFR 351.511(a)(2), the Department selected Malaysian export prices for various species of pulpwood as the most appropriate basis for deriving a market-based stumpage benchmark. See Preliminary Determination, 72 FR at 17503. On this basis, we preliminarily determined that there was a benefit because the stumpage fees paid by the SMG/APP CFS forestry companies were less than the benchmark stumpage rates. See id., 72 FR at 17503.

As discussed in the Preliminary Determination, 19 CFR 351.511(a)(2) sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration. See id., 72 FR at 17503. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles.

The "first tier" benchmark in the hierarchy, according to the regulations, is an observed market price for the good, in the country under investigation, from a supplier located either within the country, or outside the country. See 19 CFR 351.511(a)(2)(i). Such prices generally would be expected to reflect most closely the commercial environment of the purchaser under investigation. Thus, in order to meet the "first tier" benchmark hierarchy, the Department would need to identify an observed market stumpage price from a private supplier in Indonesia. Prior to the publication of the Preliminary Determination, the GOI had not provided any information on the sale of either privately-owned standing timber in Indonesia, or the stumpage fees charged by private timber companies. Furthermore, given the insignificant percentage of harvestable private land in Indonesia, the Department would not have been able to rely on any such private stumpage rates. As such, in the Preliminary Determination, the Department had no private stumpage data in Indonesia that could be evaluated for purposes of a "first tier" benchmark. See Preliminary Determination, 72 FR at 17503.

The "second tier" benchmark, according to the regulations, relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving that particular producer. See 19 CFR 351.511(a)(2)(ii). In selecting a world market price under this "second tier" approach, the Department will examine the facts on the record regarding the nature and scope of the market for that good to determine if

<sup>1</sup> We refer to the PSDI, DR, and PSDA fees collectively as "stumpage fees."

that market price would be available to an in-country purchaser. Prior to the preliminary determination, Respondents provided information regarding stumpage rates in the United States and argued that the Department should use U.S. stumpage rates as a benchmark. However, Respondents were unable to demonstrate that the types of U.S. timber they were suggesting for comparison purposes are grown in similar conditions as those in Indonesia, and are similar to the species harvested in Indonesia as pulpwood. As such, in the Preliminary Determination, the Department determined that U.S. stumpage prices do not satisfy the "second tier" benchmark requirements. See Preliminary Determination, 72 FR at 17503.

Respondents also provided information on Malaysian stumpage rates for acacia, one of the species used to produce pulp and paper products in Indonesia, as the appropriate basis for a "second tier" benchmark. However, the information Respondents provided was a study commissioned by them for purposes of this investigation, and consisted of a statement of opinion that included no supporting documentation to establish the authenticity of the figures used to calculate this benchmark rate. Additionally, the Department determined the Respondents did not address how Malaysian stumpage rates were representative of rates that would be available to a purchaser in Indonesia. As such, we determined that this data did not provide an appropriate basis for a "second tier" benchmark. See id.

Since we were unable to identify a benchmark under the "second tier" of the regulations, consistent with the hierarchy, we measured the adequacy of remuneration by using the "third tier" benchmark in the hierarchy as stipulated in 19 CFR 351.511(a)(2)(ii) (i.e., an assessment of whether the government price is consistent with market principles). The regulations do not specify how the Department is to conduct such a market principle analysis; the analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case-by-case basis. See Preamble, 63 FR at 65377.

The GOI did not provide information or documentation which demonstrated that the stumpage fees it charges are established in accordance with market principles. Because the government could not demonstrate that the price for stumpage was set in accordance with market principles, we searched for an appropriate proxy to determine a market-based stumpage benchmark. See Preliminary Determination, 72 FR at 17504. As a result of the geographic proximity and the similarities of forest conditions, climate, and tree species between Indonesia and Malaysia, we selected Malaysian pulpwood export prices as the most appropriate starting point for deriving a market-based stumpage benchmark for purposes of the Preliminary Determination. See id.

These export transactions reflected prices resulting from private transactions between Malaysian pulp log sellers and pulp log buyers in the international market. As such, we found that these transactions represented market-determined pulp log prices. See id. Accordingly, we used the value of pulp log exports from Malaysia during the POI, as reported in the "World Trade Atlas," as the starting point for determining whether the GOI is providing standing timber for less than adequate remuneration. See id.

The Respondents reported that acacia and MT11 were the types of pulpwood that were harvested from ITT plantations for pulp and paper production in Indonesia, and that AA, WKS, SPA, RAL, and FI harvested one or both of these types of pulpwood from plantations during the POI. Accordingly, we calculated two unit values from the Malaysian export data: (1) one for acacia; and (2) one for MT11 chipwood and logs. See id. To derive a market-based benchmark price for Indonesian stumpage, we then adjusted the Malaysian export pulp log prices to remove the Indonesian costs of extraction (harvesting) of the standing timber. See id. To determine the Indonesian harvesting costs (including a reasonable amount for profit associated with extraction), we used information contained in "Addicted to Rent: Corporate and Spatial Distribution of Forest Resources in Indonesia: Implications of Forest Sustainability and Government Policy" (Addicted to Rent). See Evidence for the Imposition of Countervailing Duties: Count Free Sheet Paper from China, Indonesia, and South Korea, October 31, 2006 (CES Petition), at Exhibit 8. This study, which was issued by the UK-Indonesian Tropical Forestry Management Programme, provided the only independent source that specifies extraction costs and profit in Indonesia. The amounts in this report are \$17 for extraction costs and \$5 for profit in connection with extraction. See Preliminary Determination, 72 FR at 17504. We subtracted these costs from the benchmark pulplog prices to derive a market-based stumpage benchmark price for Indonesia.

To measure the benefit for the provision of standing timber in the Preliminary Determination we first examined the stumpage fees paid by the SM/GA/PP CFS forestry companies for acacia and MT11 chipwood (collectively, pulpwood) on a per-unit basis, based on the reported DR and PSDI fees accrued by Respondents. We then compared the derived stumpage benchmark prices to the stumpage fees and preliminarily determined that the GOI received less than adequate remuneration for the standing timber during the POI. See id., 72 FR at 17505. We then calculated a per unit benefit (in cubic meters) based on the difference between the benchmark prices and stumpage prices. We then multiplied the per-unit value by the appropriate acacia, MT11 and log quantity. For acacia, we multiplied the per-unit value by the sum of AA and WKS' POI acacia harvest and AA's acacia purchases from affiliates RAL and FI. For MT11, we multiplied the per-unit value by AA, WKS, and SPA's POI MT11 harvest. For logs, we multiplied the per-unit value by the sum of AA and WKS' log sales to JK and Lontar. Where necessary, the Department converted harvest and purchase quantities from metric tons to cubic meters using the FAO's conversion factor. See Calculations for the Preliminary Determination for PT. Pabrik Kertas Tjiwi Kimia Tbk and PT. Pindo Deli Pulp & Paper Mills, (March 29, 2007) (Preliminary Calculation Memo).

In their questionnaire responses and case brief, Respondents argued that the provision of standing timber was not specific because the use of forest resources is not restricted to a certain enterprise or industry, and no enterprise or industry receives a disproportionate right to use the forests. We have considered this argument, in the context of additional information gathered since the Preliminary Determination, the results of verification, and the rebuttal arguments. For purposes of this final determination, we continue to find, in accordance with section 771(5A)(D)(ii) of the Act, that the provision of standing timber is specific because it is available to only a limited group of industries (i.e., the wood processing industries). See Comment 10.

Respondents also argued that the GOI did not provide standing acacia to the SMG/APP CFS forestry companies, because acacia is grown by license holders on plantations, and therefore, the provision of standing timber does not provide a financial contribution (i.e., timber) to the SMG/APP CFS forestry companies in accordance with section 771(5)(D)(iii) of the Act for acacia. We have considered this argument in the context of additional information gathered since the *Preliminary Determination*, the results of verification, and the rebuttal arguments. The Department continues to find that the provision of pulp timber, whether from the government-owned natural forest or government-owned plantation land, provides a financial contribution (i.e., in the form of a good, standing timber) to the SMG/APP CFS forestry companies, in accordance with section 771(5)(D)(iii) of the Act. *See* Comment 9.

In their briefs, parties submitted comments regarding the appropriate basis for calculating stumpage benchmarks. *See* Comments 11, 12, and 13. After considering these arguments, in light of additional information gathered since the *Preliminary Determination*, timely new factual information placed on the record by Petitioner and Respondents, and the results of verification, the Department has determined that a few modifications are appropriate in our calculation methodology for measuring the benefit. First, based on information on the record and results of verification, we found that both the GOI and the cross-owned SMG/APP CFS group specifically differentiate between pulpwood (timber under 30 cm in diameter) and logs (timber over 30 cm in diameter), as well as between different species of pulpwood (i.e., acacia and MTI-BBS/KBK (MTI chipwood)). *See, e.g., GOI Verification Report*, at page 5; *see also* Respondents' May 8 *Response*, Exhibit 5. Second, information on the record shows that there were meranti and MTI (campuran) logs harvested by the SMG/APP CFS forestry companies that were sold to IK and Lontar for pulp production. *See* Comment 13. All purchases of pulpwood during the POI by the SMG/APP CFS pulp producers were from AA and WKS, two of the five cross-owned SMG/APP CFS forestry companies. AA and WKS sold to the SMG/APP CFS pulp producers pulpwood they harvested during the POI, pulpwood they purchased from the other three SMG/APP forestry companies, and pulpwood they purchased from unaffiliated suppliers, as well as a small quantity of meranti and campuran logs for pulp. In calculating the benefit under this program, we are seeking to establish a market-based benchmark that reflects the stumpage fees the SMG/APP CFS forestry companies should have paid for the timber they harvested. We find that by differentiating between pulpwood and logs, and between acacia and MTI chipwood, and between meranti logs and campuran logs, in establishing our benchmarks, our analysis more accurately reflects fees the company would have otherwise paid for these various types of timber. As such, we have determined that the most appropriate basis for calculating the benefit under the provision of standing timber is to use a species-specific benchmark for each of four distinct types of timber (acacia, MTI chipwood, meranti logs, and campuran logs).

Respondents argue that, where possible, instead of making adjustments to the Malaysian log export prices based on information from the *Added-to Rent* study, the Department should calculate the benchmark rate based on a report by Prof. Dr. Shahwahid Othman. We continue to find, however, that the Malaysian export statistics and *Added-to Rent* study the Department

used in the *Preliminary Determination* provides the most appropriate basis calculating the benchmark stumpage rates for our analysis. *See* Comments 11 and 12.

In addition, as explained in the *Cross-Overship* section above, the Department continues to find that cross-ownership exists, as defined by 19 CFR 351.525, among and across IK, PD, Lontar, AA, IK, WKS, KAL, SPA, and FI (the SMG/APP CFS group). However, the Department has determined the three additional log suppliers found to be cross-owned in the *Preliminary Determination* are not cross-owned with the SMG/APP CFS group. Therefore, we are not including the volume of pulpwood supplied by these three additional companies in our calculations for this program in this final determination. *See Cross-Overship Analysis* and Comment 8.

The Department has also determined that the actual PSDI, DIR, and PSDA fees the logging companies paid during the POI should be used in the calculation. In the *Preliminary Determination*, the Department used what it believed to be the fees paid. *See Preliminary Determination*, 72 FR at 17505. However, we found at verification that the stumpage fees actually paid by many of the SMG/APP CFS forestry companies differ significantly from the fees due to the GOI. *See Countervailing Duty Investigation of Capped Free Sheet (CFS) Paper from Indonesia: Verification of the Questionnaire Responses Submitted by Forestry Companies PT. Aneka Abadi PT, Winkara Sakti PT, Pinnatan Jaya, and PT. Riau Abadi Lestari*, August 24, 2007 (*Forestry Companies Verification Report*), at pages 26-27. While the SMG/APP CFS forestry companies included in their accounts an amount that may ultimately be collected by the GOI, we did not find that these amounts were actually paid to the GOI during the POI. Furthermore, it was unclear whether such payments are collected by the GOI on any regular basis. Therefore, the Department has determined that using the PSDI, DIR, and PSDA fees actually paid is more appropriate for measuring the adequacy of remuneration. As such, we have summed the PSDI, DIR, and PSDA fees actually paid by the forestry companies during the POI and compared this amount to the market-based stumpage fees the SMG/APP CFS forestry companies should have paid during the POI.

To calculate the benefit received under this program, we first multiply benchmark prices for each of the four distinct types of timber (i.e., acacia, MTI chipwood, meranti logs, and campuran logs) by the appropriate harvest quantity. Where necessary, the Department converted harvest and purchase quantities using the Food and Agriculture Organization of the United Nations (FAO) conversion factor to convert metric tons to cubic meters for pulpwood; metric tons to cubic meters for logs; and single meters to cubic meters. *See* Comment 19 and *Final Affirmative Countervailing Duty Determination on Capped Free Sheet Paper from Indonesia: Analysis Memorandum on Calculations for PT. Pabek Kertas Tiwi Kania Tbk and PT. Prada Deli Pulp and Paper Mills* (October 17, 2007) (*Final Analysis Memo*).

After analyzing the parties' comments, we find that the FAO conversion factor for tropical pulpwood (1 metric ton to 1.33 cubic meters) is the most appropriate conversion factor to apply. Additionally, the Department will use the FAO's conversion factor for tropical saw logs and

veneer logs (1 metric ton to 1.37 cubic meters) when converting the merchant and campuran logs, which are classified as sawlogs (i.e., logs over 30 cm). As discussed above, the Department found that: 1) both the GOI and the cross-owned SMG/A/P CFS group differentiate between pulpwood (i.e., logs under 30 cm) and logs (i.e., logs over 30 cm); and 2) the FAO conversion factor is more appropriate than the GOI's conversion factor. We find that the FAO's conversion factor (1 metric ton to 1.37 cubic meters) when converting logs (i.e., logs over 30 cm) is more appropriate than the GOI's.

The Department is also using the FAO's conversion factor (1 staple meter to 0.72 cubic meters) to convert FI's reported timber harvest. At verification, FI explained that, unlike the other SMG/A/P CFS forestry companies, FI's final payment of DIR and PSDI fees is based on the staple meter estimates in the field. See *Forestry Companies' Verification Report*, at page 14. Since the Department has found that the FAO conversion factor is more appropriate than the GOI's conversion factor, as described above, we find that the FAO factor for converting staple meters to cubic meters is more appropriate than the GOI's. The conversion factor FI used to convert staple meters to cubic meters is from the same source (i.e., the GOI) as the metric ton to cubic meter conversion factor that the Department has found to be unreliable. As such, the Department has the same concerns regarding the reliability of the GOI's staple meter to cubic meter conversion factor. Therefore, we conclude that it is more appropriate to use a conversion factor determined by an international authority (i.e., the FAO). Additionally, in order to maintain consistency, we conclude that it is preferable to use conversion factors from the same source. As such, we will convert FI's reported timber harvest from staple meters to cubic meters using the FAO's 0.72 conversion factor. See *Final Analysis Memo*.

To calculate the benefit conferred through stumpage fees charged for acacia, we are multiplying the benchmark price by the sum of AA's, FI's, RAL's and WKS' acacia harvest during the POI (SPA did not harvest acacia during the POI). Because only part of FI's harvest was shipped to AA, and because FI did not purchase any pulpwood from unaffiliated pulpwood suppliers, we excluded from the benefit calculation the volume of FI's pulpwood harvest that was sold to external parties outside the SMG/A/P CFS group. To calculate the benefit conferred through stumpage fees charged for MTH chipwood, we are multiplying the benchmark price by the sum of AA's, WKS's, and SPA's MTH chipwood timber harvest during the POI (FI and RAL did not harvest MTH chipwood during the POI). See *Final Analysis Memo*.

In determining the benefit for logs (i.e., harvested timber over 30 cm in diameter that was sold to the SMG/A/P pulp producers for pulp production), the Department is using the volume of logs sold by AA and WKS to IK and Lontar as the quantity for which to measure the benefit. We are using log sales to the SMG/A/P CFS pulp producers rather than total harvest quantity because we are only capturing in our calculation benefits attributable to the pulp and paper production of the SMG/A/P CFS pulp and paper producers. In the questionnaire responses, WKS reported separately its log sales to the SMG/A/P CFS pulp producers of merchant and campuran. However, AA did not separately report log sales of merchant and campuran to the SMG/A/P CFS pulp producers. Therefore, to calculate WKS' benefit for merchant logs, we are multiplying the

benchmark price for merchant logs by WKS' merchant sales to Lontar. To calculate WKS' benefit for campuran logs, we are multiplying the benchmark price for campuran logs by WKS's campuran sales to Lontar. However, since AA's log sales are not broken down (between merchant and campuran), the Department is unable to calculate the benefit to AA's log sales in the same manner. Therefore, the Department finds that the most appropriate basis to measure the benefit of AA's log sales to the SMG/A/P CFS pulp producers is to calculate a weighted-average log benchmark (of the merchant and campuran logs) and to use the total volume of log sales to IK as the quantity for which to measure the benefit. See *Final Analysis Memo*.

After multiplying each stumpage benchmark by the appropriate harvest quantities, we summed all the values to calculate the total amount of fees that should have been paid at the market-based benchmark stumpage rate. To determine the benefit from the provision of standing timber for less than adequate remuneration, we subtracted the total of the actual PSDI and DIR fees, plus the PSDA fees, paid by the SMG/A/P CFS forestry companies, from the total amount of stumpage fees that should have been paid.

Based on the analysis of the comments, additional information gathered since the *Preliminary Determination* and the results of verification, we are making two adjustments in the denominator for this final determination. First, we are including external sales by CMI, the cross-owned home market reseller, during the POI, in the denominator. Second, since the respondent companies had already adjusted the reported sales for sales returns, claims and discounts, we are making no further adjustments to total sales value for such returns, claims and discounts. See *Final Analysis Memo* and Comment 21.

We then divided the benefit by the total external sales of the SMG/A/P CFS pulp and paper producers, including sales through CMI (the total FOB sales values of the pulp and paper producers minus any cross-owned inter-company sales) to calculate the net countervailable subsidy rate. See *Final Analysis Memo*. The countervailable subsidy rate for this program is 14.21 percent ~~ad valorem~~ for the respondent companies, TK/PD.

## 2. GOI's Log Export Ban

The Department initiated an investigation of whether the GOI's ban on log exports provides a countervailable subsidy to the production of CFS paper. Petitioner alleged that by banning exports of logs, the GOI entrusts or directs domestic log suppliers to sell logs at suppressed prices to domestic consumers, thus providing a good to pulp and paper producers for less than adequate remuneration in accordance with sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act. See *Initiation Checklist* at 11. In the preliminary determination, we did not reach the issue of whether the GOI's log export ban was countervailable for two reasons. First, we found three logging companies, in addition to AA, WKS, RAL, FI and SPA, to be cross-owned with the respondent companies. See *Preliminary Determination* 72 FR at 17501. The pulpwood sold by these three companies as cross-owned logging companies was included in the Department's preliminary benefit calculation for the stumpage program. *Id.* 72 FR at 17505. When we added

the timber from these three additional cross-owned logging companies to that of the five cross-owned logging companies, we found that, in the aggregate, all of the wood sold to, and purchased by the two SMG/APP CFS pulp producers, JK and Lomtar, was sourced from these eight cross-owned logging companies. Id. 72 FR at 17501. Since all of the wood purchased for pulp and paper production during the POI was sourced from these eight cross-owned logging companies, the entire benefit from the stumpage program was attributable to the downstream, external sales of the SMG/APP CFS pulp and paper producers, in accordance with 19 CFR 351.525(b)(6)(iv). Id.

Second, we also found in the Preliminary Determination that the calculation methodology used to determine the benefit provided to the cross-owned logging companies from the stumpage program necessarily included any benefit that might arise from the GOI's log export ban. Id. 72 FR at 17505-17506. Because, in the aggregate, the pulp and paper producers sourced all of their timber from cross-owned logging companies and because the benefit to the cross-owned logging companies from the stumpage program included any benefit that might arise from the GOI's log export ban, there was no need in the preliminary determination to address separately the countervailability of the log export ban. Id. 72 FR at 17505.

However, at verification, respondent companies demonstrated that the standards for cross-ownership were not met by the three additional logging companies which we had preliminarily determined to be cross-owned with the SMG/APP CFS paper group. See "Cross-Ownership" section above, for a complete discussion of our findings with regard to cross-ownership. Because these three logging companies are not cross-owned with the SMG/APP CFS group, we can no longer attribute the benefits they received from the stumpage program directly to the downstream, external sales of the SMG/APP CFS pulp and paper producers in accordance with 19 CFR 351.525(b)(6)(iv).

On July 13, 2007, Petitioner filed an upstream subsidy allegation stating that "(t)o the extent that the Department does not find an individual forestry company to be cross-owned with the Respondent in this case, Petitioner provides information . . . that Respondents benefited from upstream subsidies provided to these companies." See Petitioner's July 13, 2007 Upstream Subsidy Allegation at 1. As noted in the "Initiation and Deferral of Upstream Subsidy Investigation" section above, the Department has initiated on this allegation but has deferred the consideration of this program until the first administrative review, if a countervailing duty order is issued and such a review is requested.

Because our investigation of Petitioner's upstream subsidy allegation has been deferred, and because pulpwood was purchased by the SMG/APP CFS group from unaffiliated suppliers during the POI, the Department is now required to make a finding regarding the countervailability of the log export ban with respect to the production of CFS. The Department asked numerous questions in the original and supplemental questionnaires regarding the log export ban, and discussed the information provided by the GOI in their responses during verification. See GOI Verification Report at pages 10-11. Due to the uncertainty of whether it

would be necessary to evaluate the GOI's log export ban for the final determination, the parties addressed the log export ban in their case and rebuttal briefs, and have had a full opportunity to address the issue of whether the log export ban is a countervailable subsidy.

As noted above, Petitioner alleged that by banning exports of logs, the GOI entrusts or directs domestic log suppliers to sell logs at suppressed prices to domestic consumers, thus providing a financial contribution and a benefit in the form of a provision of a good for less than adequate remuneration in accordance with sections 771(5)(B)(iii) and 771(5)(D)(ii) of the Act. Petitioner also alleged that the log export ban is de facto specific in accordance with section 771(5A)(D)(iii)(1) of the Act because it is limited to a group of industries that use logs as an input.

Petitioner alleged that the GOI bans the export of logs and that this export ban works hand-in-hand with the subsidized stumpage rates to provide downstream users with artificially low-cost raw materials. As a result, Petitioner claims that the log export ban forces loggers to sell logs to only a limited number of downstream users at suppressed prices. To support this claim, Petitioner cites a WTO trade policy review which stated that Indonesia's log export ban may "depress the domestic prices of logs, thereby assisting downstream processors of such products." See Initiation Checklist at 11.

According to Petitioner, the log export ban was originally imposed in 1985 and lifted in the late 1990s under pressure from the International Monetary Fund (IMF). See CFS Petition at 9. The GOI stated that log exports were briefly permitted from 1998 to 2001. See page 20 of the GOI's January 25, 2007 questionnaire response. The GOI reimposed a ban on log and chipwood exports in October 2001, when the Ministry of Forestry and the Ministry of Industry and Trade issued Joint Decree No. 1132/Kpts-II/2001 and No. N292/MPT/Kep/10/2001. As noted in this Decree, the stated intent was to stop the export of logs in order to reduce environmental degradation and to manage the forest in a sustainable manner. Id. at 20 and Exhibit 7. The GOI has export bans on eight categories of products that include "Forestry Products," under which logs and chipwood are listed, as well as rattan, certain sawn timber, and "rattan raft" made from wood. See Annex to Decree No. 07/M-DA/GP/PT/K/4/2005, included in Exhibit 7 of the GOI's January 25, 2007 questionnaire response. According to the GOI, these bans are implemented by preventing the issuance of export permits which are required for all products being exported. See page 21 of the GOI's January 25, 2007 questionnaire response.

Article 1(1) of the GOI's Joint Decree No. 1132/Kpts-II/2001 and No. N292/MPT/Kep/10/2001, provides for an outright ban on the export of logs and chipwood from Indonesia: "Log/chip woods export is (to) be stopped from (the) whole country region of Indonesian republic." See Exhibit 7 of GOI's January 25, 2007 questionnaire response. The Department finds that by means of this total ban on log exports, the GOI entrusts or directs domestic log suppliers to sell logs at suppressed prices to domestic consumers, thus providing a good to pulp and paper

producers for less than adequate remuneration in accordance with sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act.

The SAA at 926 notes that regulatory measures can be countervailed as indirect subsidies under section 771(5)(D)(iii) of the Act in cases involving a private entity being entrusted or directed to provide a good or service to producers of the subject merchandise.

In the past, the Department . . . has countervailed a variety of programs where the government has provided a benefit through private parties. (See, e.g., Certain Softwood Lumber Products from Canada, Leather from Argentina, Lamb from New Zealand, Oil Country Tinsular Goods from Korea, Carbon Steel Wire Rod from Spain, and Certain Steel Products from Korea.) The specific manner in which the government acted through the private party to provide the benefit varied widely in the above cases. Commerce has found a countervailable subsidy to exist where the government took or imposed (through statutory, regulatory or administrative action) a formal, enforceable measure which directly led to a discernible benefit being provided to the industry under investigation.

In cases where the government acts through a private party, such as in Certain Softwood Lumber Products from Canada and Leather from Argentina (which involved export constraints that led directly to a discernible lowering of input costs), the Administration intends that the law continue to be administered on a case-by-case basis consistent with the preceding paragraph. It is the Administration's view that Article 1.1(a)(1)(iv) of the Subsidies Agreement and section 771(5)(B)(iii) encompass indirect subsidy practices like those which Commerce has countervailed in the past, and that these types of indirect subsidies will continue to be countervailable, provided that Commerce is satisfied that the standard under section 771(5)(b)(iii) has been met.

See SAA at 926. Furthermore, the Preamble, 63 FR at 65349, states that with regard to the meaning of "entrusts or directs" under section 771(5)(B)(iii) of the Act, "we do not believe it is appropriate to develop a precise definition of the phrase for purposes of these regulations. Rather, we believe that we should follow the guidance provided in the SAA to examine indirect subsidies on a case-by-case basis." With regard to the countervailability of export restraints as indirect subsidies, we have also noted the following in the Preamble, 63 FR at 65351:

With regard to export restraints, while they may be imposed to limit parties' ability to export, they can also, in certain circumstances, lead those parties to provide the restrained good to domestic purchasers for less than adequate remuneration. This was recognized by the Department in Certain Softwood Lumber Products from Canada, 57 FR 22370 (May 28, 1992) ("Lumber") and Leather from Argentina, 55 FR 40212 (October 2, 1990) ("Leather"). Further, as indicated by the SAA (at 926) and as we confirm in these Final Regulations, if the Department were to investigate situations and facts similar to those examined in Lumber and Leather in the future, the new statute would permit the Department to reach the same result.

As a preliminary matter, we observe that the GOI's log export ban in the instant case is not merely a partial restraint on exports; rather, the joint decrees impose a complete, outright ban that prevents any export of logs and chipwood by making such exports illegal. See GOI Verification Request at page 11. The GOI's complete ban on the export of logs was in place from 1985 through the POI, with the exception of a short period of time from 1998 to 2001. See GOI's January 25, 2007 questionnaire response at page 20. As a result, for 17 of the 20 years prior to the POI, the GOI's log export ban completely foreclosed log suppliers' access to any possible alternative to the domestic market.

This fact pattern can be contrasted to other types of export restraints, such as: quantitative export restrictions that curtail but still allow for some amount of exports, export duties, or various types of administrative or bureaucratic requirements (e.g., certification requirements). Depending on the type, severity and other characteristics of the restraint, these "partial restraints" may allow for alternative sales outlets that are not available under an export ban which eliminates all such alternative sales outlets and would likely have a significant impact on the market dynamics of the product in question. A total export ban, especially one that has remained in effect for as long as the Indonesian log ban, therefore, stands out in terms of the scope and extent of its likely impact on the market for the product and players involved.

We find that this log export ban is not a mere policy pronouncement or exhortation; log suppliers are required to comply with the ban under threat of law, including criminal sanctions.<sup>2</sup> The GOI therefore exercises direction over these suppliers by imposing its legal authority to criminally prosecute any supplier who exports logs from Indonesia. The result is that log suppliers are limited to selling in the domestic market as directed by the government. This, as noted by the independent studies discussed below, resulted in an abundant supply of logs at suppressed prices that benefitted the downstream industries that use these logs, particularly the pulp and paper industry.

Turning to the empirical evidence on the impact that this ban has had on the log and downstream forestry products industry in Indonesia, we have reviewed the three independent studies on the log export ban in Indonesia that were provided by the GOI in Exhibit Supp-12 of the GOI's March 6, 2007 response.<sup>3</sup> Our analysis of these independent studies shows that the GOI's log export ban in fact induced log suppliers to sell logs domestically at suppressed prices to benefit

<sup>2</sup> At verification the Ministry of Forestry officials noted cases where "they have previously identified companies that have committed customs fraud by completing false customs declarations and as a result, have subjected those companies to criminal sanctions." Id.

<sup>3</sup> The following three independent studies are found in Exhibit Supp-12 of the GOI's March 6, 2007 response: "Economic Adjustment and the Forestry Sector: Does Removing the Log Export Ban Matter Much?," published by the Centre for Strategic and International Studies (CSIS) (February 2004); "Economic Adjustment and Forestry Sector 3: Competitiveness and Efficiency of the Forest Product Industry in Indonesia," published by CSIS (February 2004); "Efficiency of Forest Product Industry 3," and, "Can Indonesian Gain from Log Export Ban?" published by CSIS (December 2002) ("Gain from Log Export Ban").



Indonesia's downstream wood processing industries. More specifically, the evidence in these studies demonstrates that this export ban reduced the price of logs and chipwood, as well as the value of stumpage in Indonesia; it increased the incidence of illegal logging; it led to greater consumption of logs; and, it was specifically used to benefit the expansion of the downstream users of wood, particularly the pulp and paper industries.

Two of the independent studies submitted by the GOI conclude that the imposition of a log export ban in Indonesia acted as a subsidy which lowered the price of logs, and contributed to greater log consumption and illegal logging. The first study, *Economic Adjustment and Forestry Sector*, examines how the removal of the earlier log export ban in Indonesia affected the domestic wood processing industry.

In addition, the rapid expansion of the pulp and paper industries in the 1990s has also put additional pressure on Indonesia's forests. The export ban/fee has basically acted as a subsidy, increasing demand for log consumption further. Subsequently, despite lower prices for domestic logs, consumption stayed at relatively high levels, and the gap between official supply and consumption capacity of wood-based industry is very likely filled by illegal logging.

*Id.* at 14. The authors of the study concluded that they could not prove empirically that the log export ban (nowed as "LEB" in the study) had helped to reduce the rate of wood extraction; to the contrary, they found that "the removal of LEB decreased, instead of increased, log production." See *Economic Adjustment and Forestry Sector* at 13. This study therefore indicates that the log export ban caused an increase in log consumption and production and, thus, contributed to increased illegal logging. An increase in log production within the context of a log export ban would generally mean increased supply and availability of logs, which would clearly be beneficial to downstream users such as pulp and paper producers.

The findings of this first study also indicate that the actual impact of the ban was completely opposite from the GOI's rationale for imposing the ban, *i.e.*, to protect forest resources. In contrast to the GOI's stated intent, this study draws a direct link between the log export ban and the financial contribution and benefit received by the wood processing industries from low log prices - a subsidy which encouraged greater consumption and illegal logging. Moreover, this study is not alone in identifying significant illegal logging that occurs in Indonesia. The record is replete with independent examples that illegal logging and environmental degradation continue to be rampant, rendering the GOI's log export ban an ineffective tool for protecting the environment but an effective means for ensuring the supply of low-cost pulpwood to downstream producers of pulp and paper products.<sup>4</sup>

<sup>4</sup> See *e.g.*, "Sustaining Indonesia's Forests: Strategy for the World Bank 2006-2009," published by the World Bank (June 2006) at page viii, in Exhibit 14 of USW's March 9, 2007 submission; *id.* "The State of Forest: Indonesia," published by Forest Watch Indonesia and Global Forest Watch (2002) at page 39, in Exhibit 3 of USW's March 9, 2007 submission; *also* "Economics of Illegal Logging and Associated Trade," published by OFCD Roundtable on

The second independent study provided by the GOI, *Efficiency of Forest Product Industry*, explains how the use of the log export ban in Indonesia increased rather than decreased log consumption by providing a subsidy to the downstream wood-based industries through artificially low domestic log prices. See *Efficiency of Forest Product Industry* at 6 and 16. In outlining its argument, this study provided the following explanations:

First, basic economics of renewable resource theory suggests that for slow growing resources such as tropical forest, it is optimal in the eye of concessionaires to harvest the forests when the rate of growth of the timber equals the rate of return from processing the timber. Higher rate of return from timber processing would induce the concessionaires to harvest the forest as quickly as possible, increasing the rate of deforestation.

(Second), low stumpage value would also induce the concessionaires to use logs inefficiently, to build excessive new capacity and to waste the raw materials during harvesting as well as processing.

Finally, the low stumpage value created disincentives for adopting resource saving technology in Indonesia.

*Id.* at 7. This study also explains that, with regard to the Indonesian wood-based industries, "the tremendous growth of production and export has been made possible through heavy subsidy, resulting in inefficiencies in harvesting and production." *Id.* at 16. Specifically, this study noted that since 1980, "Indonesia embarked on a program of massive expansion of its pulp and paper industry. The number of pulp and paper mills increased from 22 to 38 in 1989. Production of paper rose 24% a year from 403 thousand tons in 1984 to around 7 million tons in 2000." *Id.* at 5. This study found an "inefficiency impact of the log export ban due to the artificially low price of domestic logs," with the result that "the stumpage value was reduced by 33% under the log export ban policy." *Id.* at 6.

The third independent study provided by the GOI, *Gain from Low Export Barriers?*, states that the GOI intended the first log export ban to provide a subsidy to benefit downstream wood processing industries: "[f]orward the end of the 1970s, the Indonesia government began to impose log export barriers to encourage the growth of downstream wood industries. . . ." This study further explained that "[s]everal economic studies on the impact of log export barriers in Indonesia between 1978 and 1989 suggest a substantial loss in government revenues through large implicit subsidies to the downstream processing industry and foregone revenues from log exports (see, for example, Gillis, 1988; Manurung and Buongiorno, 1997; and for a survey see Barbier et al., 1994)." See *Gain from Low Export Barriers?* at pages 1-2.

We also note that the effectiveness of the log export ban in reducing the price of logs is further demonstrated by the fact that during the short period when the ban was lifted, export prices for

Sustainable Development (January 2007) at 22, in Exhibit 15 of USW's March 9, 2007 submission.

logs were significantly higher on average than domestic prices (\$110 for export logs versus \$80 for domestic logs). See GOI Verification Report at page 8 and Exhibit MOF-11 that includes copies of the April 21, 1999 and April 23, 1999 letters from the World Bank to the Ministry of Forestry. The information presented in the studies discussed above, as well as the information provided in verification showing the price disparity between export and domestic log prices, implicates the GOI and its use of the log export ban to subsidize downstream wood processing industries with low cost timber inputs. The GOI maintained and even re-imposed (in 2001) this log export ban in the presence of mounting empirical evidence that, not only was the ban not effective in furthering the ostensible goal of protecting forest resources and preventing illegal logging, this ban was promoting the opposite by distorting and flooding the market with timber.

Furthermore, the studies' conclusions have not been contradicted by any other record information. In imposing the log export ban, the GOI did not perform its own independent appraisal or assessment of whether it would be effective. Nor has the GOI conducted subsequent studies to evaluate whether the present ban has been effective in its stated purpose. Therefore, the GOI's purported purpose for the log export ban is not supported by evidence to substantiate its claim that imposing a ban would reduce the rate of deforestation and the occurrence of illegal logging.<sup>3</sup> Accordingly, the benefits of the log export ban to the downstream consumers, as noted in the studies, cannot reasonably be considered inadvertent or a mere by-product of the ban.

In sum, the totality of the record evidence refutes the GOI's claim that the log export ban is used to protect forest resources and prevent illegal logging, and that it is not "constricting or directing" (or inducing) log suppliers to provide a financial contribution to the wood processing industries. To the contrary, these studies show that the GOI imposed or maintained the log export ban in order to provide lower priced inputs (i.e., logs and chipwood) to the industries that consume those inputs, which actually led to increased deforestation and greater illegal logging.

Furthermore, these studies show that the pulp and paper industries are among the few beneficiaries of this indirect subsidy. Accordingly, we find that the GOI used its authority to impose a log export ban that directed these logs suppliers, under threat of criminal sanctions, to provide logs and chipwood for less than adequate remuneration to downstream wood processing industries. These industries include the pulp and paper industry that produces subject merchandise. As such, the log export ban provides a financial contribution in accordance with section 771(5)(D)(ii) of the Act. Furthermore, the log export ban provides a benefit (discussed further, below) to the extent that the prices paid for pulpwood and chipwood purchased by the cross-owned companies in the SMCA/PP CFS production and sales chain from unaffiliated forestry companies are less than benchmark log prices.

In determining whether the log export ban was specific as a matter of law in accordance with section 771(5A)(D)(i) of the Act, we examined the two government decrees provided by the GOI which first re-imposed the export ban on logs and chipwood, and later identified all the product

categories and the relevant Harmonized Tariff System (HTS) subheadings that fell under those categories which were subject to an export ban. The first GOI decree banned the export of logs and chipwood. See Exhibit 7 of GOI's January 25, 2007 response and Article 1(1) of the GOI's Joint Decree No. 1132/K-pts-11/2001 and No. N292/M/P/K-ep/10/2001. A subsequent decree issued by the GOI identified only eight industries which were affected by an export ban, and a small subsection of products within these industries which included a small number of HTS subheadings (33 discrete HTS subheadings were provided at mostly the six-digit and eight-digit level). One of these eight industry categories included "Cultural Products" (referred to as "Ancient things with cultural value") for which there is no designated HTS subheading nor an associated industry. Thus, we have not included this category in our analysis in finding that only seven industries benefited from an export ban. Id. at Annex to Decree No. 07/M-DAC/PEJ/4/2005. Based on this information, we find that the GOI's decree banning the export of a small subsection of products in seven industries, and its specific decree banning the exports of logs and chipwood in particular, are de jure specific within the meaning of section 771(5A)(D)(i) of the Act since it is restricted by law to only a limited group of industries and because it covers only a small, discrete number of products within each of these seven industries.

Section 351.511(a)(2) of the Department's regulations sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. The preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country, or outside the country (the latter transaction would be in the form of an import).

In the instant case, there are no meaningful or usable private prices for logs or actual import prices to evaluate for purposes of identifying a "first tier" benchmark. As explained under Comment 11, "Use of Malaysian Export Statistics as the Starting Point for Deriving the Stumpage Benchmarks," below, the GOI owns virtually all harvestable forest land and there is only a minuscule amount of private forest land. See GOI Questionnaire Response, at page 13 where the GOI reported 57 million hectares of public harvestable forest land and only 233,811 hectares of private forest land which is equivalent to 0.4 percent of the total harvestable forest land in Indonesia. This fact alone would render any private prices unusable in accordance with 19 CFR 351.511(a)(2)(f). We also note that all logs, including logs harvested from private land, are subject to the export ban. As such, we find that it is not possible to determine a private price benchmark in Indonesia for the GOI's log export ban.

As discussed in more detail under Comment 11, we have found that the purchase documentation regarding two private log purchases from Malaysia placed on the record by Respondents does not provide an appropriate alternative to use in this analysis. One of the two purchases occurred in

<sup>3</sup> The GOI reported that it "has not conducted any studies but is aware that several independent groups have done so, none of which the GOI endorses." See GOI's January 25, 2007 questionnaire response at page 25.

2007, outside of the POI; the other purchases involved a sale for which we are unable to evaluate the reliability of the sale and the price. See Comment 11. Finally, we have no information on the record regarding official import statistics on the quantity and value of pulpwood imports, nor did any of our cross-owned companies in the CFS production and sales chain import any logs or pulpwood during the POI.

We next looked for a "second tier" benchmark which, according to the regulations, relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving that particular producer. In selecting a world market price under this second approach, the Department will examine the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in-country purchaser. The Department finds that the public export statistics of Malaysian pulpwood reported in the World Trade Atlas are reliable for establishing a benchmark under the "second tier" as a world market or alternative price that would be available in Indonesia.

As we noted in the Preliminary Determination 72 FR at 17504, Indonesia and Malaysia share the same geographic proximity and similarities of forest conditions, climate, and tree species, and that the chipwood and logs from these Malaysian trees were exported to Indonesia as well as many other countries during the POI. Accordingly, we have selected as our "second tier" benchmark species-specific Malaysian export prices as published in the World Trade Atlas as representative of market-determined prices for chipwood and logs. We do not find the additional information placed on the record by Respondents following the publication of the preliminary determination concerning Sabah Forestry Department Statistics to provide an appropriate alternative to use in this analysis. The Sabah Forestry Department statistics do not provide the export data by HTS number, nor do these statistics differentiate between pulpwood and sawlogs, a key distinction in our analysis. See Comment 11.

We compared these species-specific Malaysian export prices to the unaffiliated pulpwood suppliers' weighted-average prices for chipwood and resin sold to the SMG/APP forestry companies during the POI, and calculated a per cubic meter benefit for chipwood and resin. We then multiplied the volume of chipwood and resin pulpwood purchased by the SMG/APP CFS forestry companies, on a cubic meter basis, by the appropriate per cubic meter benefit.

We capped the quantity for each type of pulpwood (acacia and MTI) used in the LEB benefit calculation by the lower of the total quantity, by species, purchased by JK and Lontar during the POI (after deducting the harvest quantity used in the stumpage calculation) or the total quantity, by species, purchased by the SMG/APP CFS forestry companies from unaffiliated suppliers during the POI. We consider the application of the second cap appropriate because, based on the companies' pulpwood purchase and sales information, there is insufficient information to include in the benefit calculation any quantity beyond what the SMG/APP CFS forestry companies purchased from unaffiliated suppliers.

We then summed the benefit for each species. In addition, we made an adjustment to the benefit amount; however the information concerning this adjustment is business proprietary. Therefore, we have included a discussion of the adjustment in the Final Analysis Memo. We then divided this benefit by the sum of external sales values of the SMG/APP CFS pulp and paper producers. We have not included in the denominator any external sales by the SMG/APP CFS forestry companies because, just as with stumpage, we are capturing in our benefit calculation only pulpwood sold to the SMG/APP CFS pulp and paper companies. Furthermore, we have not included in this log export ban calculation any cross-owned forestry/logging companies' harvested pulpwood, since we have captured any benefit they receive from the log export ban in the stumpage benefit calculation. On this basis, we calculate a subsidy of 3.11 percent ad valorem for the respondent companies TK/PP.

### 3. Subsidized Funding for Reforestation (Hutan Tanaman Industri or HTI Program): "Zero Interest" Rate Loans

The GOI reported that "zero interest" rate loans were available to some holders of HTI licenses; such licenses are issued for harvesting timber from plantations. The GOI has reported that there are three types of plantations in Indonesia: (1) privately owned, (2) voluntary HTI joint ventures, and (3) compelled HTI joint ventures which implement transmigration policy. Of these three types of plantations, only HTI joint ventures could apply for zero-interest rate loans.

The GOI reported that the loaned amounts came from the DR Fund. The HTI joint venture could apply for zero-interest loans from the DR Fund for the establishment phase of the plantation. According to the GOI, loan amounts were payable to the joint venture in increments based on the amount of harvesting done each year and the total amount of the loan could not exceed 32.5 percent of the calculated plantation costs. The GOI required that the private party guarantee the loan repayment in full. In 2000, the GOI discontinued funding joint ventures through the DR Fund loan programs, although existing joint ventures which had previously obtained loans through the DR Fund would receive loan disbursements and would be required to make loan payments as required by loan agreements finalized before 2000.

The respondent companies reported and the Department verified that, of the cross-owned SMG/APP forestry companies, only KAL and FI received "zero interest" loans prior to 2000 that remained outstanding during the POI. These loans provide a financial contribution as described in section 771(5)(D)(i) of the Act, as a direct transfer of funds in the form of loans. The loans give rise to a benefit in the amount of the difference between the amount of interest the borrowers actually paid and the amount of interest the borrowers would have paid on a comparable commercial loan under section 771(5)(E)(ii) of the Act. The loan program is de jure specific within the meaning of section 771(5A)(D)(i) of the Act, because participation in the program is limited to HTI joint venture plantations. Therefore, we determine that these loans confer countervailable subsidies.



JOINT DECREE OF THE MINISTER OF FORESTRY

NO. 1132/KPTS-II/2001 AND THE MINISTER OF INDUSTRY AND TRADE

NO. 292/MP/PP/Kep/10/2001 DATED OCTOBER 8, 2001

THE DISCONTINUATION OF LOG/CHIP RAW MATERIAL EXPORTS

THE MINISTER OF FORESTRY AND

THE MINISTER OF INDUSTRY AND TRADE,

Considering :

- a. that policies on the export of logs/chip raw materials have been misused by illicit timber companies and illegal traders that threaten the conservation of forestry resources and the environment;
- b. that in this connection, it is necessary to stipulate a policy to put an end on the export of logs/chip raw materials.

In view of :

1. Law No. 5/1990 on the conservation of bio-natural resources and their ecosystem (Statute Book of 1990 No. 49, Supplement to Statute Book No. 3419);
2. Law No. 7/1994 on the ratification of Agreement Establishing The World Trade Organization (Statute Book of 1994 No. 57, Supplement to Statute Book No. 3564);
3. Law No. 10/1995 on customs (Statute Book of 1995 No. 75, Supplement to Statute Book No. 3612);
4. Law No. 41/1999 on forestry (Statute Book of 1999 No. 167, Supplement to Statute Book No. 3888);
5. Presidential Decree No. 228/M/2001 on the formation of the Mutual-Help Cabinet.

DECIDES :

To stipulate :

THE JOINT DECREE OF THE MINISTER OF FORESTRY AND THE MINISTER OF INDUSTRY AND TRADE ON THE DISCONTINUATION OF LOG/CHIP RAW MATERIAL EXPORTS

Article 1

- (1) The export of logs/chip raw materials from the whole territory of the Republic of Indonesia shall be stopped.
- (2) The stoppage as referred to in paragraph (1) shall be valid until the time limit stipulated later on.

Article 2

Referred to us :

- (1) Log shall be part of tree cut into a trunk or trunks excluding branch or twig, with a minimum diameter of 30 cm and with the length not limited, of all types of wood contained in headings number 4403.
  - (2) Chip raw material (BDS) shall be wood with a diameter of 29 cm or below and with the length not limited, of all types of wood contained in headings number 4403 up to 4404.
  - (3) Export shall be the act of releasing goods from the customs area.
  - (4) Log/chip raw materials exporter shall be corporate body already obtaining a recommendation of fulfilling special requirements to export logs/chip raw materials and notification on export plan.
- Article 3
- (1) All recommendation of fulfilling special requirements to export logs/chip raw materials issued by the Ministry of Forestry without notification on export plan issued by the Minister of Industry and Trade shall be declared null and void.
  - (2) All notifications on export plan issued by the Minister of Industry and Trade without L/C (Letter of Credit) from a foreign buyer shall be declared null and void.

Article 4

Log/chip raw material exporters that are already in possession of L/C from a foreign buyer, before the stipulation of this joint decree, shall :

- (1) report their export plan to the Ministry of Industry and Trade and the Minister of Forestry;
- (2) realize their export no later than October 31, 2001.

Article 5

Violation of Article 1 of this joint decree shall lead to the imposition of criminal sanction pursuant to Law No. 10/1995.

Article 6

This joint decree shall begin to take effect on the date of stipulation.

Stipulated in Jakarta

On October 8, 2001

THE MINISTER OF INDUSTRY AND TRADE

sgd.

RINI M.S. SOEWANDI

THE MINISTER OF FORESTRY

sgd.

MUHAMMAD PRAKOSA

Non-Confidential Attachment C-1.2.6



Non-Confidential Attachment C-13.1

81 FR 3110, January 20, 2016

## DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-023]

Certain Uncoated Paper From the People's Republic of China: Final  
Affirmative Countervailing Duty DeterminationAGENCY: Enforcement and Compliance, International Trade Administration,  
Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain uncoated paper (uncoated paper) from the People's Republic of China (PRC). For more information on the estimated subsidy rate, see the "Final Determination and Suspension of Liquidation" section of this notice. The period of investigation is January 1, 2014, through December 31, 2014.

DATES: Effective: January 20, 2016.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Joy Zhang, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1503 or (202) 482-1168, respectively.

## SUPPLEMENTARY INFORMATION:

## Background

The events that have occurred since the Department published the Preliminary Determination on June 29, 2015 and Notice of Correction on July 9, 2015,\1\ are discussed in the Issues and Decision Memorandum, which is hereby incorporated in this notice.\2\ This memorandum also details the changes we made since the Preliminary Determination to the subsidy rates calculated for the mandatory respondents and all other producers/exporters. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

\1\ See Certain Uncoated Paper From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination, 80 FR 36968 (June 29, 2015) (Preliminary Determination), and Certain Uncoated Paper From the People's Republic of China: Notice of Correction to Preliminary Affirmative

Countervailing Duty Determination, 80 FR 39409 (July 9, 2015)  
(Notice of Correction).

\2\ See Memorandum to Paul Piquado, ``Issues and Decision Memorandum for the Final Affirmative Countervailing Duty Determination in the Countervailing Duty Investigation of Certain Uncoated Paper from the People's Republic of China'' (January 8, 2016) (Issues and Decision Memorandum).

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#### Scope of the Investigation

The scope of the investigation covers uncoated paper. For a complete description of the scope of the investigation, see Appendix I.

#### Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum, dated concurrently with this notice. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice as Appendix II.

#### Use of Facts Otherwise Available, Including Adverse Inferences

As described in the Preliminary Determination, Shandong Sun Paper Industry Joint Stock Co., Ltd., and Sun Paper (Hong Kong) Co., Ltd. (collectively, Sun Paper Companies) and UPM (China) Co., Ltd. (UPM) each notified the Department that it would not participate in this investigation.\3\ Thus, for the final determination, we are basing the countervailing duty (CVD) rate for Sun Paper Companies and UPM on facts otherwise available, pursuant to sections 776(a)(2)(C) and (D) of the Tariff Act of 1930, as amended (the Act). Further, because Sun Paper Companies and UPM did not cooperate to the best of their ability in this investigation, we also determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. As adverse facts available (AFA), we have assigned Sun Paper Companies and UPM, each a rate of 185.25 percent. For a full discussion of this issue, see the Issues and Decision Memorandum.

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\3\ See Letter from Sun Paper Companies, ``Certain Uncoated Paper from the People's Republic of China--Withdrawal of Participation in Investigation,'' (April 8, 2015) (Sun Paper Companies Withdrawal Letter) and UPM's submission, ``Uncoated Paper From the People's Republic of China (C-570-023) Investigation; UPM (China) Co. Ltd.'s Letter Regarding Questionnaire Responses,'' (May 6, 2015) (UPM Withdrawal Letter).  
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#### Final Determination and Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for Asia Symbol (Guangdong) Paper Co., Ltd. (AS Guangdong), Asia Symbol (Shandong) Pulp & Paper Co., Ltd. (AS Shandong), Asia Symbol (Guangdong) Omya Minerals Co., Ltd. (AS Omya), and Greenpoint Global Trading (Macao Commercial Offshore) Limited (Greenpoint) (collectively, Asia Symbol Companies). Section



705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, we will determine an "all-others" rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. Where the rates for investigated companies are zero or de minimis, or based entirely on facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an "all-others" rate using "any reasonable method." As discussed above, we determined Sun Paper Companies and UPM rates based entirely on AFA in accordance with sections 776(a) and (b) of the Act. Therefore, we used the rate calculated for Asia Symbol Companies as the "all-others" rate. We intend to disclose to parties the calculations performed in this proceeding within five days of the public announcement of this final determination in accordance with 19 CFR 351.224(b).

We determine the total estimated net countervailable subsidy rates to be:

Company	Subsidy rate
Asia Symbol (Guangdong) Paper Co., Ltd. (AS Guangdong), Asia Symbol (Shandong) Pulp & Paper Co., Ltd. (AS Shandong), Asia Symbol (Guangdong) Omya Minerals Co., Ltd. (AS Omya), and Greenpoint Global Trading (Macao Commercial Offshore) Limited (Greenpoint) (collectively, Asia Symbol Companies).	7.23 percent.
Shandong Sun Paper Industry Joint Stock Co., Ltd. (Shandong Sun Paper), and Sun Paper (Hong Kong) Co., Ltd. (Sun Paper HK) (collectively, Sun Paper Companies).	176.75 percent.
UPM (China) Co. Ltd. (UPM).....	176.75 percent.
All-Others.....	7.23 percent.

As a result of our affirmative Preliminary Determination, pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise from the PRC which were entered or withdrawn from warehouse, for consumption on or after June 29, 2015, the date of the publication of the Preliminary Determination in the Federal Register.

In accordance with section 703(d) of the Act, we later issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after October 27, 2015, but to continue the suspension of liquidation of all entries from June 29, 2015, through October 26, 2015, as appropriate.

We will issue a CVD order and reinstate the suspension of liquidation in accordance with our final determination and under section 706(a) of the Act if the United States International Trade Commission (ITC) issues a final affirmative injury determination, and we will instruct CBP to require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat

of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded.

#### International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our final determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

#### Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this

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

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: January 8, 2016.

Paul Piquado,  
Assistant Secretary for Enforcement and Compliance.

#### Appendix I--Scope of the Investigation

The merchandise covered by the investigation includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness level \4\ of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

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\4\ One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade. ``Colored paper'' as used in this scope definition means a paper with a hue other than white that reflects one of the primary colors of magenta, yellow, and cyan (red, yellow, and blue) or a combination of such primary colors.

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Certain Uncoated Paper includes (a) uncoated free sheet paper

that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope are (1) paper printed with final content of printed text or graphics and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered "printed with final content" where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

## Appendix II--List of Topics Discussed in the Issues and Decision Memorandum

### I. Summary

### II. Background

### III. Scope of the Investigation

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

### V. Subsidies Valuation

### VI. Benchmarks and Discount Rates

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

### VIII. Analysis of Programs

### IX. Analysis of Comments

Comment 1: Whether To Reverse the Department's Government Authorities' Determination

Comment 2: Whether To Reverse the Department's Specificity Determination for the Provision of Calcium Carbonate and Caustic Soda for Less Than Adequate Remuneration (LTAR)

Comment 3: Whether To Reverse the Department's Market Distortion Determination

Comment 4: Whether To Exclude Policy Loan Observation 95 From the Final Determination Calculations

Comment 5: Whether To Include Surcharges in International Freight Calculations for Calcium Carbonate and Caustic Soda Benchmarks

Comment 6: Whether To Incorporate the Minor Corrections Into the Final Calculations

Comment 7: Whether To Revise the Provision of Coal for Less Than Adequate Remuneration Benchmark

Comment 8: Whether the Provision of Water for LTAR Confers a Benefit

Comment 9: Whether the Provision of Land to State-Owned Enterprises (SOEs) for LTAR is Countervailable

### X. Recommendation

[FR Doc. 2016-01013 Filed 1-19-16; 8:45 am]  
BILLING CODE 3510-DS-P



UNITED STATES DEPARTMENT OF COMMERCE  
International Trade Administration  
Washington, DC 20503

C-570-023

Investigation

PUBLIC DOCUMENT

DOI: 01/01/2014 - 12/31/2014

0111: PT

DATE: January 8, 2016

MEMORANDUM TO:

Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM:

Christina Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT:

Issues and Decision Memorandum for the Final Affirmative  
Countervailing Duty Determination in the Countervailing Duty  
Investigation of Certain Uncoated Paper from the People's  
Republic of China

I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to the producers and exporters of certain uncoated paper (uncoated paper) from the People's Republic of China (PRC), as provided in section 703 of the Tariff Act of 1930, as amended (the Act). The mandatory respondents in this investigation are: UPM Changshu (UPM); Shandong Sun Paper Industry Joint Stock Co., Ltd. and Sun Paper (Hong Kong) Co., Ltd. (collectively, Sun Paper Companies); Asia Symbol (Guangdong) Paper Co., Ltd. (AS Guangdong), Asia Symbol (Guangdong) Omya Minerals Co., Ltd. (AS Omya), Asia Symbol (Shandong) Pulp & Paper Co. (AS Shandong), and Greenpoint Global Trading (Malacca Commercial Offshore) Limited (Greenpoint) (collectively, the Asia Symbol Companies); and the Government of the People's Republic of China (GOC). Petitioners are United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; Donnar Corporation; Finch Paper LLC; P.J.L. Charlier Company; and Packaging Corporation of America (collectively, Petitioners). Below is the complete list of issues in this investigation for which we received comments from interested parties:

- Comment 1: Whether to Reverse the Department's Government "Authorities" Determination  
Comment 2: Whether to Reverse the Department's Specifically Determination for the Provision of Calcium Carbonate and Caustic Soda for Less Than Adequate Remuneration (LTAR)  
Comment 3: Whether to Reverse the Department's Market Distortion Determination  
Comment 4: Whether to Exclude Policy Loan Observation 95 from the Final Determination Calculations



Comment 5: Whether to Include Surcharges in International Freight Calculations for Calcium Carbonate and Caustic Soda Benchmarks

Comment 6: Whether to Incorporate the Minor Corrections into the Final Calculations

Comment 7: Whether to Reverse the Provision of Coal for Less Than Adequate Remuneration Benchmark

Comment 8: Whether the Provision of Water for LTAR Confers a Benefit

Comment 9: Whether the Provision of Land to State-owned Enterprises (SOEs) for LTAR is Countervailable

II. BACKGROUND

A. Case History

On June 29, and July 9, 2015, we published the Preliminary Determination for this investigation and Notice of Correction, respectively.<sup>1</sup> We conducted verifications of the questionnaire responses submitted by the Asia Symbol Companies, between August 26 and September 8, 2015.<sup>2</sup> On December 1, 2015, we issued a post-preliminary analysis memorandum.<sup>3</sup> We received case briefs from Petitioners, the Asia Symbol Companies, and the GOC on December 8, 2015. We received rebuttal briefs from Petitioners and the Asia Symbol Companies on December 14, 2015. On December 15, 2015, parties withdrew their requests for a public hearing.<sup>4</sup>

The Department is issuing a scope comments decision memorandum for the final determinations of the antidumping (AD) and countervailing duty (CVD) investigations of certain uncoated paper, which is incorporated by reference in, and hereby adopted, by this final determination.<sup>5</sup>

<sup>1</sup> See Certain Uncoated Paper from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Allegement of Final Determination With Final Antidumping Duty Determination, 80 FR 36968 (June 29, 2015) (Preliminary Determination) and accompanying Decision Memorandum (Preliminary Determination Memorandum) and Certain Uncoated Paper from the People's Republic of China: Notice of Correction to Preliminary Affirmative Countervailing Duty Determination, 80 FR 39409 (July 9, 2015) (Notice of Correction).

<sup>2</sup> See Memorandum to the File, "Verification of the Questionnaire Responses of Asia Symbol Companies: Countervailing Duty Investigation of Uncoated Paper from the People's Republic of China," (October 16, 2015) (Asia Symbol Companies Verification Report); "Countervailing Duty Investigation of Uncoated Paper from the People's Republic of China: Verification of LTAR U.S. Customer of Greenpoint Global Trading (Malacca Commercial Offshore) Ltd.," (October 16, 2015) (U.S. Verification Report).

<sup>3</sup> See Memorandum to the File, "Countervailing Duty Determination in the Countervailing Duty Investigation of Certain Uncoated Paper from the People's Republic of China: Post-Preliminary Analysis Memorandum," (November 30, 2015) (Post-Preliminary Determination).

<sup>4</sup> See Letter from Petitioners, "Certain Uncoated Paper from the People's Republic of China: Petitioners' Withdrawal of Hearing Request," (December 15, 2015) and Letter from Asia Symbol Companies, "Certain Uncoated Paper from the People's Republic of China: Withdrawal of Request for Hearing - Asia Symbol," (December 15, 2015).

<sup>5</sup> See the Department's memorandum to the file titled, "Less-Than-Fair-Value Investigations of Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal, and Countervailing Duty Investigations of Certain Uncoated Paper from the People's Republic of China and Indonesia: Scope Comments Decision Memorandum for the Final Determinations," (January 8, 2016) (Final Scope Decision Memorandum).

B. Period of Investigation

The period of investigation (POI) is January 1, 2014, through December 31, 2014.

III. SCOPE OF THE INVESTIGATION

The merchandise covered by the investigation includes uncoated paper in sheet form, weighing at least 40 grams per square meter but not more than 150 grams per square meter, that either is a white paper with a GfE brightness level<sup>6</sup> of 85 or higher or is a colored paper, whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched, irrespective of the smoothness of the surface, and irrespective of dimensions (Certain Uncoated Paper).

Certain Uncoated Paper includes (a) uncoated free sheet paper that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope are (1) paper printed with final content of printed text or graphics and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered "printed with final content" where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

<sup>6</sup> One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GfE Reflectance Scale, which measures the reflection of light off a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade. "Colored paper" as used in this scope definition means a paper with a hue other than white that reflects one of the primary colors of magenta, yellow, and cyan (red, yellow, and blue) or a combination of such primary colors.

IV. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM THE PRC

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.<sup>7</sup> In CFS from the PRC, the Department found that:

... given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.<sup>8</sup>

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.<sup>9</sup> Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that the Department has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.<sup>10</sup> The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding. If Additionally, for the reasons stated in CWP from the PRC, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of CVD investigations.<sup>12</sup>

V. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.<sup>13</sup> The Department finds the AUL in this proceeding to be 13-years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.<sup>14</sup> The Department notified the respondents of the 13-year AUL in the initial questionnaire and requested data accordingly.<sup>15</sup> No party in this proceeding disputes this allocation period.

<sup>7</sup> See Coated Free Sheet Paper from the People's Republic of China, Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) (CFS from the PRC), and accompanying Issues and Decision Memorandum (IDM) at Comment 6.

<sup>8</sup> Id.

<sup>9</sup> See Circular Welded Carbon Steel Line Pipe from the People's Republic of China, Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008) (CWP from the PRC), and accompanying IDM at Comment 16.

<sup>10</sup> Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

<sup>11</sup> See Public Law 112-99, 126 Stat. 265 §1(b).

<sup>12</sup> See CWP from the PRC and accompanying IDM at Comment 2.

<sup>13</sup> See 19 CFR 351.524(b).

<sup>14</sup> See U.S. Internal Revenue Service Publication 946 (2013), "Appendix B – Table of Class Lives and Recovery Periods," submitted in the Petition at Volume VII, Exhibit VII-1.

<sup>15</sup> See Letter from the Department to the CDOC regarding "Initial Questionnaire" (March 24, 2013) (Department's Initial Questionnaire) at "Section II – Program Specific Questions."

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

#### B. Attribution of Subsidies

**Cross Ownership:** In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

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 section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The CVD Preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the CVD Preamble, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.<sup>16</sup>

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>17</sup>

#### Asia Symbol Companies

During the POI, AS Guangdong, AS Shandong, and AS Onyia were directly or indirectly, partially or wholly owned by the same shareholders. Under 19 CFR 351.525(b)(6)(vi), cross-ownership exists between corporations if one corporation can use or direct the individual assets of the other corporation(s) in essentially the same way it uses its own. This section of the Department's regulations 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. Based on the information supplied by the Asia Symbol Companies that indicated AS Guangdong, AS Shandong, and AS Onyia are owned by the same shareholder parent, we determine that AS Guangdong, AS Shandong, and AS Onyia are cross-owned under 19 CFR 351.525(b)(6)(vi). AS Guangdong is a producer of the subject merchandise and AS Shandong and AS Onyia are input producers. Consequently, the subsidies received by these companies are attributed according to the rules established in 19 CFR 351.525(b)(6)(i) and (iv), respectively.

#### C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, e.g., to the respondent's export or total sales. In the sections below, we describe the denominators we used to calculate the commercially available subsidy rates for the various subsidy programs.

In its response, the Asia Symbol Companies reported that, in addition to domestic sales, they produce uncoated paper on a toll basis to a third-country trading company that subsequently sells the merchandise to foreign markets.<sup>18</sup> In our first supplemental questionnaire, we requested the Asia Symbol Companies to provide additional information concerning its tolled sales. In particular, we sought additional information concerning the mark-up charged by the third-country trading company.<sup>19</sup> In its response, the Asia Symbol Companies reported the tolfee for each respective company did not charge a mark-up on the ultimate export price of merchandise produced by AS Guangdong or AS Shandong because there was no sale between the companies and their toltees.<sup>20</sup> Based on the information provided by the Asia Symbol Companies, we determine that the third-country trading company did not charge a mark-up on the merchandise produced by the Asia Symbol Companies. As a result, we have determined to calculate the sales denominator used in our subsidy calculation based on the sales values attributable to the Asia Symbol Companies.

<sup>16</sup> See the Asia Symbol Companies' submission, "Certain Uncoated Paper from the People's Republic of China: Reporting Companies, Affiliation Data and Response to Additional Questions - Asia Symbol (Guangdong) Paper Co., Ltd.," (April 24, 2015) (Asia Symbol Companies' Affiliation Response).

<sup>17</sup> See Asia Symbol Companies' initial questionnaire response (IQR) (May 20, 2015) at AS Guangdong IQR at 10-12 and AS Guangdong's first supplemental questionnaire response (ISQR) (June 12, 2015) at 1-3; see also AS Shandong IQR at 10-13 and AS Shandong ISQR (June 15, 2015) at 1-5.

<sup>18</sup> See the Department's first supplemental questionnaire to the Asia Symbol Companies (June 1, 2015) (AS ISQR) at 3-4.

<sup>19</sup> See AS Shandong ISQR at 4 and AS Guangdong ISQR at 2 and 3. See also Circular Wielded Argentine Shingles Pressure Line from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 4976 (January 28, 2009) (CWSLIP from the PRC) and accompanying IDM at 11 and 12 for a discussion of the criteria to adjust sales denominator.

<sup>16</sup> See *Counterclaiming Duties*, 63 FR 65348, 65401 (November 25, 1998) (CVD Preamble).

<sup>17</sup> See *Estimotech, Inc. v. Fed. de Chile*, 54 F. Supp. 2d 593, 600-604 (CIT, 2001).

## VI. BENCHMARKS AND DISCOUNT RATES

The Department is investigating loans received by the respondent from PRC policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.<sup>22</sup> The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

### A. Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark.<sup>23</sup> If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national average interest rate for comparable commercial loans."<sup>24</sup>

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in CFS from the PRC, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.<sup>25</sup> Because of this, any loans received by the respondents from private PRC or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, 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 PRC 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 *Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.<sup>26</sup>

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in CFS from the PRC,<sup>27</sup> and more recently updated in *Thermal Paper from the PRC*.<sup>28</sup> Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As

<sup>22</sup> See 19 CFR 351.524(b)(1).

<sup>23</sup> See 19 CFR 351.505(a)(3)(i).

<sup>24</sup> See 19 CFR 351.505(a)(3)(ii).

<sup>25</sup> See CFS from the PRC, and accompanying IDM at Comment 19 pages 62 to 72; see also Memorandum to the file from Patricia Tran, International Trade Compliance Analyst, "Countervailing Duty Investigation of Certain Uncoated Paper from the People's Republic of China: Banking Memorandum," dated June 22, 2015 (Banking Memorandum).

<sup>26</sup> See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination, Certain Softwood Lumber Products from Canada, 67 FR 13545 (April 2, 2002) (Softwood Lumber Determination), and accompanying IDM at "Analysis of Programs, Private-Sector Subsidies Determined to Confer Subsidies, Benefit."

<sup>27</sup> See CFS from the PRC, and accompanying IDM at Comment 10.

<sup>28</sup> See *Landscape Thermal Paper from the People's Republic of China*, Final Affirmative Countervailing Duty Determination, 74 FR 57323 (October 2, 2009) (Landscape Paper from the PRC) and accompanying IDM at 8-10.

explained in CFS from the PRC, this pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.<sup>29</sup> Beginning in 2010, however, the PRC is in the upper-middle income category and remained there from 2011 to 2013.<sup>30</sup> Accordingly, as explained further below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2013. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.<sup>31</sup>

After the Department identifies the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions.<sup>32</sup> The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.

In each of the years from 2001-2009 and 2011-2013, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group.<sup>33</sup> This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since CFS from the PRC to compute the benchmarks for the years from 2001-2009 and 2011-2013. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries. Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010-2013 and "lower middle income" for 2001-2009.<sup>34</sup> First, we did not include those economies that the Department considered to be non-market economies for AID 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

<sup>29</sup> See World Bank Country Classification, <http://data.worldbank.org/WorldBank/Country-Classification>; see also Memorandum to the file, "Countervailing Duty Investigation on Uncoated Paper from the People's Republic of China: Final Determination Calculations for the Asia Symbol Companies," (January 8, 2016) (Final Calculation Memorandum).

<sup>30</sup> See World Bank Country Classification.

<sup>31</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China*, Preliminary Countervailing Duty Determination, 78 FR 33346 (June 4, 2013) and accompanying Preliminary Decision Memorandum (DO1) at "Benchmarks and Discount Rates," unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China*, Final Affirmative Countervailing Duty Determination, 78 FR 50391 (August 19, 2013).

<sup>32</sup> For this final determination, we have applied the 2013 short-term benchmark rate for situations that require a 2014 short-term benchmark.

<sup>33</sup> See Memorandum to the file from Patricia Tran, International Trade Compliance Analyst, "Countervailing Duty Investigation of Certain Uncoated Paper from the People's Republic of China: Interest Rate Benchmark Memorandum," dated June 22, 2015 (Interest Rate Benchmark Memorandum).

<sup>34</sup> *Id.*



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 Iceland and Timor L'Estie are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.<sup>35</sup> Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.<sup>36</sup>

#### B. Long-Term RMB-Denominated Loans

The lending rates reported in the IPS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.<sup>37</sup>

In Citric Acid PRC Investigation, the Department revised this methodology by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where "n" equals or approximates the number of years of the term of the loan in question.<sup>38</sup> Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.<sup>39</sup>

#### C. Foreign Currency-Denominated Loans

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

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

the term of the loan in question. The resulting inflation-adjusted benchmark lending rates are provided in our Interest Rate Benchmark Memorandum.<sup>40</sup>

#### D. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.<sup>41</sup> The interest rate benchmarks and discount rates used in our final calculations are provided in the Final Calculation Memorandum.<sup>42</sup>

### VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Tariff Act of 1930, as amended (the Act) provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) 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 (c) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(f) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.<sup>43</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.<sup>44</sup>

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the

<sup>35</sup> See Interest Rate Benchmark Memorandum.

<sup>36</sup> See Final Calculation Memorandum.

<sup>37</sup> Id.

<sup>38</sup> See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretive rule, in which it announced applicability dates for each amendment to the Act, except for amendments to section 771(f) of the Act, which relate to determinations of material injury by the International Trade Commission. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Enacted by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notices*). The text of the TPEA may be found at <https://www.congress.gov/bills/114/commss/summary/bills/114/295/summary>.

<sup>39</sup> See Final Calculation Memorandum.

Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>45</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.<sup>46</sup>

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>47</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>48</sup> Further, and under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.<sup>49</sup>

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.<sup>50</sup> The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.<sup>51</sup>

#### A. GOC – Calcium Carbonate and Coal Markets Are Distorted by the Significant Government Presence

The Department requested the GOC to provide information concerning calcium carbonate, caustic soda, and coal in the PRC for the POI and the previous two years. Specifically, we requested the GOC to provide the following information:<sup>52</sup>

- a. The total number of producers.
- b. The total volume and value of Chinese domestic consumption of {input} and the total volume and value of Chinese domestic production of {input}.
- c. The percentage of domestic consumption accounted for by domestic production.
- d. The total volume and value of imports of {input}.

<sup>45</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(i)(1)(B).

<sup>46</sup> See also 19 CFR 351.308(e).

<sup>47</sup> See also 19 CFR 351.308(d).

<sup>48</sup> See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. No. 103-316, vol. 1 at 870 (1994).

<sup>49</sup> See section 776(c)(2) of the Act; TPEA, section 502(i).

<sup>50</sup> See section 776(d)(1) of the Act; TPEA, section 502(i).

<sup>51</sup> See section 776(d)(3) of the Act; TPEA, section 502(i).

- e. The total volume and value of domestic production that is accounted for by companies in which the Government maintains an ownership or management interest either directly or through other Government entities.
- f. A discussion of what laws, plans or policies address the pricing of {input}, the levels of production of {input}, the importation or exportation of {input}, or the development of {input} capacity. Please state which, if any, central and sub-central level industrial policies pertain to the {input} industry.

The Department requests such information to determine the government's role in the relevant input market and whether the GOC is the predominant provider of these inputs in the PRC and whether its significant presence in the market distorts all domestic transaction prices. The GOC stated that it does not maintain records on calcium carbonate and coal, rendering the identification of producers in which the GOC maintains an ownership or management interest either directly or through other government entities extremely difficult.<sup>53</sup> The GOC, with information from the industry association, provided the total volume and value of domestic consumption and production of calcium carbonate and coal.<sup>54</sup> The GOC, with information from the General Administration of Customs of the People's Republic of China (Customs) and the National Bureau of Statistics (SBS), provided the total volume and value of domestic consumption, production, and imports of caustic soda.<sup>55</sup> The Department issued a supplemental questionnaire requesting the GOC to provide the number of input producers in which the Government maintains an ownership or management interest.<sup>56</sup> The GOC responded that it, "does not maintain information regarding the number or ownership," of calcium carbonate and coal producers.<sup>57</sup> In a previous investigation,<sup>58</sup> however, the Department was able to confirm at verification that the GOC maintains two databases at the State Administration of Industry and Commerce (SAIC): one is the business registration database, showing the most up-to-date company information; while a second system, "ARCIHIVE," houses electronic copies of documents such as business licenses, annual reports, capital verification reports, etc. See Comment 3. In the instant investigation, the GOC provided ownership information from SAIC for the Asia Symbol Companies' calcium carbonate and coal suppliers.<sup>59</sup> The GOC is able to utilize the SAIC database which indicates the type of enterprise, e.g., solely-state owned, in conjunction with information from the industry association to determine the number and ownership of calcium carbonate and coal producers in which the government maintains an ownership or management interest either directly or through other government entities.<sup>60</sup> On this

<sup>53</sup> See GOC's initial questionnaire response (May 21, 2015) (GOC IQR) at 57 and 88; GOC's 1st supplemental questionnaire response (June 15, 2015) (GOC 1SQR) at 4, 5, and 16.

<sup>54</sup> Id. at 56 and 87.

<sup>55</sup> Id. at 73.

<sup>56</sup> See the Department's 1SQ to the GOC (June 1, 2015) at 4, 6, and 9.

<sup>57</sup> See GOC 1SQR at 4 and 16.

<sup>58</sup> See Memorandum to the file from Patricia M. Tran, "Additional Documents for the Preliminary Determination," (June 22, 2015) (Additional Documents for Prelim Memorandum) at Attachment 1, which contains Memorandum to Susan Kulkarni, Director, AD/CVD Operations, Office 1, from Shane Subler and David Neftci, International Trade Compliance Analysts, "Countervailing Duty Investigation: Certain Oil Country Tubular Goods from the People's Republic of China; Verification Report of the Jiangsu Province State Administration of Industry and Commerce and Tianjin Municipality State Administration of Industry and Commerce," (October 29, 2009) (OCCITG PRC Investigation Verification Report).

<sup>59</sup> See GOC IQR at Exhibits 34 and 40.

<sup>60</sup> Id. at 56, 87 and Exhibit 34.

basis, we determine that the GOC has an electronic system available to it to gather industry specific information the Department requested.<sup>61</sup>

Therefore, we determine that the GOC withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making our final determination.<sup>62</sup> Moreover, we determine that based on this failure to provide us with the requested information, the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available.<sup>63</sup> In drawing an adverse inference, we find that PRC prices from actual transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC.<sup>64</sup> Therefore, we find that the use of an external benchmark is warranted for calculating the benefit for the provision of calcium carbonate and coal for less than adequate remuneration (L-TAR).

For details regarding the remaining elements of our analysis, see the "Provision of Calcium Carbonate and Coal for L-TAR" section below and Comment 3.

**B. GOC – Provision of Calcium Carbonate and Caustic Soda is Specific to the Paper Industry in China**

The Department requested the GOC to provide a list of industries in the PRC that purchase calcium carbonate and caustic soda directly and to provide the amounts (volume and value) purchased by each of the industries, including the paper industry.<sup>65</sup> The Department requests such information for purposes of its de facto specificity analysis. In the narrative section of its questionnaire response, the GOC, citing data from an industry association, submitted information listing the relative consumption, by industry, of calcium carbonate and caustic soda.<sup>66</sup> In a supplemental questionnaire, the Department requested the GOC to substantiate the information in its narrative response, namely to provide volume and value data corresponding to each of the industries that consumed calcium carbonate and caustic soda.<sup>67</sup> Rather than provide the requested information, the GOC indicated that it based the industry consumption data in its initial response on the "estimates" of "experienced experts" of each respective industry.<sup>68</sup> See Comment 2 below for further discussion.

We determine that the "estimated" consumption information submitted by the GOC, which lacks supporting documentation, is not verifiable and therefore is unreliable.<sup>69</sup> We further determine that the GOC has withheld necessary information with regards to the volume and value data corresponding to each of the industries that consumed calcium carbonate and caustic soda that was requested of it and, thus, that the Department must rely on "facts available" in making our

<sup>61</sup> See Additional Documents for Prelim Memorandum at Attachment H.

<sup>62</sup> See section 776(b)(2)(A) of the Act.

<sup>63</sup> See section 776(b) of the Act.

<sup>64</sup> See CVD Exemption, 63 FR 65148, 65177.

<sup>65</sup> See Department's IQ at 11-8, 11-10, and 11-11.

<sup>66</sup> See GOC IQR at 59 and 76.

<sup>67</sup> See Department's ISQ to the GOC (June 1, 2015) at 3, 4, and 6.

<sup>68</sup> See GOC ISQR at 2 and 9.

<sup>69</sup> *Id.*

final determination.<sup>70</sup> Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information that corroborates the industry consumption information contained in the narrative section of its initial questionnaire response. Consequently, for purposes of the determination, we find that an adverse inference is warranted in the application of facts available.<sup>71</sup> In drawing an adverse inference, we find that the GOC's provision of calcium carbonate and caustic soda to paper producers is specific within the meaning of section 771(5A) of the Act. The Department's determination that the subsidies under these programs are specific is supported by the Department's determinations regarding the GOC's provision of calcium carbonate and caustic soda for L-TAR in 2011 Citric Acid Review<sup>72</sup> and 2012 Citric Acid Review.<sup>73</sup>

For details regarding the remaining elements of our analysis, see the "Provision of Calcium Carbonate and Caustic Soda for L-TAR" section below and Comment 1.

**C. GOC – Certain Input Providers Are GOC Authorities**

In the initial questionnaire, we requested ownership information from the GOC about the companies that produced calcium carbonate, caustic soda, and coal purchased by the Asia Symbol Companies.<sup>74</sup> We notified the GOC that, in accordance with the analysis contained in the Public Body Memorandum placed on the record of this investigation,<sup>75</sup> the Department generally treats producers that are majority owned by the government or a government entity as controlled by the government and, hence, as "authorities" within the meaning of section 771(5)(B) of the Act. However, with regard to those majority government-owned companies that the GOC argues are not "authorities," and for each producer that is not majority owned by

<sup>70</sup> See sections 776(d)(1) and 776(d)(2)(A) of the Act.

<sup>71</sup> See section 776(b) of the Act.

<sup>72</sup> See Citric Acid and Certain Chinese Sales From the People's Republic of China, Final Results of Countervailing Duty Administrative Review, 2011, 79 FR 108 (January 2, 2014) (2011 Citric Acid Review), and accompanying IDMI at Comment 4.

<sup>73</sup> See Citric Acid and Certain Chinese Sales From the People's Republic of China, Final Results of Countervailing Duty Administrative Review, 2012, 79 FR 78799 (December 31, 2014) (2012 Citric Acid Review), and accompanying IDMI at Comment 5A.

<sup>74</sup> See Department's IQ at 11-7, 11-10, and 11-14.

<sup>75</sup> See Memorandum to the File from Patricia M. Finn, "Additional Documents for the Preliminary Determination," dated June 22, 2015 (Additional Documents Memorandum), which includes Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D. McInerney, Chief Counsel for Import Administration, from Shanna Bibb, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "Section 729 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe, Light-Walled Rectangular Pipe and Tube, Laminated Woven Sacks, and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DSR79," dated May 18, 2012 (Public Body Memorandum), and its amendment, Memorandum for Paul Piquado, Assistant Secretary for Import Administration, through Lynn Fischer Fox, Deputy Assistant Secretary for AD/CVD Policy and Negotiation, Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, and John D. McInerney, Chief Counsel for Import Administration, from Shanna Bibb, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be 'public bodies' within the context of a countervailing duty investigation," dated May 18, 2012 (CCP Memorandum).

the government, we instructed the GOC to answer all questions in the "Information Regarding Input Producers in the PRC" Appendix (Input Producer Appendix). For each producer that the GOC claimed was privately owned by individuals during the POI, we requested identification of the owners, members of the board of directors, or managers of the producers who were also government or CCP officials or representatives during the POI.

The GOC responded that the Asia Symbol Companies purchased caustic soda from six producers, calcium carbonate from seven producers, and coal from four producers. With regard to eight producers, the GOC did not challenge the Department's "authority" practice and analysis for enterprises that are majority owned by the government or a government entity.<sup>76</sup> The GOC attempted to provide ownership information for five producers, wholly or partially owned by Chinese individuals or entities. However, the GOC failed to respond to section 3 of the Input Producer Appendix regarding the presence of Chinese Communist Party (CCP) officials and organizations within those companies.<sup>77</sup> Instead, the GOC stated that the Department's CCP questions are not relevant to the investigation of the L/TAR program and that, as a matter of PRC law, the government cannot interfere in the management and operation of the suppliers of raw materials.<sup>78</sup> The GOC explained its view that the CCP, the People's Congress, and the Chinese People's Political Consultative Conference are not governmental bodies.<sup>79</sup> The GOC also stated that "because the 9 entities are not governmental bodies, the GOC cannot require them to provide the requested information."<sup>80</sup> Furthermore, the GOC stated that "there is no central informational database to search for the requested information and the industry and commerce administration does not require companies to provide such information."<sup>81</sup> In the ISQ, we asked the GOC to provide a response to those questions in section 3 of the Input Producer Appendix, which it did not answer in the initial questionnaire response.<sup>82</sup> In its ISQR, the GOC reiterated its initial questionnaire response, stating that "the nine entities in this question are not governmental bodies."<sup>83</sup>

Regarding the GOC's objection to the Department's questions about the role of CCP officials and organizations in the management and operations of raw material suppliers, we have explained our understanding of the CCP's involvement in the PRC's economic and political structure in a past proceeding.<sup>84</sup> The Department has previously determined that "available information and record evidence indicates that the CCP meets the definition of the term 'government' . . . for the limited purpose of applying the U.S. CVD law to China."<sup>85</sup> Additionally, publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in the

company's affairs.<sup>86</sup> With regard to the GOC's claim that Chinese law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.<sup>87</sup> The GOC also claims that government and CCP officials are not eligible to hold positions in enterprises citing to *Company Law* and the *Civil Servant Law*.<sup>88</sup> The GOC's argument, however, is contradicted by past Department findings that CCP officials can, in fact, serve as owners, members of the board of directors, or senior managers of companies.<sup>89</sup> More broadly, the Department has found that, even in non-state-owned enterprises, "CCP primary organizations . . . ensure these entities 'carry out social responsibilities,' [and] maintain and implement the Party's (i.e., the government's) line and principles."<sup>90</sup>

Thus, the Department finds, as it has in other PRC CVD proceedings,<sup>91</sup> that the information requested regarding the role of CCP officials and CCP committees in the management and operations of the calcium carbonate and caustic soda producers, and in the management and operations of the producers' owners, is necessary to our determination of whether the producer is an authority within the meaning of section 771(5)(B) of the Act.

Because the GOC did not respond to the Input Producer Appendix for each producer that is not majority-owned by the government, we determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in conducting our final analysis of the calcium carbonate and caustic soda producers.<sup>92</sup> Moreover, we determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our requests for information. By stating that the requested information is not relevant, the GOC has placed itself in the position of the Department, and only the Department can determine what is relevant to this investigation.<sup>93</sup> Furthermore, by stating that it

<sup>76</sup> *Id.*, at Public Body Memorandum at 35-36 and sources cited therein.

<sup>77</sup> See Certain Semisolid Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China, *Final Affirmative Determination*, 75 FR 57494 (September 21, 2010), and the accompanying IDM at 16.

<sup>78</sup> See GOC IQR at Exhibit 26 and 27.

<sup>79</sup> See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Determination*, 75 FR 28557 (May 21, 2010) (GCC Strand from the PRC) and accompanying IDM at Comment 8 ("[I]n the instant investigation, the information on the record indicates that certain company officials are members of the Communist Party and National Party Conference as well as members of certain town, municipal, and provincial level legislative bodies"). See also, *Chloric Acid and Certain Chloric Salts: Final Results of Countervailing Duty Administrative Review*, 2013, 80 FR 77318 (December 14, 2015) (2013 Chloric Acid Review), and *Danone Shanghai Steel Sinks From the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission in Part*, 2012-2013, 80 FR 69638 (November 10, 2015).

<sup>80</sup> See 2012 Chloric Acid Review and accompanying IDM at Comment 1.

<sup>81</sup> See, e.g., 2012 Chloric Acid Review.

<sup>82</sup> See *Disputed Comment*, S.H.A. v. United States, 628 F. Supp. 198, 205 (CIT 1986) (stating that "[i]f Commerce, not the respondent, then determines what information is to be provided"), The Court in *Asahi* criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department's decision, and for claiming that submitting such information would be "an unreasonable and unnecessary burden on the company." *Id.* See also *Essex Steel Ltd. v. United States*, 721 F. Supp. 241 (285, 1298-99) (CIT 2010) (stating that "[i]f regardless of whether Essar declined the license information relevant, it nonetheless should have produced it [in] the event that Commerce reached a different conclusion," and that "Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin"); *NSK Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is

is unable to obtain the information because in its view the CCP is not the government, the GOC is substantially non-responsive. The GOC would have the Department reach its determination on the role of the CCP based solely on the unsupported, conclusory statements of the GOC. The Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be relevant, as documented in the CCP Memorandum placed on the record of this review, because public information suggests that the CCP exerts significant control over the activities of enterprises in the PRC, and that the CCP is part of the governing structure of the PRC.<sup>94</sup> As this constitutes a failure to cooperate to the best of its ability, we find that an adverse inference is warranted in the application of facts available.<sup>95</sup> As AFA, we infer that CCP officials are present as managers or directors of these five producers, and, because the CCP is part of the governing structure in the PRC, we find that the GOC uses these five producers as instrumentalities to effectuate its policy goals.<sup>96</sup> Accordingly, we determine that these five producers (four calcium carbonate producers and one caustic soda producer) are "authorities" within the meaning of section 771(5)(B) of the Act. See also Comment 1.

#### D. GOC – Other Subsidies

In the initial questionnaire we instructed the Asia Symbol Companies and the GOC to coordinate with each other and to report to the Department any other forms of government assistance provided to the Asia Symbol Companies.<sup>97</sup> In response, the Asia Symbol Companies, referencing their financial statements, self-reported that they received potentially countervailable subsidies in the form of government provided grants.<sup>98</sup> Meanwhile, the GOC stated that pursuant to Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures (the SCM) the Department may not initiate an investigation of a subsidy program based on a "simple assertion" that is "unsubstantiated by relevant evidence." It further stated that it was therefore premature to answer questions concerning the concerning the bestowal of any additional forms of assistance.<sup>99</sup> In a supplemental questionnaire, we requested the GOC to provide information pertaining to the grants, i.e., laws and regulations relating to the programs, number of companies that were approved for assistance, and total number of companies that applied for, but were denied, assistance under this program.<sup>100</sup> The GOC's supplemental response lacked the information necessary to conduct an analysis for de jure or de facto specificity under section 771(5A) of the Act. The GOC failed to provide information to determine de jure specificity, i.e., legislation, and de facto specificity, i.e., the total amount of assistance approved for all companies, the total number of companies that applied for assistance, the total number of companies that were approved for assistance, the total number of companies that applied for, but were denied assistance, etc.

Consequently, for those grants that were numerically significant (i.e., grants received prior to the POI that were large enough to pass the "0.5 percent test" and those grants received during the POI that exceeded the 0.005 percent threshold for numerically significant subsidies) we sought further information from the companies about these grants, and also asked the GOC to provide information about the programs under which the grants were provided.<sup>101</sup>

With regard to the Asia Symbol Companies' grants, the Department normally relies on information from the government to assess program specificity; however, the GOC did not submit such information; nor did it provide an explanation why it was unable to obtain the information.<sup>102</sup> Thus, we relied upon AFA to make our final determination. In particular, for those programs, we determine that the GOC withheld necessary information that was requested of it and, thus, the Department must rely on facts available for this final determination.<sup>103</sup> Moreover, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information and that an adverse inference is warranted in the application of facts available.<sup>104</sup> Consequently, due to the GOC's failure to provide the requested information about the programs under which the Asia Symbol Companies received grants, we are relying on an adverse inference that these grants are specific.<sup>105</sup>

#### E. Tax Allowance for Special Equipment for Water and Energy-Saving Purchased by Enterprises

As stated above, we instructed the Asia Symbol Companies and the GOC to coordinate with each other and to report to the Department any other forms of government assistance provided to the Asia Symbol Companies.<sup>106</sup> We requested the Asia Symbol Companies and the GOC to answer the standard questions appendix with regard to a tax program.<sup>107</sup> Although the Asia Symbol Companies provided its response,<sup>108</sup> the GOC stated, "the Department has not initiated the program addressed in its *fact* supplemental questionnaire and has not carried out consultations with the GOC regarding this program, the GOC is not in the position to respond to the supplemental questionnaire. For more information regarding this program and the amount received by AS Guangdong under this program, please refer to the company's questionnaire response."<sup>109</sup> The GOC's supplemental response lacked the information necessary to conduct an analysis for specificity, i.e., number of companies that were approved for assistance, and total number of companies that applied for, but were denied, assistance under this program.

The Department normally relies on the government subject to the CVD proceeding to provide the necessary information on financial contribution and specificity. However, with respect to this

<sup>94</sup> *Id.*, and ISQ to the Asia Symbol Companies at 4 and 6.  
<sup>95</sup> *See* GOC IQR at 98 and GOC ISQR at 23.

<sup>96</sup> *See* section 776(d)(2)(A) of the Act.  
<sup>97</sup> *See* section 776(d) of the Act.

<sup>98</sup> *See* section 771(5A) of the Act.

<sup>99</sup> *See* the Department's 3<sup>rd</sup> supplemental questionnaire to Asia Symbol Companies (3SQ) (June 22, 2015) at 3, and ISQ to GOC (August 13, 2015).

<sup>100</sup> *See* AS Guangdong IQR at Exhibit 20 and AS Guangdong IQR at Exhibit 35.

<sup>101</sup> *See* GOC IQR at 98.

<sup>102</sup> *See* Department's ISQ to GOC at 10.

<sup>103</sup> *Id.*, and ISQ to the Asia Symbol Companies at 4 and 6.

<sup>104</sup> *See* GOC IQR at 98 and GOC ISQR at 23.

<sup>105</sup> *See* section 776(d)(2)(A) of the Act.

<sup>106</sup> *See* section 776(d) of the Act.

<sup>107</sup> *See* section 771(5A) of the Act.

<sup>108</sup> *See* the Department's 3<sup>rd</sup> supplemental questionnaire to Asia Symbol Companies (3SQ) (June 22, 2015) at 3, and ISQ to GOC (August 13, 2015).

<sup>109</sup> *See* Asia Symbol Companies' 3<sup>rd</sup> supplemental questionnaire response (3SQR) (August 10, 2015) at 7 – 12 and Exhibit 3A – 3D.

<sup>110</sup> *See* GOC's 3SQR (August 24, 2015).

program, the GOC did not submit such information, as requested by the Department, nor did it provide an explanation why it was unable to obtain the information.<sup>110</sup> As such, we determine that the GOC withheld necessary information that was requested of it and, thus, the Department must rely on facts available for this final determination.<sup>111</sup> Moreover, we find that the GOC failed to cooperate by not acting in the best of its ability to comply with our request for information and that an adverse inference is warranted in the application of facts available.<sup>112</sup> Consequently, due to the GOC's failure to provide the requested information about the "Tax Allowance for Special Equipment for Water and Energy-Saving Purchased by Enterprises" program under which the Asia Symbol Companies received benefits, we are relying on an adverse inference to determine that tax benefits under this program are specific.<sup>113</sup>

#### F. Application of AFA with Regard to UPM and the Sun Paper Companies

The Sun Paper Companies and UPM have refused to participate in the investigation. Further, as discussed above, the GOC failed to respond to the Department's CVD questionnaire with respect to these companies, thereby withholding necessary information requested by the Department, and significantly impeding the investigation.<sup>114</sup> Therefore, in accordance with sections 776(a)(2)(A) and (C) of the Act, we are relying on facts otherwise available in this final determination.

We find that an adverse inference is warranted, pursuant to section 776(b) of the Act because, by not responding to our questionnaire, Sun Paper Companies, UPM and the GOC failed to cooperate by not acting to the best of their ability. Accordingly, our determination is based on AFA. See attached Appendix.

#### G. Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(e)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."<sup>115</sup> The Department's

practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>116</sup>

In this investigation, the Department is examining the programs discussed in the Preliminary Determination and Post-Preliminary Determination. Because Sun Paper Companies, UPM, and the GOC failed to act to the best of their ability in this investigation, as discussed above, we are making an adverse inference that each of the programs examined, including those not used by the participating respondent, provides a financial contribution within the meaning of section 771(5)(D) of the Act, is specific in accordance with section 771(5A) of the Act, and confers a benefit in accordance with section 771(5)(E) of the Act.<sup>117</sup>

It is the Department's practice in a CVD investigation to select, as AFA, the highest calculated rate for the identical subsidy program, or if no identical subsidy program with a subsidy rate above zero is available, then a similar program.<sup>118</sup> Thus, under this practice, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation or calculated in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program within the investigation where the rate is above zero, the Department looks for an above the minimum rate for the identical program in another proceeding involving the same country. Absent an above the minimum rate for the identical program, the Department uses the highest rate calculated for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above the minimum subsidy rate calculated for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified that could conceivably be used by the non-cooperating companies.<sup>119</sup> See attached Appendix.

Income tax programs are the exception to the practice described above. Under the standard AFA methodology that has been applied in past CVD investigations,<sup>120</sup> for the alleged income tax

<sup>110</sup> See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H. Rep. 1034, 103d Cong. 2d Session at 870 (1994).

<sup>111</sup> *Id.*

<sup>112</sup> See, e.g., *Laminated Wooden Sticks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination in Part of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (Laminated Sticks), and accompanying IDM at "Selection of the Adverse Facts Available."

<sup>113</sup> *Id.* See also *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (Aluminum Extrusions), and accompanying IDM at "Application of Adverse Inferences: Non-cooperative Companies." *Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012) (Steel Wire), and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences," and Circular Welded Carbon-Quenched Steel Pipe From India: *Final Affirmative Countervailing Duty Determination*, 77 FR 64668 (October 22, 2012) (Steel Pipe From India), and accompanying IDM at "Selection of the Adverse Facts Available Rate."

<sup>114</sup> See, e.g., *Laminated Wooden Sticks From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (Laminated Paper from the PRC), and accompanying IDM at "Selection of the Adverse Facts Available Rate."

<sup>115</sup> *Id.* See also *Steel Pipe From India*, and accompanying IDM at "Selection of Adverse Facts Available Rate."

program pertaining to either the reduction of income tax paid or the payment of no income tax, we applied an adverse inference that Sun Paper Companies and UPM paid no income tax during the POI. The standard income tax rate for corporations in the PRC in effect during the POI was 25 percent.<sup>121</sup> Thus, the highest possible benefit to each respondent for these income tax programs is 25 percent. Accordingly, we are applying 25 percent as the AFA rate. Consistent with past practice, the 25 percent AFA rate does not apply to the income tax credit and rebate, accelerated depreciation, or import tariff and value add tax (VAT) exemption programs because such programs may not affect the tax rate.<sup>122</sup>

Based on this methodology, we determine that the AFA rate for the non-cooperative companies is 176.75 percent ad valorem.<sup>123</sup>

#### H. Corroboration of Secondary Information Used to Derive AFA Rates

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."<sup>124</sup> The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.<sup>125</sup> The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.<sup>126</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. Additionally, as stated above, we are applying subsidy rates which were calculated in this investigation or previous PRC CVD investigations or administrative reviews. Additionally, no information has been presented which calls into question the reliability of these previously calculated subsidy rates that we are applying as AFA. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a

<sup>121</sup> See GOC IQR at 18.

<sup>122</sup> See, e.g., Aluminum Extrusions Investigation at "Application of Adverse Inferences: Non-Cooperative Companies."

<sup>123</sup> See attached Appendix. We are using a single rate for the programs Policy Loans to the Paper Industry and Prefabricated Laminates to SOEs, because our analysis reveals that these programs would cover the same loans from SOEs. See Non-Quota-Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 70 FR 61607 (October 14, 2004) (NOES PRC), and accompanying IDM (NOES PRC IDM).

<sup>124</sup> See SAA, at 870.

<sup>125</sup> *Id.*  
<sup>126</sup> *Id.*, at 869-870.

countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>127</sup>

In the absence of record evidence concerning the programs under investigation resulting from the non-cooperative companies' decision not to participate in the investigation, we reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs under investigation in this case. For the programs for which there is no program-type match, we selected the highest calculated subsidy rate for any PRC program from which the non-cooperative companies could receive a benefit to use as AFA. The relevance of these rates is that they are actual calculated CVD rates for a PRC program from which the non-cooperative companies could actually receive a benefit. Further, these rates were calculated for periods close to the POI. Moreover, the failure of these companies to respond to the Department's request for information "resulted in an egregious lack of evidence on the record to suggest an alternative rate."<sup>128</sup> Due to the lack of participation by the non-cooperative companies and the resulting lack of record information concerning their use of programs under investigation, the Department corroborated the rates it selected to the extent practicable.

#### VIII. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we determine the following.

##### A. Programs Determined to Be Countervailable

###### 1. Policy Loans to the Paper Industry

In the CVD investigation of CFS from the PRC, the Department found that, "the GOC has a policy in place to encourage and support the growth and development of the paper industry through preferential financing initiatives, as illustrated in the five-year plans and industrial policies on the record."<sup>129</sup> The Department further determined that, "loans provided by Policy Banks and state-owned commercial banks (SOCBs) in the PRC constitute a direct financial contribution from the government..." In Thermal Paper from the PRC and Coated Paper from the PRC, the Department affirmed its earlier finding and extended it through its period of investigation.<sup>130</sup> Based on the record of the instant investigation, the Department determines that the five-year plans and industrial policies for the paper-making industry have continued or been renewed. Specifically, we find that the Papermaking Industry Development "12th Five-Year"

<sup>127</sup> See, e.g., Egyptian Cotton Yarns From Mexico: Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996).

<sup>128</sup> See Shanghai Tissue Inc. v. Treadwell Co. Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (CIT 2005).

<sup>129</sup> See CFS from the PRC and accompanying IDM at 9 and 49.

<sup>130</sup> See Thermal Paper from the PRC and Coated Paper from the PRC at 11 and 12; see also Certain Coated Paper Suitable for High-Density Print Granules From Sheet-Fed Presses from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 59212 (September 27, 2010) (Coated Paper from the PRC) and accompanying IDM at 12.

For example the stated objective of the 12<sup>th</sup> Five-Year Plan is to, “[s]trengthen investment and open up financing channels,” by “expanding indirect financing in the papermaking industry, gradually increase the proportion of direct financing. Further increase the scales of loans provided by commercial banks. Encourage and guide financial institutions to lay stress on supporting the projects and enterprises with powerful economic strength and enormous market potential.”<sup>133</sup> The *Papermaking Industry Development Policy*, “[e]ncourage[s] eligible pulp and papermaking enterprises to raise capital through public offering and issuance of corporate bonds. Domestic financial institutions, especially policy banks, should provide financial supports to construction projects by the national large-scale backbone pulp and papermaking enterprises.”<sup>134</sup> Further, the *Order of the State Development* urges the papermaking industry to develop towards large bases and on a large scale.<sup>135</sup>

We attributed benefits under this program to the total consolidated sales of the Asia Symbol Companies (exclusive of intercompany sales), as discussed in the "Attribution of Subsidies" section above. On this basis, we determine a subsidy rate of 0.56 percent and waiver for the Asia Symbol Companies. See also Comment 4.

101 See COC's IQR at Exhibit 7.  
102 Id. at Exhibit 8.  
103 Id. at Exhibit 7.  
104 Id.  
105 Id. at Exhibit 8.  
106 See, e.g., New Pneumonia Off-the-Road Trics From the People's Republic of China, Final Results of Countervailing Duty Administrative Review, 76 FR 21286 (April 26, 2011) (IQR Trics from the PRIC) and accompanying IDA at Comment 12. See also, Banking Memorandum.  
107 See Final Determination Calculation Memorandum.  
108 See section 771(5)(F)(ii) of the Act.  
109 See also 19 CFR 351.505(c).

As discussed under "Use of Firms Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that the provision of calcium carbonate for LTPAR is specific because the QOC failed to provide information, which was requested of it on two occasions, regarding the industries that used/consumed calcium carbonate and the associated volume data for the years 2012, 2013, and 2014. See Comment 2.

Under 19 CFR 5.511(a)(2), the Department sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.<sup>142</sup> This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

<sup>1106</sup> See COC, IQE at Exhibit 231, 237, 24, and 25. See also Final Determination Calculation Memorandum.  
<sup>1107</sup> See section 771(d)(2)(C)(iii) of the Act.  
<sup>1108</sup> See also *Sellswood Lumber from Canada*, and accompanying IDB at “Market-Based Benchmark,”  
<sup>1109</sup> See CVD Preliminary, 63 FR 65748, 65777.



Also discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that actual transaction prices, including any input prices for calcium carbonate in the PRC are significantly distorted by the government's involvement in the market.

As we explained in Softwood Lumber from Canada:

Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.<sup>142</sup>

For these reasons, prices stemming from private transactions within the PRC cannot give rise to a price that is sufficiently free from the effects of the GOC's actions and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

Given that we have determined that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price available to producers of subject merchandise in the PRC.

The Department, Petitioners and the Asia Symbol Companies placed on the record information to construct a benchmark from GTA.<sup>143</sup> The GTA data contain calcium carbonate volume and value data, by country, on an HTS-specific basis. The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Based on the facts of this case, the Department weight-averaged the prices to calculate a single benchmark by month. The Asia Symbol Companies reported their input purchases on an HTS specific basis. Therefore, in order to derive the benchmark, we calculated HTS-specific benchmarks that correspond to the HTS categories of calcium carbonate purchased by the Asia Symbol Companies during the POI. Our approach in this regard is consistent with the Department's practice of deriving benchmark

prices by grade when such data are available and when the record evidence indicates that the respondent firm purchases the good in question on a grade specific basis.<sup>146</sup>

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we included international freight and inland freight. The international ocean freight rates used are an average of the freight rates submitted on the record by Petitioners, which reflect ocean freight pricing data from Mærsk, for the POI.<sup>147</sup> The Asia Symbol Companies also submitted ocean freight pricing data for the route Rotterdam to Shanghai, sourced from Maersk, for the POI.<sup>148</sup> However, we determine that there is sufficient information on the record to conclude that transporting calcium carbonate would incur the "special equipment service" delivery charge.<sup>149</sup> Further, the Asia Symbol Companies did not provide information on the record that it does not incur this fee. See Comment 5. Therefore, we have utilized only Petitioners' ocean freight data. We averaged the international freight rates to derive the amount included in our benchmark.

The Asia Symbol Companies purchased calcium carbonate from domestic sources; therefore, for inland freight we relied on the Asia Symbol Companies' reported inland freight expense to transport calcium carbonate from its plant to the port.<sup>150</sup> Additionally, to derive the benchmark, we included import duties and the VAT applicable to imports of calcium carbonate into the PRC as reported by the GOC.<sup>151</sup> We did not include marine insurance. In prior CVD investigations involving the PRC, the Department found that while the PRC customs authorities impose 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.<sup>152</sup>

To calculate the benefit, we calculated the difference between the delivered world market price and the price that the Asia Symbol Companies paid for calcium carbonate, including delivery charges. We next divided the sum of the price differentials by the total consolidated sales of the Asia Symbol Companies (excluding inter-company sales). Comparing the adjusted benchmark

<sup>142</sup> See Softwood Lumber from Canada and accompanying IDM at "There are no market-based internal Canadian benchmarks" section.  
<sup>143</sup> See Memorandum to File, "Global Trade Atlas Data (GTA)" from Joy Zhang, Analyst, AD/CVD Operations, Office III, (April 1, 2015) (DOC Benchmark Information), Letter from Petitioners regarding "Certain Uncoated Paper From The People's Republic of China, Response to Department's April 1 Memorandum," (April 20, 2015) (Petitioners' First Benchmark Information); Letter from Asia Symbol Companies regarding "Certain Uncoated Paper from the People's Republic of China: Comments on Benchmarks - Asia Symbol (Guangdong) Paper Co. Ltd.," (June 1, 2015) (Asia Symbol Companies' Benchmark Information); and Letter from Petitioners, "Certain Uncoated Paper from the People's Republic of China: Petitioners' Benchmark Data Factual Information Submission," (June 1, 2015) (Petitioners' Second Benchmark Information).

<sup>146</sup> See Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 77 FR 17017 (March 23, 2012) (Steel Wheels from the PRC), and accompanying IDM at Comment 15; see also CWASPR from the PRC, and accompanying IDM at "Provision of SSC for LTA/R" (where the Department compared prices by steel grade); Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 14, 2008) (Hot-Rolled India), and accompanying IDM at "Sale of High-Grade Iron Ore for LTA/R" (where the Department conducted the benefit analysis on a lump-to-lump and fine-to-fine basis) and Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 7348 (December 12, 2005) (Softwood Lumber from Canada II), and accompanying IDM at "Calculation of Provisional Benefit" and "Methodology for Adjusting the Unit Prices of the Crown Slumpage Program Administered by the COIRCO" (where the Department compared species-specific benefits).

<sup>147</sup> See Petitioners' Second Benchmark Information at Exhibit 1-3.

<sup>148</sup> See the Asia Symbol Companies Benchmark Information at Exhibit 6.

<sup>149</sup> See Petitioners' Second Benchmark Information at Exhibit 3.

<sup>150</sup> See AS Guangdong IQR at 33 and AS Shanghai IQR at 36.

<sup>151</sup> See GOC IQR at 58.

<sup>152</sup> See, e.g., PC Shrimp from the PRC, and accompanying IDM at Comment 13.

prices to the prices paid by the Asia Symbol Companies for calcium carbonate during the POI, we find that the GOC provided calcium carbonate for LTA/R, and that a benefit exists in the amount of the difference between the benchmark price and the price that the companies paid.<sup>153</sup> On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.74 percent *ad valorem* during the POI.

### 3. Provision of Caustic Soda for LTA/R

The Department is investigating whether GOC authorities provided caustic soda to producers of uncoated paper for LTA/R. As instructed in the Department's questionnaires, the Asia Symbol Companies identified the suppliers and producers from whom they purchased caustic soda during the POI. In addition, they reported the date of payment, quantity, unit of measure, and purchase price for caustic soda purchased during the POI.

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that the provision of caustic soda for LTA/R is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the industries that used/consumed caustic soda and the associated volume data for the years 2012, 2013, and 2014. See also Comment 2.

Six producers provide caustic soda to the Asia Symbol Companies. The GOC indicated that four producers are majority government-owned enterprises.<sup>154</sup> As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.<sup>155</sup> The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.<sup>156</sup> Therefore, we determine that these entities constitute "authorities" within the meaning of section 771(5)(B) of the Act and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.<sup>157</sup>

One producer is wholly-foreign owned.<sup>158</sup> There is no evidence on the record indicating that this wholly-foreign owned producer possesses, exercises or is vested with governmental authority. We determine that this producer is not an "authority." With respect to the remaining producer, i.e., the Chinese producer that is not majority government-owned, we discussed under "Use of Facts Otherwise Available and Adverse Inferences," above that we are relying on AFA to determine this producer to be an "authority" and capable of providing a financial contribution.<sup>159</sup> See also Comment 1.

<sup>153</sup> See 19 CFR 351.511(a).

<sup>154</sup> See GOC IQR at 63.

<sup>155</sup> See Public Body Memorandum.

<sup>156</sup> *Id.*

<sup>157</sup> See *Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 2012, 79 FR 52370 (September 3, 2014) [OCITG from the PRC 2012 Final Results], and accompanying IDM at Comment 6.

<sup>158</sup> *Id.* at Exhibit 35-A, 36, 37 and GOC ISOR at Exhibit 57. See also Final Determination Calculation Memorandum.

<sup>159</sup> See section 771(5)(D)(iii) of the Act.

Based on the previously described LTA/R benchmark hierarchy, we must first determine whether there are market prices from actual sales transactions involving Chinese buyers and sellers that can be used to determine whether the GOC authorities sold coal to the respondents for LTA/R. As noted above, where the Department finds that the government provides the majority, or a substantial portion of the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.<sup>160</sup> For these reasons, prices stemming from private transactions within the PRC cannot give rise to a price that is sufficiently free from the effects of the GOC's actions and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

In its IQR, the GOC provided information on the amount of caustic soda production and the percentage of companies in which the government maintains an ownership or management interest either directly or through other government entities.<sup>161</sup> The Department requested the GOC to provide supporting documentation to substantiate its claim and provide information for 2012 and 2013. The GOC provided information from the SSB indicating that the government maintains ownership levels of caustic soda producers that account for 56, 53, and 50 percent of domestic production in 2012, 2013, and 2014 respectively.<sup>162</sup> Consequently, because of the government's significant involvement in the caustic soda industry and because import penetration is less than 0.1 percent from 2012 through 2014,<sup>163</sup> we determine that the private producer prices in the PRC are distorted and not suitable as market benchmarks, such that the use of private producer prices in the PRC would be akin to comparing the benchmark to itself (i.e., a benchmark would reflect the distortions of the government presence).<sup>164</sup> As such, we 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. Accordingly, to determine whether the provision of caustic soda conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, consistent with the 2012 *Clitic Acid Review*,<sup>165</sup> we applied a tier two benchmark, i.e., world market prices available to purchasers in the PRC (see 19 CFR 351.511(a)(2)(ii)).

The Department, Petitioners and the Asia Symbol Companies placed on the record information to construct a benchmark from CITA.<sup>166</sup> The CITA data contain caustic soda volume and value data, by country, on an HTS-specific basis. The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Based on the facts of this case, the Department weight-averaged the prices to calculate a single benchmark by month. The Asia Symbol Companies reported their input purchases on an HTS-specific basis. Therefore, in

<sup>160</sup> See *Countervailing Duties: Final Rule*, 63 FR 65348, 65377 (November 25, 1998).

<sup>161</sup> See GOC IQR at 74.

<sup>162</sup> See GOC ISOR at 9 and Exhibit 54.

<sup>163</sup> *Id.* at 8 and 9 and Exhibits 54 and 55.

<sup>164</sup> See also *Softwood Lumber from Canada*, and accompanying IDM at "Market-Based Benchmark."

<sup>165</sup> See 2012 *Clitic Acid Review*, and accompanying IDM at 26 through 28.

<sup>166</sup> See DDC Benchmark Information, Petitioners' First Benchmark Information, Asia Symbol Companies' Benchmark Information, Petitioners' Second Benchmark Information, and Petitioners' Rebuttal Benchmark Information.

order to derive the benchmark, we calculated HTS-specific benchmarks that correspond to the HTS categories of caustic soda purchased by the Asia Symbol Companies during the POI. As noted above, our approach in this regard is consistent with the Department's practice of deriving benchmark prices by grade when such data are available and when the record evidence indicates that the respondent firm purchases the good in question on a grade-specific basis.<sup>167</sup>

Pursuant to 19 CFR 351.511(a)(2)(iv), in deriving the benchmark prices, we included international freight and inland freight. The international ocean freight rates used are an average of the freight rates submitted on the record by Petitioners. Petitioners placed on the record ocean freight pricing data from Maersk, for the POI.<sup>168</sup> The Asia Symbol Companies also submitted ocean freight pricing data for the route Rotterdam to Shanghai, sourced from Maersk, for the POI.<sup>169</sup> However, as explained in greater detail below we determine that there is sufficient information on the record to conclude that transporting caustic soda would incur the "dangerous cargo service" delivery charge.<sup>170</sup> Further, the Asia Symbol Companies did not provide information on the record that it does not incur this fee. See Comment 5. Therefore, we have utilized only Petitioners' ocean freight data. We averaged the international freight rates to derive the amount included in our benchmark.

The Asia Symbol Companies purchased caustic soda from domestic sources; therefore, for inland freight we relied on the Asia Symbol Companies' reported inland freight expense to transport caustic soda from its plant to the port.<sup>171</sup> Additionally, to derive the benchmark, we included import duties and the VAT applicable to imports of caustic soda into the PRC as reported by the GOC.<sup>172</sup> We did not include marine insurance. In prior CVD investigations involving the PRC, the Department found that while the PRC customs authorities impose 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.<sup>173</sup>

To calculate the benefit, we calculated the difference between the delivered world market price and the price that the Asia Symbol Companies paid for caustic soda, including delivery charges. We next divided the sum of the price differentials by the total consolidated sales of the Asia Symbol Companies (excluding inter-company sales). Comparing the adjusted benchmark prices to the prices paid by the Asia Symbol Companies for caustic soda during the POI, we find that the GOC provided caustic soda for LTA/R, and that a benefit exists in the amount of the difference between the benchmark price and the price that the companies paid.<sup>174</sup> On this basis,

<sup>167</sup> See Steel Wheels from the PRC, and accompanying IDMA at Comment 15; see also CWASILE from the PRC, and accompanying IDMA at "Provision of SSC for LTA/R" (where the Department compared prices by steel grade); Hot Rolled Hdh, and Hot Rolled India IDMA at "Sale of High-Grade Iron Ore for LTA/R" (where the Department conducted the benefit analysis on a lump-to-lump and fine-to-fine basis), and Softwood Lumber from Canada II, and accompanying IDMA at "Calculation of Provincial Benefit" and "Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the GOBC" (where the Department compared species-specific benefits).

<sup>168</sup> See Petitioners' Second Benchmark Information at Exhibit 5 - 7.

<sup>169</sup> See the Asia Symbol Companies Benchmark Information at Exhibit 6.

<sup>170</sup> See AS Guangdong IQR at 35 and AS Shandong ISQR at 15 and Exhibit 11.

<sup>171</sup> See GOC IQR at 75.

<sup>172</sup> See, e.g., EC Standard from the PRC, and accompanying IDMA at Comment 13.

<sup>173</sup> See 19 CFR 351.511(f).

we determine that the Asia Symbol Companies received a countervailable subsidy of 0.37 percent ad valorem during the POI.

#### 4. Provision of Coal for LTA/R

The Department is investigating whether the Asia Symbol Companies purchased coal for LTA/R during the POI. On the record of this investigation, the GOC reported that the Asia Symbol Companies purchases coal from state-owned enterprises during the POI.<sup>175</sup> As explained in the Public Body Memorandum, majority state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.<sup>176</sup> The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.<sup>177</sup> Therefore, we determine that the Asia Symbol Companies received a financial contribution from authorities in the form of the provision of a good, pursuant to section 771(5)(D)(ii) of the Act.

Regarding specificity, the GOC reported that the industry/sector coal consumption statistics published by SSB for 2013 and 2014 were not yet available; however, the GOC did submit industry consumption information for 2012.<sup>178</sup> The GOC also submitted the Annual Report on Coal Market Development of China (2014) and the National Coal Industry's 12<sup>th</sup> Five-Year Plan (Coal Five-Year Plan).<sup>179</sup> In the Initiation Checklist, the Department indicated that there was sufficient evidence to initiate an investigation of the provision of coal on both a de jure and de facto specific basis, i.e., on the basis that power generators are predominant users.<sup>180</sup> Upon examination of the Coal Five-Year Plan, the Department determines that there is insufficient evidence to find the provision of coal is de jure specific to power generators under section 771(5A)(D)(i) of the Act. Therefore, the Department examined the industry consumption information for 2012 published by the SSB.<sup>181</sup> Based upon the record information, we find that the power generation industry, which uses 34 percent of the coal in China, is a predominant user of coal.<sup>182</sup> Therefore, we determine the provision of coal to be specific within the meaning of section 771(5A)(D)(iii) of the Act.

AS Shandong's business license indicates that its business scope includes power generation.<sup>183</sup> Further, in its ISQR, AS Shandong responded that the company uses coal and water to generate electricity for its own consumption and any surplus electricity is sold to the State's grid.<sup>184</sup> Therefore, we determine that AS Shandong is a power generator whose purchases of coal during the POI fall under the provision of coal for LTA/R. In its supplemental questionnaire response, AS Guangdong replied that the coal purchased, "is used for power generation purposes, and the

<sup>175</sup> See GOC IQR at 82.

<sup>176</sup> See Public Body Memorandum.

<sup>177</sup> Id.

<sup>178</sup> See GOC IQR at 90 and Exhibit 46 and GOC ISQR at Exhibit 60.

<sup>179</sup> See GOC IQR at Exhibit 47 and 48.

<sup>180</sup> See Initiation Checklist at 16.

<sup>181</sup> See GOC IQR at Exhibit 60.

<sup>182</sup> Id.; see also Non-Oxidized Electrical Steel from Taiwan: Final Affirmative Countervailing Duty Determination, 79 FR 6102, (October 14, 2014) [Taiwan NDESI] and accompanying IDMA at Comment 1.

<sup>183</sup> See AS Shandong IQR at Exhibit 1.

<sup>184</sup> See the Asia Symbol Companies ISQR at 1 and Exhibit 1.

generated power and steam is used in the company's operations, including the production of subject merchandise."<sup>185</sup> For these reasons, we determine AS Shandong and AS Guangdong, members of the Asia Symbol Companies, are power generators during the POI.

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are relying on AFA to determine that actual transaction prices for coal in the PRC are significantly distorted by the government's involvement in the market. As such, we determine that domestic prices by coal producers based in the PRC and import prices into the PRC may not serve as viable, tier one benchmark prices.<sup>186</sup> Given that we have determined that no tier one benchmark prices are available, we next evaluated information on the record to determine whether there is a tier two world market price available to producers of subject merchandise in the PRC.

The Department, Petitioners and the Asia Symbol Companies placed on the record information to construct a benchmark from GITA and IMF information.<sup>187</sup> The GITA data contain coal volume and value data, by country, on an IITs-specific basis. The Department's regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Based on the facts of this case, the Department weight-averaged the prices to calculate a single benchmark by month. The Asia Symbol Companies reported their input purchases on an IITs specific basis. Therefore, in order to derive the benchmark, we calculated IITs-specific benchmarks that correspond to the IITs categories of coal purchased by the Asia Symbol Companies during the POI. See Comment 7. As noted above, our approach in this regard is consistent with the Department's practice of deriving benchmark prices by grade when such data are available and when the record evidence indicates that the respondent firm purchases the good in question on a grade specific basis.<sup>188</sup>

Pursuant to 19 CFR 351.511(a)(2)(iv), in deriving the benchmark prices, we included international freight and inland freight. The international ocean freight rates used are an average of the freight rates submitted on the record by Petitioners and the Asia Symbol Companies. Petitioners placed on the record ocean freight pricing data from Platts Report, for the POI.<sup>189</sup> The Asia Symbol Companies placed on the record ocean freight pricing data from *Marwest* and *Seatrikes* (for distance data), for the POI.<sup>190</sup> We averaged the international freight rates from Petitioners and the Asia Symbol Companies to derive the amount included in our benchmark.

<sup>185</sup> See the Asia Symbol Companies' 2<sup>nd</sup> supplemental questionnaire response (SSQR) (July 29, 2015) at 3.  
<sup>186</sup> See 2010 *Citric Acid Review* and 2011 *Citric Acid Review*, and accompanying IDMs at "Provision of Steam Coal for LTVAR".

<sup>187</sup> See DOC Benchmark Information, Petitioners' First Benchmark Information, Asia Symbol Companies' Benchmark Information, Petitioners' Second Benchmark Information, and Petitioners' Rebuttal Benchmark Information.

<sup>188</sup> See *Steel Wheels from the PRC*, and accompanying IDM at Comment 15; see also *CWASPP from the PRC*, and accompanying IDM at "Provision of SSC for LTVAR" (where the Department compared prices by steel grade); *Lat Rolled India*, and accompanying IDM at "Sale of High-Grade Iron Ore for LTVAR" (where the Department conducted the benefit analysis on a lump-to-lump and fine-to-fine basis); and *Softwood Lumber from Canada II*, and accompanying IDM at "Calculation of Potential Benefit" and "Methodology for Adjusting the Unit Prices of the Crown Stumpage Program Administered by the COBC" (where the Department computed species-specific benefits).  
<sup>189</sup> See Petitioners' Second Benchmark Information at Exhibits 10 through 13.  
<sup>190</sup> See the Asia Symbol Companies' Benchmark Information at Exhibit 6.

The Asia Symbol Companies purchased coal from domestic sources; therefore, for inland freight we relied on the Asia Symbol Companies' reported inland freight expense to transport coal from its plant to the port.<sup>194</sup> Additionally, to derive the benchmark, we included import duties and the VAT applicable to imports of coal into the PRC as reported by the PRC.<sup>195</sup> We did not include marine insurance. In prior CVD investigations involving the PRC, the Department found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges.<sup>193</sup>

To calculate the benefit, we calculated the difference between the delivered world market price and the price that the Asia Symbol Companies paid for coal, including delivery charges. We next divided the sum of the price differentials by the total consolidated sales of the Asia Symbol Companies (excluding inter-company sales). Comparing the adjusted benchmark prices to the prices paid by the Asia Symbol Companies for coal during the POI, we find that the COC provided coal for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark price and the price that the companies paid.<sup>194</sup> On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.98 percent ad valorem during the POI.

##### 5. Preferential Income Tax Program for High or New Technology Enterprises

Article 28 of the Enterprise Income Tax Law (EITL) authorizes a reduced income tax rate of 15 percent for high- and new-technology enterprises (HNTEs).<sup>195</sup> The criteria and procedures for identifying eligible HNTEs are provided in the Measures on Recognition of High and New Technology Enterprises (GUOKEIFAIIUO (2008) No. 172) (Measures on Recognition of HNTEs) and the Guidance on Administration of Recognizing High and New Technology Enterprises (GUOKEIFAIIUO (2008) No.362).<sup>196</sup> 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 HNTEs in their respective jurisdictions.<sup>197</sup>

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.<sup>198</sup>

<sup>193</sup> See AS Shandong IQR at 29 and AS Guangdong IQR at 33.

<sup>194</sup> See COC IQR at 89.

<sup>195</sup> See *see*, *EC Shrimp from the PRC*, and accompanying IDM at Comment 13.

<sup>196</sup> 19 CFR 351.511(a).

<sup>197</sup> See COC IQR at 11 and Exhibit 12 and 13.

<sup>198</sup> *Id.*, at Exhibit 14 and 15.  
<sup>199</sup> *Id.*

AS Guangdong and AS Shandong reported that they received tax savings under this program on their 2013 income tax return filed during the POI.<sup>199</sup> We determine that the reduced income tax rate paid by AS Guangdong and AS Shandong is a financial contribution in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of the tax savings.<sup>200</sup> We also determine, consistent with the 2008/2009 Citric Acid Review,<sup>201</sup> 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 HNTIs and, hence, is specific under section 771(5A)(D)(i) of the Act. Both the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.

To calculate the benefit, we compared the income tax rate that the Asia Symbol Companies would have paid in the absence of the program (25 percent) to the income tax rate that the companies actually paid (15 percent). We treated the income tax savings realized by the Asia Symbol Companies as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POI by the total consolidated sales for the Asia Symbol Companies (excluding inter-company sales) for the POI, pursuant to 19 CFR 351.525(b)(6)(ii) and 19 CFR 351.525(c). On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.56 percent ad valorem.

#### 6. Preferential Income Tax for Comprehensive Utilization, Limiting Enterprises

The GOC described that Article 33 of the Enterprise Income Tax Law of the PRC provides that incomes generated by an enterprise from using any of the materials as listed in the Catalogue of Resources for Comprehensive Utilization by Enterprises Limited to Preferential Income Tax Treatment (Catalogue of Resources) as its major raw material may use ten percent of that income to reduce its overall taxable income.<sup>202</sup> The GOC indicated that the government agencies or authorities responsible for administering this program are: Shandong Provincial State Administration of Taxation, Shandong Provincial Department of Finance, Shandong Economic and Information Technology Committee, and Shandong Provincial Local Taxation Bureau.<sup>203</sup> AS Shandong stated that it applied to each entity listed above to obtain approval and received the "Certificate of Resources for Comprehensive Utilization." After obtaining the certificate, it was filed with the Rizhao Economic and Technological Development Zone State Administration of Taxation.<sup>204</sup> AS Shandong qualified for this program by utilizing industrial waste heat and pressure in the production of electricity. By virtue of this program, AS Shandong reduced its taxable income during the POI.<sup>205</sup>

We determine that the reduction in taxable income is a financial contribution in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of tax savings.<sup>206</sup> The Catalogue of Resources sets three categories of raw materials use to be eligible for tax benefits under this program: symbiosis, associated mineral resources; waste (liquid), waste gas and waste residue; and renewable resources; and sixteen resources for revenue. We determine that the tax reduction under this program is the tax specific under section 771(5A)(D)(i) of the Act because the program is limited to certain enterprises that utilize certain raw materials specified by the government.

To calculate the benefit, we compared the taxable income that the Asia Symbol Companies would have claimed in the absence of the program to the taxable income that the companies actually claimed. We treated the income tax savings realized by the Asia Symbol Companies as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POI by the total consolidated sales for the Asia Symbol Companies (excluding inter-company sales) for the POI, pursuant to 19 CFR 351.525(b)(6)(ii) and 19 CFR 351.525(c). On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.09 percent ad valorem.

#### 7. Tax Allowance for Special Equipment for Water and Energy-Saving Purchased by Enterprises

AS Guangdong reported that it reduced its income tax payable because of its purchases of equipment for water and energy-saving.<sup>207</sup> We determine that the reduction in income tax under this program is a financial contribution in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of the tax savings pursuant to section 771(5)(D)(i) of the Act and 19 CFR 351.509(a)(1), respectively.

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

We treated the income tax savings realized by the Asia Symbol Companies as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POI by the total consolidated sales for the Asia Symbol Companies (excluding inter-company sales) for the POI, pursuant to 19 CFR 351.525(b)(6)(ii) and 19 CFR 351.525(c). On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.02 percent ad valorem.

#### 8. VAT and Import Tariff Exemptions for Imported Equipment

Enacted in 1997, the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular 37) exempts both foreign invested enterprises ("FIEs") and certain domestic enterprises from the VAT and tariffs on imported equipment used in their

<sup>199</sup> See AS Guangdong IQI at 22 – 25 and Exhibit 6, 14, 15, and 16.  
<sup>200</sup> See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).  
<sup>201</sup> See Citric Acid and Certain Citric Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, 76 FR 77206 (December 12, 2011) (2008/2009 Citric Acid Review), and accompanying IDN.  
<sup>202</sup> See GOC ISQR at 34 – 44 and Exhibits 63 and 64.  
<sup>203</sup> *Id.* at 35.  
<sup>204</sup> See AS Shandong IQI at 25 and Exhibit 16 and 17.  
<sup>205</sup> *Id.* at 26 – 27 and Exhibit 6.

<sup>206</sup> See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1), respectively.  
<sup>207</sup> See Asia Symbol SSQR at 8 and AS Guangdong IQI at Exhibit 6.

production so long as the equipment does not fall into prescribed lists of non-eligible items.<sup>206</sup> The National Development and Reform Commission (NDRC) and the General Administration of Customs are the government agencies responsible for administering this program. Qualified enterprises receive a certificate either from the NDRC or one of its provincial branches. To receive the exemptions, a qualified enterprise only has to present the certificate to the customs officials upon importation of the equipment. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.<sup>207</sup> The Department previously found this program to be countervailable.<sup>210</sup>

Both AS Guangdong and AS Shandong reported receiving VAT and tariff exemptions under this program for imported equipment prior to the POI.<sup>211</sup> We determine that the VAT and duty exemptions received under the program constitute a financial contribution in the form of revenue foregone by the GOC, which provides a benefit to the recipients in the amount of the VAT and tariff savings.<sup>212</sup> As described above, only FIEs and certain domestic enterprises are eligible to receive VAT and tariff exemptions under this program; therefore, we further determine that the VAT and tariff exemptions under this program are de jure specific under section 771(5A)(D)(i) of the Act because the program is limited to certain enterprises.<sup>213</sup>

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL.<sup>214</sup> Therefore, because these exemptions are for capital equipment, we have examined the VAT and tariff exemptions that AS Guangdong and AS Shandong received under the program during the POI and preceding 12 years.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is consistent with the Department's approach in prior cases.<sup>215</sup> Next, we summed the amount of duty and VAT

exemptions received in each year. For each year, we divided the company's total exemptions by its corresponding sales for the year of import. Pursuant to 19 CFR 351.524(b)(2), we expanded the grant amounts to the year of receipt for those years in which the grant amount was less than 0.5 percent of the total consolidated sales of the Asia Symbol Companies (excluding inter-company sales). For the years in which the grant amount for the company was greater than 0.5 percent of its sales, we allocated the benefit over the AUL using the methodology described under 19 CFR 351.524(d). We used the methodology described in the "Subsidies Valuation" section above to determine the amount attributable to the POI. We then divided the POI benefit by the total consolidated POI sales of the Asia Symbol Companies (excluding inter-company sales), to calculate the subsidy rate. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 3.13 percent and within during the POI.

Additionally, the GOC reported that, pursuant to the "Announcement of Ministry of Finance, China Customs, and State Administration of Taxation," No. 43 (2008), the VAT exemption was terminated.<sup>216</sup> Under 19 CFR 351.526(b)(1) and (2), the Department may take a program-wide change to a subsidy program into account in establishing the cash deposit rate if it determines that subsequent to the POI, but before the final determination, a program-wide change occurred and the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question. Based on a prior investigation with regard to this program, we determined that a program-wide change has not occurred.<sup>217</sup> Under 351.526(d)(1), the Department will only adjust the cash deposit rate of a possibly terminated program if there are no residual benefits. However, this program still provides for residual benefits because import tariff and VAT exemptions were provided for the importation of capital equipment and, thus, those exemptions are treated as non-recurring subsidies pursuant to 19 CFR 351.524(c)(2)(iii). This decision is consistent with the Department's approach to this program in prior PRC proceedings.<sup>218</sup>

#### 9. VAT Rebates on FIE Purchases of Chinese-Made Equipment

According to Trial Regulations on Tax Rebate on Domestically-Manufactured Equipment Purchased by a Foreign-Funded Enterprise (No. 171), the GOC refunds the VAT on purchases of certain Chinese-produced equipment to FIEs if the equipment is used for certain encouraged projects.<sup>219</sup> AS Shandong reported using this program during the AUL.<sup>220</sup> The Department

<sup>206</sup> See the GOC IQR at 23 and Exhibit 16.

<sup>207</sup> *Id.*

<sup>208</sup> See, e.g., Strike Acid PRC Investigation, and accompanying IDM at "11. VAT and Duty Exemptions on Imported Equipment."

<sup>209</sup> See AS Guangdong IQR at 27; see also AS Shandong IQR at 29.

<sup>210</sup> See sections 771(5)(D)(i) and 771(5)(E) of the Act, as well as 19 CFR 351.524(a)(1). The VAT portion of this program was abolished beginning January 1, 2009 pursuant to the Amendment of Ministry of Finance, General Administration of Customs and State Administration of Taxation on resumption of VAT on imported equipment and related goods. See the GOC IQR at 23, and Exhibit 17.

<sup>211</sup> See CES from the PRC and accompanying IDM at Comment 16; see also QTR from the PRC at "C. VAT and Import Duty Exemptions on Imported Material."

<sup>212</sup> See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(1).

<sup>213</sup> See, e.g., Strike Welded Carbon Quality Steel Line From the People's Republic of China, Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008) (June Panel from the PRC), and

accompanying IDM at Comment 8 ("... we agree with Petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties").

<sup>214</sup> See GOC IQR at 31 and Exhibit 17.

<sup>215</sup> See Utility Scale Wind Towers From the People's Republic of China, Final Affirmative Countervailing Duty Determination, 77 FR 75978 (December 26, 2012) (Wind Towers from the PRC) and accompanying IDM at 19 and 20.

<sup>216</sup> See, e.g., Drill Pipe From the People's Republic of China, Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 76 FR 1971 (January 11, 2011) (Drill Pipe from the PRC), and accompanying IDM at "Import Tariff and

VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries."

<sup>217</sup> See Cryogenic Silex Phenoxylate Cells, Winebier or Not Assembled Line Modules From the People's Republic of China, Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 63788 (October 17, 2012) (Silex Cells Investigation), and accompanying IDM at 18.

<sup>218</sup> See AS Shandong IQR at 32-33.

previously found this program countervailable.<sup>221</sup> We determine that the rebates under this program are a financial contribution in the form of revenue foregone by the GOC, and they provide a benefit to the recipients in the amount of the tax savings.<sup>222</sup> We further find that the VAT rebates are contingent upon the use of domestic over imported equipment and, hence, specific under sections 771(5A)(A) and (C) of the Act.

Since this indirect tax is provided for, or tied to, the capital structure or capital assets of a firm, the Department treated this tax as a non-recurring benefit and allocated the benefit to the firm over the AUL.<sup>223</sup> To calculate a benefit under this program, for the years in which the rebate amount was less than 0.5 percent of the relevant sales figure, we expensed the rebates in the year of receipt, consistent with 19 CFR 351.524(a). The benefits AS Shandong received in 2008 were less than 0.5 percent of the total consolidated sales of the Asia Symbol Companies' sales (excluding inter-company sales); therefore the benefits were expensed to 2008. However, for 2009 the benefit amount for the company was greater than 0.5 percent of its sales; thus, we allocated the benefit over the AUL using the methodology described under 19 CFR 351.524(d). We used the methodology described in the "Subsidies Valuation" section above to determine the amount attributable to the POI. We then divided the POI benefit by the total consolidated POI sales of the Asia Symbol Companies (excluding inter-company sales), to calculate the subsidy rate. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.07 percent ad valorem during the POI.

#### 10. Subsidies for Energy Efficiency and Environmental Protection

AS Shandong reported that it received assistance in the form of a grant, from the Rizhao City Government for environmental protection.<sup>224</sup> We determine that the grant received by AS Shandong constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

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

To calculate the benefit, we divided the grant amount by the Asia Symbol Companies' total consolidated sales (excluding inter-company sales) for the year in which the grant was received and found that the resulting ratio exceeded 0.5 percent. Because the grant is a non-recurring benefit, consistent with 19 CFR 351.524(c)(2)(iii), we allocated the benefit over the 13-year AUL. We then divided the benefit amount by the Asia Symbol Companies' total consolidated sales (excluding inter-company sales) for the POI to obtain the ad valorem subsidy rate. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.10 percent ad valorem.

<sup>221</sup> See Solar Cells Investigation and accompanying DMA at 18.

<sup>222</sup> See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

<sup>223</sup> See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

<sup>224</sup> See AS Shandong ISQR at 7 and Exhibit 7-a; see also GOC ISQR at 25.

#### 11. Support Fund for Environmental Protection Project - Rizhao City

AS Shandong reported that it received assistance, in the form of a grant, from the Rizhao City Government.<sup>225</sup> We determine that the grant received by AS Shandong constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

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

To calculate the benefit, we divided the grant amount by the Asia Symbol Companies' total consolidated sales (excluding inter-company sales) for the year in which the grant was received and found that the resulting ratio exceeded 0.5 percent. Because the grant is a non-recurring benefit, consistent with 19 CFR 351.524(c)(2)(iii), we allocated the benefit over the 13-year AUL. We then divided the benefit amount by the Asia Symbol Companies' total consolidated sales (excluding inter-company sales) for the POI to obtain the ad valorem subsidy rate. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.14 percent ad valorem.

#### 12. Support Fund for Environmental Protection Input

AS Shandong reported that it received assistance, in the form of a grant, from the Rizhao Municipal Finance Bureau for environmental protection.<sup>226</sup> We determine that the grant received by AS Shandong constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

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

The grant that AS Shandong received during the POI was less than 0.5 percent of the total consolidated sales of the Asia Symbol Companies for the POI. Therefore pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount in its entirety to the POI. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.14 percent ad valorem.

#### 13. Support Fund for Environmental Protection Project

AS Shandong reported that it received assistance, in the form of a grant, from the Rizhao Economic and Technological Development Area Government for environmental protection.<sup>227</sup> We determine that the grant received by AS Shandong constitutes a financial contribution and a

<sup>225</sup> See AS Shandong ISQR at 7 and Exhibit 7-a; see also GOC ISQR at 25.

<sup>226</sup> See AS Shandong ISQR at 7 and Exhibit 7-a; see also GOC ISQR at 25.

<sup>227</sup> See AS Shandong ISQR at 7 and Exhibit 7-a; see also GOC ISQR at 25.

benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

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

The grant that AS Shandong received during the POI was less than 0.5 percent of the total consolidated sales of the Asia Symbol Companies for the POI. Therefore pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount in its entirety to the POI. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.15 percent ad valorem.

#### 14. City Bonus for Export Activity from Finance Bureau

AS Guangdong reported that it received assistance, in the form of a grant, from Jiangmen City for export activities.<sup>228</sup> We determine that the grant received by AS Guangdong constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(i) of the Act, respectively.

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

The grant that AS Guangdong received during the POI was less than 0.5 percent of the total consolidated sales of the Asia Symbol Companies for the POI.<sup>229</sup> Therefore pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount in its entirety to the POI. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.13 percent ad valorem.

#### 15. Energy Efficiency and Environmental Protection Project

AS Shandong reported that it received assistance, in the form of a grant, from the NIDRC for the purpose of encouraging and promoting investments related to environmental protection.<sup>230</sup> The GOC indicates that this is a national program subject to the Interim Measures for the Management of Central Budgetary Investment Subsidy and Interest Discount Project (2005 No. 31).<sup>231</sup> We determine that the grant received by AS Shandong constitutes a financial contribution and benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, because the actual recipients of the grants under this program were limited

in number, i.e., 168 enterprises,<sup>232</sup> we determine that the grant is specific under section 771(5A)(2)(iii)(I) of the Act.

To calculate the benefit, we divided the grant amount by the Asia Symbol Companies' total consolidated sales (excluding inter-company sales) for the year in which the grant was received and found that the resulting ratio exceeded 0.5 percent. Because the grant is a non-recurring benefit, consistent with 19 CFR 351.524(c)(2)(iii), we allocated the benefit over the 13-year AUL. We then divided the benefit amount by the Asia Symbol Companies' total consolidated sales (excluding inter-company sales) for the POI to obtain the ad valorem subsidy rate. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.02 percent ad valorem.

#### 16. Administrative and Industrial Fee Exemptions in Yinzhou Lake Paper Base

AS Guangdong reported that it paid reduced administrative fees pursuant to this program.<sup>233</sup> The GOC indicates that pursuant to Circular on Printing and Distributing the Supporting Rules for the Development of Yinzhou Lake Paper Base (2010 No. 80) the program is for investments into the paper or paper-related industries in Yinzhou Lake Paper Base.<sup>234</sup>

We determine that the reduced fees are revenue foregone and constitute a financial contribution and a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Regarding specificity, because this program is limited to paper or paper-related industries, we determine that this program is de jure specific under section 771(5A)(2)(X) of the Act.

The benefits that AS Guangdong received during the POI were less than 0.5 percent of the total consolidated sales of the Asia Symbol Companies for the POI. Therefore pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts in their entirety to the POI. On this basis, we determine that the Asia Symbol Companies received a countervailable subsidy of 0.01 percent ad valorem.

#### B. Programs Determined Not To Confer a Benefit on the Asia Symbol Companies During the POI

##### 1. Provision of Water for LITAK in Yinzhou Lake Paper Base

Petitioners alleged that the Xinhui District government provides preferential water rates to enterprises within Yinzhou Lake Paper Base, a designated area of Xinhui District.<sup>235</sup> In response to the Department's new subsidy allegation questionnaire, the GOC provided the Water Law of the People's Republic of China and the Regulation on the Administration of the License for Water Drawing and the Levy of Water Resources Fees and Guangdong Water Resources Fee

<sup>228</sup> See AS Guangdong ISOR at 5 - 8; see also GOC ISOR at 18.  
<sup>229</sup> Because AS Guangdong and AS Shandong do not have export sales, we utilized the companies' consolidated processing fees as a denominator. All third country sales of subject merchandise are made by Greenpoint.

<sup>230</sup> See AS Shandong ISOR (June 15, 2015) at 7 and Exhibit 7G. See also GOC ISOR (June 15, 2015) at 25 and Exhibits 61 and 62.  
<sup>231</sup> See GOC ISOR (June 15, 2015) at Exhibit 61.

<sup>232</sup> Id. at 31 and Exhibit 62. See also, e.g., Jinxuan MOE's and accompanying IDM at 23.

<sup>233</sup> See Asia Symbol Companies' new subsidy allegation questionnaire response (NSAQR) (June 15, 2015) at 9 and Asia Symbol Companies' Minor Corrections to Verification Exhibit 19 MC9.

<sup>234</sup> See GOC NSAQR (June 22, 2015) at 8 and Exhibit 65.  
<sup>235</sup> See the Department's Decision Memorandum on New Subsidy Allegations (May 28, 2015) at 6.



Collection Standards Sheet.<sup>256</sup> At verification, we verified that AS Guangdong and AS Onyia, both located within the Yinzhou Lake Paper Base, paid the provincial water tariff rate for power generation and paper production and the Xinhui District water tariff rate for "living water" and did not pay a preferential rate as alleged.<sup>257</sup> Therefore, we determine that this program did not confer a benefit during the POI. See Comment 8.

C. Programs Determined Not To Be Specific to the Asia Symbol Companies during the POI

1. Provision of Land and/or Land-Use Rights to SOEs for L.TAR

As explained in the Department's position for Comment 9, we find there is no evidence of de jure or de facto specificity on the record. However, if this investigation results in a CVD order, we will examination this program in a subsequent administrative review.

D. Programs Determined Not To Be Used by the Asia Symbol Companies

1. Titanium Dioxide for L.TAR
2. Provision of Water for L.TAR
3. Provision of Electricity for L.TAR
4. Land-Use Rights for L.TAR in Certain Industrial/Development Zones
5. Export Buyer's Credit from Export-Import Bank of China
6. Export Seller's Credit from Export-Import Bank of China
7. Tax Reductions for High and New-Technology Enterprises Involved in Designated Zones
8. Income Tax Exemptions for Forestry Projects
9. Funds for Using Wood Pulp in Forestry-Paper Integration Projects
10. Interest Payments for Forestry-Paper Integration Projects
11. Support for Developing New Paper Products
12. State Key Technology Renovation Fund
13. Grants to Cover Legal Fees in Trade Kennedy Cases
14. Grants for Listing Shares
15. Demolition and Relocation Assistance for Shandong Chenming
16. Preferential Loans to SOEs
17. Jiangmen City – Honest Green Card Backbone Enterprises: Tax Refund
18. Jiangmen City – Honest Green Card Backbone Enterprises: Preferential Interest Rates and Guarantee Fees
19. Jiangmen City – Honest Green Card Backbone Enterprises: Grants
20. Tax Refund for Technology Renovation Projects in Xinhui District
21. Infrastructure Fee and Tax Refund for Enterprises in Xinhui District
22. Interest Subsidy for Capital Increase and Production Expansion Projects in Xinhui District
23. Provision of Electricity for L.TAR in Yinzhou Lake Paper Base
24. Provision of Steam for L.TAR in Yinzhou Lake Paper Base

<sup>256</sup> See GOC's NSAQOR (June 22, 2015) at Exhibits 66 and 67.  
<sup>257</sup> See Asia Symbol Companies Verification Report at 8 - 9.

IX. ANALYSIS OF COMMENTS

COMMENT 1: Whether to Reverse the Department's Government "Authorities" Determination

*GOC's Arguments*

- The Department improperly applied an adverse inference in its governmental authority analysis of four calcium carbonate producers and one caustic soda producer.
- Section 776(b) of the Act allows the Department to apply adverse inferences only to information missing from the record.
- The only information identified by the Department as missing from the record related to these four calcium carbonate producers and one caustic soda producer is whether there are any CCP officials and organizations within these companies.
- The GOC provided business licenses, capital verification reports, Articles of Association, as well as corporate governance information including the names of general managers and directors for the aforementioned entities.
- The Company Law indicates that Chinese law prohibits government officials from participating in or holding positions in a Chinese company.
- The Civil Servant Law stipulates that a civil servant is prohibited from "undertaking or participating in any profit-making activity, or holding a concurrent post in an enterprise or any other profit-making organization."
- The Department has even acknowledged that these laws indicate a lack of governmental control. For example, within the context of the Separate Rate Analysis, which the Department conducts in antidumping proceedings involving non-market economies (NMEs), the Department has stated that "we have analyzed the Company Law and have found it to establish sufficiently an absence of de jure control over privately owned companies in the PRC."<sup>258</sup>
- The Department's AFA determination that the owners, members of the board of directors, and senior managers of the input producers at issue are CCP officials and that, therefore, these producers are government authorities is unlawful because such a finding disregards the evidence on the record that government officials are prohibited from holding these positions in a company.
- The producers' Articles of Association demonstrate that the Boards of Directors are elected and dismissed by the producers' respective shareholders and not by the government. Further, the Articles of Association do not articulate a way for the GOC to influence or participate in this election process, or how the GOC would otherwise control the directors and managers. Nor is there anything else on the record indicating such government control. Therefore, there is not substantial evidence on the record to support a finding that the presumed CCP membership of the directors and managers of these producers act on behalf of the GOC.

<sup>258</sup> See Memorandum to Ronald K. Lorenzen, Deputy Assistant Secretary for Import Administration, from John M. Antlensen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Caustic-Soda Length Carbon Steel Plate from the People's Republic of China: Issues and Decisions Memorandum for the Final Results of Administrative Review," (February 16, 2010) in Comment 2, and the record at A-570-849.

- Additionally, the Department improperly determined that majority-government owned coking coal producers and SOEs that provided coal to respondents, are, by default, "authorities" within the meaning of section 771(5)(B) of the Act.
- The WTO Appellate Body in *DS436* held that a public body is "an entity that possesses, exercises or is vested with governmental authority." In addition, it also clarified that "the mere ownership or control over an entity by a government, without more, is not sufficient to establish that the entity is a public body." Further, the WTO Appellate Body indicated that an entity should be evaluated on a case-by-case basis and that "the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority."<sup>239</sup>
- The Department's Public Body Memorandum appears to be essentially the same as the previous "majority ownership" analysis already rejected by the WTO Appellate Body. Namely, it appears that the Department is again applying a broad policy that considers majority government-owned entities to be "public bodies" by default without a case-specific analysis of whether entities "possess, exercise, or are vested with government authority."

#### *Asia Symbol Companies' Rebuttal Briefs*<sup>240</sup>

- In their rebuttal briefs, the Asia Symbol Companies state their agreement with the GOC's arguments on this issue.
- *Petitioners' Rebuttal Arguments*
  - Pursuant to section 782(i)(1) of the Act, the Department "shall verify all information relied upon in making a final determination in an investigation." The Department has explained that it "is unable to rely on [ ] unverified information" in a final determination.<sup>241</sup> Pursuant to section 776(f) of the Act, the Department "shall . . . use the facts otherwise available in reaching 'its final determination when an interested party 'provides such information but the information cannot be verified as provided in section (782(i) of the Act).' " An adverse inference may be used where an "interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information."<sup>242</sup>
  - In the initial questionnaire response, the Department asked the GOC to provide certain information regarding the presence of CCP officials and organizations within input suppliers that are wholly or partially owned by Chinese individuals or entities.<sup>243</sup> The GOC refused to provide a response to the Department's questions with respect to five producers.<sup>244</sup> The Department gave the GOC a second opportunity to cooperate and

provide information regarding the presence of the CCP in certain input suppliers.<sup>245</sup> The GOC again refused to submit the requested information and referred the Department to its initial questionnaire response.<sup>246</sup>

- In *Danavon Sinks*, as it did here, the GOC argued that the information was not relevant and that Chinese law prohibits the GOC officials from taking positions in private companies.<sup>247</sup> The Department rejected the GOC's arguments, found that it withheld information, and determined that the supplier was an authority as AFA.<sup>248</sup> The Department has consistently determined that "the information requested regarding the role of CCP officials and CCP primary organizations in the management and operations of (input suppliers) is necessary to our determination of whether these producers are 'authorities' within the meaning of section 771(5)(B) of the Act."<sup>249</sup>
- The Department has found that "CCP primary organizations in non-SOEs . . . carry out the Party's . . . policies and guide and monitor the enterprise to comply with the nation's laws and regulations."<sup>250</sup> The Department has explained that "CCP primary organizations are not mere observers within these enterprises but active participants in the development of strategic and operational objectives of the enterprises with the intent on expanding the CCP's presence within the enterprise."<sup>251</sup> The GOC's argument also is contradicted by the recent decision of the United States Court of International Trade.<sup>252</sup> In *ADM v. United States*, the Court explained that the GOC "failed to provide ownership information for the companies producing and supplying sulfuric acid and steam coal."<sup>253</sup> The Court explained that the missing information regarding the CCP "would have allowed Commerce to determine whether these producers were 'authorities' within the meaning of section 771(5)(B) of the Act."<sup>254</sup> Although the question before the Court in that case was whether, "in a countervailing duty proceeding, the application of AFA to a non-cooperating party may adversely impact a cooperating party" (the Court ruled in the affirmative), *ADM v. United States* is still instructive. The Court explained the "previously articulated pattern that ' [t]ypically, foreign governments are in the best position to provide information regarding the administrative of their alleged subsidy program . . . {and} ' in cases '[w]here the foreign government fails to act to the best of its ability, Commerce will usually find that the government has provided a financial contribution to a specific industry.' "<sup>255</sup>
- The GOC's argument that simultaneous service as both a government official and a company senior employee would violate Chinese law is unavailing. The Department

<sup>244</sup> See GOC ISQR at 5.

<sup>245</sup> *Id.*

<sup>246</sup> See *Danavon Sinks Steel Sinks From the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Reconsideration in Part*, 2012-2013, 80 FR 69638 (November 10, 2015) (*Danavon Sinks*) and accompanying IDM at 8.

<sup>247</sup> *Id.*

<sup>248</sup> See 2013 China Acid Review and accompanying IDM at 8. See also 2012 China Acid Review and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences" and "GOC - Calcium Carbide and Coking Coal are Government 'Authorities'."

<sup>249</sup> See 2012 China Acid Review and accompanying IDM at 39.

<sup>250</sup> *Id.* at 39.

<sup>251</sup> See *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331 (CIT 2013) (*ADM v. United States*).

<sup>252</sup> *Id.* at 1337.

<sup>253</sup> *Id.* citing *Essar Steel Ltd v. United States*, 721 F. Supp. 2d 1285, 1297 (CIT 2010).

has made clear that this "argument, however, is contradicted by the Department's finding in a past proceeding that CCP officials can, in fact, serve as owners, members of the board of directors, or senior managers of companies."<sup>256</sup>

- The GOC did not report that no CCP primary organizations or CCP officials were present in the five input suppliers.<sup>257</sup> As the record stands, there is no evidence demonstrating the lack of CCP presence within the five suppliers. The GOC failed to provide any information about the CCP with respect to the five producers' individual owners, board members, or senior managers.

- The GOC's withholding of necessary information that was requested of it led the Department to rely on AFA in conducting its analysis of certain input suppliers.<sup>258</sup> The GOC provided incomplete responses to multiple questionnaires and adverse inferences are warranted in the application of AFA. The Department should continue to find that CCP officials are present in the five input suppliers as individual owners, managers, and members of the boards of directors, and that this gives the CCP, as the government, meaningful control over the companies and their resources.<sup>259</sup> Because an entity with significant CCP presence on its board or in management or in party committees may be controlled such that it is vested with governmental authority, the Department should continue to find that the five input suppliers are "authorities" within the meaning of section 771(5)(B) of the Act.<sup>260</sup>

In its questionnaire, the Department "notified the GOC that the Department generally treats producers that are majority owned by the government or a government entity as controlled by the government and, hence, as 'authorities' within the meaning of section 771(5)(B) of the Act."<sup>261</sup> The GOC did not challenge the Department's "authority" practice for enterprises that are majority owned by the government or a government entity in its questionnaire response, and the Department preliminarily determined that such majority government owned suppliers were authorities.<sup>262</sup> Contrary to the GOC's argument, the Department's preliminary determination to treat majority state-owned input suppliers as authorities is consistent with the Department's practice. As explained in the Public Body Memorandum, producers in the PRC that are majority-owned by the government possess, exercise, or are vested with governmental authority.<sup>263</sup> The Department has consistently determined that the GOC exercises meaningful control over majority state-owned entities and "uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of

the state sector."<sup>264</sup> The Department's Preliminary Determination should remain unchanged.

**Department's Position:** We continue to find companies that supplied the Asia Symbol Companies with inputs, specifically certain calcium carbonate, caustic soda, and coal producers, are "authorities" within the meaning of section 771(5)(B) of the Act.

As explained in the Preliminary Determination, in order to do a complete analysis of whether producers of inputs are "authorities" within the meaning of section 771(5)(B) of the Act, we sought information regarding whether any individual owners, board members, or senior managers were government or CCP officials and the role of any CCP primary organization within the companies.<sup>265</sup> Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or otherwise influenced by certain entities, the Department requested information regarding the means by which the GOC may exercise control over company operations and other CCP-related information.<sup>266</sup> The Department explained its understanding of the CCP's involvement in the PRC's economic and political structure in the current and past PRC CVD proceedings, including why it considers the information regarding the CCP's involvement in the PRC's economic and political structure to be relevant.

Despite the importance of the information requested in the Input Producer Appendix, the GOC provided none of the requested information with regard to CCP officials and CCP primary organizations. For certain calcium carbonate and caustic soda producers that are privately owned, the GOC stated that there is no central informational database, and therefore it cannot obtain the information requested by the Department.<sup>267</sup> Instead, the GOC argued that pursuant to the Civil Servant Law, government officials cannot serve as owners, members of the board of directors, or managers of the input producer without violating the law. It further stated that the Department's CCP questions are not relevant "to determining questions regarding 'public body' or 'government control.'"<sup>268</sup>

Contrary to the GOC's assertions and objections to our questions, it is the prerogative of the Department, not the GOC, to determine what information is relevant to our analysis.<sup>269</sup> As noted, the Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be essential because public information demonstrates that the CCP may exert significant control over activities in the PRC.<sup>270</sup> The CCP Memorandum and

<sup>256</sup> See *China Acid and Certain Chloride Salts from the People's Republic of China*, Preliminary Results of Countervailing Duty Administrative Review, 2011, 78 FR 36648 (June 10, 2013) and accompanying Preliminary Decision Memorandum at 6 (stating that "The GOC's argument, however, is contradicted by the Department's finding in a past proceeding that CCP officials can, in fact, serve as owners, members of the board of directors, or senior managers of companies.") (internal citation omitted).

<sup>257</sup> See GOC IQR at 47-51.

<sup>258</sup> See Preliminary Determination Memorandum at 8.

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> See Preliminary Determination Memorandum at 16.

<sup>262</sup> *Id.*

<sup>263</sup> See Additional Documents for Prelim Memorandum at Attachment II.

<sup>264</sup> See 2013 *China Acid Review* and accompanying IDM at 17.

<sup>265</sup> See Preliminary Determination at 16.

<sup>266</sup> See Department's Initial Questionnaire to the Input Producer Appendix.

<sup>267</sup> See GOC IQR at 51 and 68.

<sup>268</sup> *Id.*

<sup>269</sup> See *NSK Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) ("NSK's assertion that the information it submitted to Commerce provided it sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'") see, e.g., *Alusuisse Compagnie S.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (stating that "(t)he Commerce, not the respondent, that determines what information is to be provided").

<sup>270</sup> See Additional Documents Memorandum, which includes Public Body Memorandum, and its attachment CCP Memorandum.

Public Body Memorandum support the Department's determination that CCP membership is relevant to companies—including private companies—in the PRC.<sup>271</sup>

Specifically, the Department has determined that "available information and record evidence indicates that the CCP meets the definition of the term 'government' for the limited purpose of applying the U.S. CVD law to China."<sup>272</sup> Further, publicly available information indicates that Chinese law requires the establishment of CCP organizations "in all companies, whether state, private, domestic, or foreign-invested" and that such organizations may wield a controlling influence in the company's affairs.<sup>273</sup>

In the 2012 Citric Acid Review, the Department rejected the GOC's assertion that it cannot obtain information on CCP officials and CCP organization. In that proceeding, the GOC provided official government documentation, i.e., stamped originals of election notification from the CCP Committee of Jiaxing Town, that the owner of two input producers did not serve as Secretary for the Party Committee of Linjiadu Village in the PRC during the POR and that the village does not geographically overlap with the locations of the producers' operations.<sup>274</sup> Because in this proceeding the GOC did not provide the information we requested regarding this issue, we have no basis to revise the Department's AFA finding that certain calcium carbonate and caustic soda producers are "authorities" within the meaning of section 771(5)(I) of the Act.

Similarly, the Department's evaluation of the Company Law in the context of separate rate analyses in AD proceedings does not evince a lack of state control here. As explained in 2010/12 Aluminum Extrusions from the PRC, AD PRC proceedings are separate and distinct from CVD PRC proceedings with the application of different analyses and methodologies.<sup>275</sup> As such, the Department's finding in an AD review is not germane to this investigation.

Finally, we disagree with the GOC's assertion that our "authorities" analysis for the majority-government owned caustic soda producers and SOI coal producers was based solely on state ownership. Rather, as explained in the Public Body Memorandum, we found that majority SOIs in the PRC possess, exercise, or are vested with governmental authority.<sup>276</sup> Our finding is based on the GOC exercising meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.<sup>277</sup> Therefore, we continue to determine that these entities are "authorities" within the meaning of section 771(5)(I) of the Act, and that the respondent companies received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act. Further, the GOC has not placed information on the record that contradicts our findings in the Public Body Memorandum.

<sup>271</sup> See CCP Memorandum; Public Body Memorandum; *Drawn Silk's* and accompanying IDM at Comment 1.  
<sup>272</sup> *Id.*, at CCP Memorandum at 33.

<sup>273</sup> *Id.*, at Public Body Memorandum at 35-36, and sources cited therein.

<sup>274</sup> See 2012 Citric Acid Review and accompanying IDM at Comment 2.

<sup>275</sup> See *Aluminum Extrusions from the People's Republic of China*, Final Results of Antidumping Duty Administrative Review and Rescissions, in Part, 2010/12, 79 FR 96 (January 2, 2014) (2010/12 Aluminum Extrusions from the PRC) and accompanying IDM at Comment 4.

<sup>276</sup> See Public Bodies Memorandum at 11-17.  
<sup>277</sup> *Id.*

## COMMENT 2: Whether to Reverse the Department's Specificity Determination for the Provision of Calcium Carbonate and Caustic Soda for LTAAR

### GOC's Arguments

- The Department's application of AFA and conclusion that the provision of calcium carbonate and caustic soda are specific are unlawful because (a) the GOC complied to the best of its abilities and, therefore, an AFA finding is not appropriate, and (b) evidence on the record demonstrates that these alleged programs are not specific and, therefore, the Department cannot apply AFA to find otherwise.
- The GOC reported that SSIB does not maintain consumption data for calcium carbonate and the consumption data the GOC placed on the record was "estimated on the base of the best estimates of the attendees at (the China Inorganic Salts Industry Association's) annual conference and the experts engaged in the calcium carbonate industry." The China Inorganic Salts Industry Association (CISIA) is an industry association that includes producers of calcium carbonate.
- Similarly for caustic soda, the GOC placed data from the China Chlor-Alkali Industry Association (CCAIA), an association whose members include the caustic soda industry. The GOC cannot withhold information that it does not have, and the Department cannot penalize the GOC for not providing it.<sup>278</sup>
- In its Preliminary Determination, the Department claims its application of AFA to its specificity finding with respect to calcium carbonate and caustic soda for LTAAR is supported by its findings in the 2011 Citric Acid Review and 2012 Citric Acid Review. In the 2011 Citric Acid Review, the Department found the GOC failed to act to the best of its ability because it limited its responses to "...data collected by the SSIB."<sup>279</sup> The Department's refusal to accept the exact information the Department itself proposed as a cure for a deficient response is punitive.
- Evidence on the record indicates that the paper making industry is not the primary user of either calcium carbonate or caustic soda. The record evidence shows that numerous industries and sectors in China consume calcium carbonate.<sup>280</sup> The papermaking industry is not the primary user of calcium carbonate, and the percentage consumption of the paper industry is similar to the usage by other segments.<sup>281</sup> The evidence that the GOC placed on the record shows that calcium carbonate has a variety of industrial applications, including adhesives and sealants, building products, and water treatment, among many others.<sup>282</sup> Further, the industry data on the record demonstrates that caustic soda is

<sup>278</sup> See *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1572 (Fed. Cir. 1990) (while Commerce has broad discretion in applying an adverse inference, it may not "characterize a party's failure to list and give details of sales as a 'refusal' or 'inability' to give an answer where, in fact, there are no sales."); *AK Steel Corp. v. United States*, 21 CIT 1204, 1223 (1997) ("Commerce may not, as plaintiff's argue, characterize a party's failure to provide information that does not exist as a 'refusal' to provide data"); *NSK Ltd. v. United States*, 416 F. Supp. 2d 1334, 1341 (CIT 2006) (finding Commerce's application of facts available unlawful and "punitive" when a party "stated that it is reporting its adjustments to the best of its ability" and there is "no factual showing that [it] is able to produce more specific data on the particular allocation of its billing instructions").

<sup>279</sup> See 2011 Citric Acid Review and accompanying IDM at Comment 4.  
<sup>280</sup> See GOC LQR at 59.  
<sup>281</sup> *Id.*  
<sup>282</sup> *Id.*, at 58 and Exhibit 30.

widely used in the Chinese economy and that consumption of caustic soda by the papermaking industry is much lower than several other industries.<sup>283</sup>

#### *Petitioners' Rebuttal Arguments*

- The GOC did not act to the best of its ability because it only provided to the Department estimated calcium carbonate and caustic soda information from non-government entities, which could not be verified.
- Regarding calcium carbonate, the GOC provided the purported percentage of consumption of calcium carbonate by industry during 2012 and 2013, but failed to provide 2014, POI data.<sup>284</sup>
- For calcium carbonate and caustic soda, the consumption information the GOC provided did not have any documentary support.<sup>285</sup> For each input, the Department provided the GOC with a second opportunity to provide the requested information and substantiate the reported information with actual documentation. The GOC responded that the consumption data were estimates based on information from each respective industry association.<sup>286</sup> Those estimates were based on the knowledge of persons that chose to attend the CISIA's annual conference and the best estimates of the experienced experts engaged in the caustic soda industry.<sup>287</sup>
- The GOC failed to provide any documentation to support the estimates of the individuals that chose to attend a conference hosted by the CISIA and the experts engaged in the caustic soda industry.<sup>288</sup>
- The Department appropriately determined that "the 'estimated' consumption information submitted by the GOC, is not verifiable and therefore unreliable."<sup>289</sup> The Department's AFA specifically determination with respect to calcium carbonate and caustic soda is consistent with its past practice. In 2012 China Acid Review, the GOC similarly provided estimated data for the caustic soda industry.<sup>290</sup> In that case, the Department determined that the provision of caustic soda was specific based on AFA and found that "assertions [...] based on data that was not documented and is therefore unverifiable."<sup>291</sup> In other cases, the Department determined that information based on estimates without supporting documentation is not verifiable.<sup>292</sup> The record in this review shows that the GOC failed to put forth anywhere near its maximum effort to respond to the Department's requests. The Department made the GOC aware of this fact and issued supplemental questionnaires. The Department appropriately determined that the GOC "withheld necessary information with regards to the volume and value data corresponding to each of the industries that consumed calcium carbonate and caustic soda that was requested of it and, thus, that the Department must rely on 'facts available' in

making our preliminary determination."<sup>293</sup> The GOC's conduct shows that the Department correctly determined that "the GOC has failed to cooperate by not acting to the best of its ability to comply with" the Department's requests for information.<sup>294</sup> The consequence for such conduct is that "an adverse inference is warranted in the application of facts available," and the Department found that "the GOC's provision of calcium carbonate and caustic soda to paper producers is specific within the meaning of section 771(5A) of the Act."<sup>295</sup> The Department appropriately applied AFA to determine that the provision of calcium carbonate and caustic soda to paper producers for LITAR is specific and should continue to do so in the final determination.

**Department's Position:** The GOC indicated that it did not maintain statistics on consumption by the relevant chemical sectors, but in conjunction with the CISIA and CCAIA provided, respectively, calcium carbonate and caustic soda industry consumption information.<sup>296</sup> The Department requested supporting documentation for the reported data but the GOC responded that there is "no supporting documentation provided by the CISIA" and "the percentages of caustic soda consumed by each industry sector was estimated based on the best estimates of the experienced experts engaged in the caustic soda industry."<sup>297</sup>

The Department requested this information because for verification purposes, the Department must be able to test books and records in order to assess whether the questionnaire responses are complete and accurate, which means that we need to tie information to internal documentation—e.g., surveys, phone records, or databases.<sup>298</sup> The CISIA's Article of Association states it, "conduct[s] deep survey and research on the hot issues of the industrial development," "collect[s], organize and analyze statistic information for the development and key products of domestic and foreign inorganic products; to conduct industry statistics upon the authorization; and to provide the basis for the government on making industrial policy and service for enterprises on business determination through improving the monitor and analysis of industrial economic operation," and "to enhance the construction and management of industrial media [like CISIA website, journals, etc., and to hold] various technology lectures and training course."<sup>299</sup> The CCAIA's Article of Association states its business scope is, "(1) to organize and initiate members of researching into the development program, strategies, major technical and economic policies, and issues on production and operation for chlor-alkali industry and suggesting to relevant government departments through analysis on national development policies and international and domestic market trends;" "to conduct industry consulting and examining services; to compose, publish and issue journal of the Association, books and reference materials in accordance with relevant regulations;" and "to establish authoritative information release platform of the industry and to provide high-quality service for the industry and upstream and downstream customers under the fully utilization of (CCAIA) website."<sup>300</sup>

<sup>283</sup> See Preliminary Determination Memorandum at 15 -- 16.

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> See GOC IQR at 59 and 76, GOC ISQR at 7 and 8.

<sup>287</sup> See GOC ISQR at 2 and 9.

<sup>288</sup> See section 7820(f) of the Act.

<sup>289</sup> See GOC IQR at Exhibit 28 -- CISIA's Article of Association -- Chapter II, Article 6.

<sup>290</sup> *Id.*

<sup>291</sup> *Id.* at Exhibit 38 -- CCAIA's Article of Association -- Chapter II, Article 6.

<sup>292</sup> See GOC IQR at 76.

<sup>293</sup> *Id.* at 59.

<sup>294</sup> *Id.* and GOC ISQR at 1-2.

<sup>295</sup> See GOC ISQR at 1 -- 2 and 9.

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> See Preliminary Determination Memorandum at 15.

<sup>299</sup> See 2012 China Acid Review and accompanying IDM at Comment 5.

<sup>300</sup> *Id.*

<sup>301</sup> See Certain Foreign Stainless Steel Flanges From India, Final Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 42005 (July 16, 2003) and accompanying IDM at Comment 2.

We do not agree with the GOC that AFA is inappropriate here. It was the GOC itself that submitted consumption information from the CISIA and the CCAIA. Further, as noted above, the Articles of Association of the CISIA and the CCAIA state that the two organizations provide statistical analysis for use by the GOC, thereby indicating a level of integration and cooperation between the industry associations and the GOC.

Thus, we disagree with the GOC that the Department's request for information that corroborated the consumption data from the CISIA and CCAIA constituted a demand for information that was not at the disposal of the GOC. Further, because the GOC did not provide the source information we requested, we find that the GOC provided information that we could not verify within the meaning of section 776(a)(2)(D) of the Act. Moreover, it failed to cooperate by not acting to the best of its ability, because it provided unverifiable information. The Department cannot make its determination on this issue based on unsupported assurances by industry association officials. Therefore, as stated above in the section "Application of Facts Available and Adverse Inferences," the Department determines that AFA is warranted in determining the provision of caustic soda for L-TAR is specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

### COMMENT 3: Whether to Reverse the Department's Market Distortion Determination

#### GOC's Arguments

- The GOC stated in its responses that it did not collect the industry volume and value information requested by the Department and did not maintain the ownership information for calcium carbonate, caustic soda, and coal producers required to gather such industry information, yet the Department applied AFA (to calcium carbonate and coal) because it insisted that the GOC collected and maintained additional information that would better respond to the Department's request.<sup>302</sup>
- The Department relied on its verification report from "a previous investigation" conducted over six years ago involving a completely different industry and completely different producers. In that proceeding, the Department determined that "[t]he GOC is able to utilize the SAIC database which indicates the type of enterprise, e.g., solely-state owned, in conjunction with information from the industry association to determine the number and ownership of calcium carbonate and coal producers."<sup>303</sup>
- This statement is purely speculative and has no relation to this investigation into uncutted paper. The databases at issue in OCTG PRC Investigation, however, involved regional databases maintained and used by the Jiangsu Province and Tianjin Municipality, two regions that have no relation to this proceeding.<sup>304</sup> Further, although the Department was able to find certain business records of a few steel companies in those databases, there was no indication in the verification report of that proceeding that records relating to the calcium carbonate, caustic soda, or coal producers were contained in those databases. Therefore, the Department's reliance here on that case to indicate that the GOC collects

and maintains information on the ownership, production, and consumption of these producers and products is unfounded.

- The record evidence in this proceeding does show, however, that the GOC does not know the ownership status of the calcium carbonate producers.<sup>305</sup> Therefore, the Department's reliance on the record of another completely unrelated investigation to support an AFA finding is not based on substantial evidence and is unlawful. The Department has no evidence on the record of this proceeding that the GOC maintains such a database. Instead, the only record evidence indicates that the GOC did not maintain this information so could not have provided it. Therefore, as the GOC did not withhold information and did cooperate to the best of its ability, the Department should not rely in its final determination on an AFA finding that PRC prices from actual transactions involving Chinese buyers and sellers are significantly distorted.

With regard to caustic soda, distortion of the market cannot simply be presumed based on the level of government participation in the market.<sup>306</sup> In order to use benchmarks from markets outside the country under evaluation, the SCM requires a finding that the in-country benchmark is too distorted to be reliable: "Article 14(d) requires an analysis of the market in the country of provision to determine whether particular in country prices can be relied upon in arriving at a proper benchmark."<sup>307</sup> Further, the WTO Appellate Body has determined that "... the distortion of in country prices must be established on the basis of the particular facts underlying each countervailing duty investigation," and, further, "an investigating authority cannot, based simply on a finding that the government is the predominant supplier of the relevant goods, refuse to consider evidence relating to factors other than government market share."<sup>308</sup> The United States has recognized that it must comply with this proceeding.<sup>309</sup> In other words, a finding that a market is distorted must be based on an analysis of that the specific market and cannot be based solely on a finding that the government is the predominant supplier in the market. By requesting information only to determine "whether the GOC is the predominant provider of these inputs in the PRC," the focus of the Department's questions avoids an actual evaluation of the market and thus the basic premise of its analysis is unlawful.<sup>310</sup>

- The Department simply cannot resort to a tier-two benchmark under 19 CFR 351.511(a)(2)(ii) solely because of the government's involvement in the industry.<sup>311</sup> Therefore, the Department's application of the tier-two benchmarks is unlawful and its determination is unsubstantiated by the evidence on the record and is counter to its international obligations and U.S. law. In the final determination, the Department should

<sup>302</sup> See GOC IQR at 56-57 and GOC ISQR at 4-6.

<sup>303</sup> See *Berenson Management Brn. Shmoyev v. United A.S. v. United States*, 61 F. Supp. 3d 1306, 1331, 1331 n.24 (CIT 2015) ("The Preamble allows for the possibility of a level of 'minimal' distortion even where there is 'substantial' portion government involvement. ... [S]imply inquiring whether the portion or share of a government's market involvement is 'substantial' would not, necessarily, answer whether that involvement is 'substantially', in the sense of 'substantively', 'distortive, as the Preamble itself implies.")

<sup>304</sup> See Appellate Body Report, *United States – Countervailing Measures on Certain Products from China* (DS437) at 4,419.

<sup>305</sup> *Id.* at 4,511, 4,935.

<sup>306</sup> See Notice of Commencement of Countervailing Proceedings Pursuant to Section 129 of the Uruguay Round Agreements Act, 80 FR 23254 ("On February 13, 2015, the United States informed the DSB that the United States intends to implement the DSB's recommendations and rulings in WT/DS437").

<sup>307</sup> See Preliminary Determination Memorandum at 14.

<sup>308</sup> See DS437 at 4,511, 4,935.

conclude that prices for transactions involving private entities are not distorted by GOC involvement in the market and use these prices as a tier-one benchmark.

#### *Petitioners' Rebuttal Arguments*

- As recognized by the Department, the GOC maintains databases that include the business registration information for all companies.<sup>312</sup> Moreover, the Department has recognized that the *Law of the People's Republic of China on State-owned Assets of Enterprises*, which applies to all enterprises with state investment regardless of the level of ownership, requires that all state-invested enterprises must be in line with state industrial policies.<sup>313</sup> The GOC's assertions regarding its knowledge of the Chinese economy and the state-ownership therein are simply not based in fact. The Department appropriately rejected these assertions and correctly determined in the *Preliminary Determination* that the GOC withheld information.<sup>314</sup>
- The Department's consistent practice is to find domestic prices distorted where the GOC maintains ownership levels at or above 50 percent.<sup>315</sup> Moreover, even where the government provides "a substantial portion" of the market for a good, prices for such goods may be considered significantly distorted.<sup>316</sup>
- The GOC also supports its arguments with respect to caustic soda by citing WTO decisions.<sup>317</sup> The Department should reject these arguments, because WTO decisions have no direct and automatic effect under U.S. law.<sup>318</sup>
- Accordingly, the Department's preliminary determination that domestic prices in China's calcium carbonate, coal, and caustic soda industries are distorted should remain unchanged in the final determination. The Department should continue to use tier-two, out-of-country benchmarks to measure the adequacy of remuneration paid by the Asia Symbol Companies.

**Department's Position:** We disagree with the GOC's assertion that the Department's application of AFA to find the calcium carbonate and coal markets are distorted is unsupported by the record and unlawful. The GOC asserts the Department's reliance on the OCTG from the PRC investigation verification report, which is on the record of this investigation,<sup>319</sup> is speculative and has no relation to the investigation of uncoated paper. Information provided by the GOC contradicts its own statement. The GOC was able to provide the ownership information of the Asia Symbol Companies' calcium carbonate and coal suppliers by submitting printouts from a publicly accessible online database of (a) registering authority, i.e., SAIC.<sup>320</sup> These producers are located in various provinces which indicate that it is a national database and

is not limited to Jiangsu Province and Tianjin Municipality as the GOC suggests.<sup>321</sup> As explained above in the "Use of Fact Otherwise Available and Adverse Inferences" section, the GOC is able to utilize the SAIC database which indicates the type of enterprise, i.e., solely-state owned, in conjunction with information from the industry association to determine the number and ownership of calcium carbonate and coal producers in which the government maintains an ownership or management interest either directly or through other government entities.<sup>322</sup> Thus, we determine that the GOC withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" in making our final determination.<sup>323</sup> Further, we find that the GOC failed to cooperate to the best of its ability, and therefore an adverse inference is warranted. In drawing an adverse inference, we find that PRC prices from actual transactions involving Chinese buyers and sellers are significantly distorted by the involvement of the GOC.<sup>324</sup>

We are continuing to find distortion in the calcium carbonate, caustic soda and coal industry due to the government presence in the market. As discussed in the *Preliminary Determination*, when identifying the appropriate benchmark for measuring a benefit in an LVAR program, the Department's preference, as the GOC correctly observes, is to use market prices from actual transactions within the country under investigation (i.e., tier-one benchmarks). As such, the Department's preference would be to use prices from private producers within the country if information on such prices is available. However, where we find that the government provides the majority, or a substantial portion of the market for a good, prices for such goods in the country may be considered significantly distorted by the government's presence in that market and may not be an appropriate basis of comparison for measuring the adequacy of remuneration.<sup>325</sup> Therefore, we find that the use of an external benchmark is warranted for calculating the benefit for the provision of calcium carbonate and coal for LVAR.

We continue to find the caustic soda industry with substantial government ownership of domestic production, i.e., 56, 53, and 50 percent for 2012, 2013, and 2014 respectively, and import penetration is less than 0.1 percent in 2014.<sup>326</sup> As evidence that the market is distorted by the government's presence,<sup>327</sup> Given that Chinese state-owned enterprises were responsible for such a large percentage of domestic production volume, as reflected in their share of gross industry revenue, we preliminarily found, and continue to find, that it is reasonable to conclude that actual transaction prices are significantly distorted and thus not suitable as market benchmarks, such that the use of private producer prices in the PRC would be akin to comparing the benchmark to itself (i.e., a benchmark would reflect the distortions of the government presence).<sup>328</sup> As such, there is no basis to apply a tier-one benchmark for caustic soda and we continue to rely on a tier two benchmark for caustic soda for the final determination.

<sup>312</sup> See Preliminary Determination Memorandum at 14.  
<sup>313</sup> See Additional Documents for the Preliminary Determination at Attachment II.  
<sup>314</sup> See Preliminary Determination Memorandum at 14 – 15.  
<sup>315</sup> See *Dawson Sticks* and accompanying IDMI at Comment 4.  
<sup>316</sup> *Id.*, citing CVD Presumable, 63 FR 65377.  
<sup>317</sup> See GOC Brief at 22 – 24.  
<sup>318</sup> See *Cons Steel BV v. Department of Commerce*, 395 F.3d 1343, 1347-1349 (Federal Cir. 2005); *Cons Steel BV v. Department of Commerce*, 502 F.3d 1370, 1375 (Federal Cir. 2007); and *NSK Ltd. v. United States*, 510 F.3d 1375, 1380 (Federal Cir. 2007).  
<sup>319</sup> See Additional Documents for Prelim Memorandum at Attachment I containing OCTG PRC Investigation Verification Report.  
<sup>320</sup> See GOC IQIR at 43 and Exhibit 24 and 40.

<sup>321</sup> *Id.*  
<sup>322</sup> See GOC IQIR at 56, 87 and Exhibit 34.  
<sup>323</sup> See section 776(a)(2)(A) of the Act.  
<sup>324</sup> See CVD Presumable.  
<sup>325</sup> *Id.*, 63 FR at 65377.  
<sup>326</sup> See GOC ISQR at 9 and Exhibit 54.  
<sup>327</sup> See also *Sedgewood Lumber from Canada*, and accompanying IDMI at "Market-Based Benchmark."  
<sup>328</sup> See CVD Presumable, 63 FR at 65377. With respect to the GOC's arguments relying on the WTO Appellate Body report in DS 437, we agree with Petitioners that this decision has no direct or immediate effect under U.S. law. See, e.g., *Cons Steel BV v. Department of Commerce*, 395 F.3d 1343, 1347-1349 (Federal Cir. 2005). Furthermore, the

**COMMENT 4: Whether to Exclude Policy Loan Observation 95 from the Final Determination Calculations**

*Asia Symbol Companies' Arguments*

- Loan observation 95 should not be included in the calculation for countervailing Policy Loans to the Paper Industry.
- While AS Guangdong prepaid interest on that loan on December 17, 2014, the interest and principal were not due until 2015.
- The Department should not include that interest payment in its calculation because AS Guangdong should not be penalized for pre-paying interest.

*Petitioners' Rebuttal Arguments*

- The statute provides that a benefit is conferred when there is a difference between amount the recipient pays and the amount the recipient would have paid on a comparable commercial loan.<sup>329</sup> The Asia Symbol Companies received a benefit at the time it paid the interest (during the POI), because it paid interest at a rate lower than the market otherwise required.<sup>330</sup> Accordingly, the Department should continue to include policy loan observation 95 in its final benefit calculations.

**Department's Position:** We disagree with the Asia Symbol Companies. In the Preliminary Determination, we determined that the Asia Symbol Companies' policy loans from SOCRs to constitute a financial contribution under section 771(5)(D)(i) of the Act.<sup>331</sup> Pursuant to 19 CFR 351.505(a)(1) and section 771(5)(E)(ii) of the Act, the benefit conferred 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 loan. Therefore, we find that all interest payments made during the POI, regardless of whether it was a prepayment, are countervailable.

**COMMENT 5: Whether to Include Surcharges in International Freight Calculations for Calcium Carbonate and Caustic Soda I/TAR Benchmarks**

*Asia Symbol Companies' Arguments*

- The record does not support the inclusion of special charges for the shipment of calcium carbonate and caustic soda.
- The Department preliminarily determined that there is sufficient information on the record to conclude that transporting calcium carbonate would incur "special equipment service" delivery charges and that transporting caustic soda would incur a "dangerous cargo service" delivery charge.
- The Department's decision to include additional/extraordinary shipping charges is based on the facts in Exhibit 3 of Petitioners' Second Benchmark submission, which consists of

Department is currently conducting a proceeding to bring the decisions challenged in that WTO dispute into conformity with the WTO Dispute Settlement Body's recommendations and rulings. See Notice of Commencement of Compliance Proceeding Pursuant to Section 129 of the Uruguay Round Agreements Act, 80 FR 23254 (Apr. 27, 2015).

<sup>329</sup> See section 771(5)(B) of the Act.

<sup>330</sup> See Preliminary Determination Memorandum at 12.

<sup>331</sup> *Id.*, at 24

three pieces of evidence: (1) a product introduction sheet by a Chinese manufacturer of large plastic bags for calcium carbonate; (2) a one-page document issued by Nutrient Source Specifics related to the production, chemical properties and end-use applications, of calcium carbonate; and (3) the specifications of various types of containers published by Mærsk Line.

- None of these sources in Exhibit 3 provide any information regarding the shipment of caustic soda, let alone whether the "dangerous cargo service" delivery charge is incurred. Exhibit 3 does not indicate that shipping calcium carbonate in large plastic bags requires "special equipment service" for loading or transport. Therefore, the Department should not include those extraordinary charges in the benchmark calculation.
- Neither of these special charges is incurred in the shipment of calcium carbonate and caustic soda; therefore, the Department should include the Asia Symbol's international freight benchmark data in calculating the benchmark for these two inputs.

*Petitioners' Arguments*

- The Department should reject the Asia Symbol Companies' arguments, because the international freight rates suggested by Petitioners are supported by record evidence and Department precedent. Petitioners included freight rates for calcium carbonate that utilize flat-rack containers, which include certain equipment charges.<sup>332</sup> The brochure clearly states that these types of containers are used for "heavy cargo."<sup>333</sup> In another proceeding in which the Department examined the calcium carbonate market, it has verified that calcium carbonate is "heavy."<sup>334</sup> Given that specialized containers are required to ship "heavy cargo," the use of flat-rack containers in the international freight calculation is justified.
- For caustic soda, Petitioners' freight rates include a dangerous cargo service charge.<sup>335</sup> Petitioners placed on the record information demonstrating that Mærsk assesses a "dangerous cargo service charge" to transport volatile chemicals such as caustic soda (i.e., UN ID Num=UN1823; UN Hazard Class=8).<sup>336</sup> The United Nations Hazard Class 8 means that caustic soda poses a "severe" health hazard. The information provided by Petitioners makes clear that caustic soda is a hazardous material that "may react violently when exposed to water producing extreme heat and spattering."<sup>337</sup>
- Consistent with 19 CFR 351.511(a)(2)(iv) and Department precedent, the Department should continue to use the hazardous shipping charges in calculating the Asia Symbol Companies' international freight shipping charges for caustic soda.<sup>338</sup>

**Department's Position:** As explained in 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration using a tier-one or tier-two benchmark pursuant to 19 CFR

<sup>332</sup> See Petitioners' Second Benchmark Information at Exhibit 3 (first page) showing calcium carbonate being loaded onto a flat-rack container.

<sup>333</sup> *Id.*, at Exhibit 3 (last page).

<sup>334</sup> See China Acid PRC Investigation and accompanying ID# at 19.

<sup>335</sup> See Petitioners' Second Benchmark Information at Exhibit 5.

<sup>336</sup> *Id.*, at Exhibit 6 and 7.

<sup>337</sup> *Id.*, at Exhibit 7.

<sup>338</sup> See 19 CFR 351.511(a)(2)(iv) ("The Department . . . will adjust the comparison price to reflect the price a firm actually paid or would pay if it imported the product . . ."). See also 2012 China Acid Review and accompanying ID# at Comment 12



351.511(a)(2)(i) or (ii), respectively, 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. We find that the evidence Petitioners provided tends to a reasonable conclusion that calcium carbonate may be shipped using flat rack containers, which would incur a "special equipment service" charge, and that caustic soda is a hazardous chemical that would incur a "dangerous cargo service" charge.<sup>339</sup> Contrary to the Asia Symbol Companies' assertion, record evidence indicates that calcium carbonate is the type of "heavy" cargo that requires flat-rack containers,<sup>340</sup> and that caustic soda qualifies as a hazardous material that poses "severe" health hazards.<sup>341</sup>

In OCTG from the PRC investigation, there was information on the record to demonstrate that the respondents did not incur surcharges when shipping the products at issue.<sup>342</sup> In contrast, we have no information on the record that the "special equipment service" and "dangerous cargo service" fees included in the submitted benchmark freight data are not required for calcium carbonate or caustic soda, respectively. Therefore, as in prior investigations, we continue to use the international freight pricing data in the Preliminary Determination because it best accurately reflects the Asia Symbol Companies' purchases.<sup>343</sup>

#### COMMENT 6: Whether to Incorporate the Minor Corrections into the Final Calculations

##### *Asia Symbol Companies' Arguments*

- The minor corrections provided to the Department during the on-site verifications,<sup>344</sup> as described in the Asia Symbol Companies Verification Report, should be incorporated in the final determination.

*Petitioners did not provide comments on this issue.*

**Department's Position:** The Department will incorporate the minor correction collected at verification into the calculations for the final determination.<sup>345</sup>

<sup>339</sup> See Petitioners' First Benchmark Submission at Exhibits 2 through 7.

<sup>340</sup> *Id.* at Exhibit 3 (first page); see also Citric Acid PRC Investigation and accompanying IDM at 19.

<sup>341</sup> *Id.* at Exhibit 7.

<sup>342</sup> See 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 Investigation), and accompanying IDM at Comment 13D.

<sup>343</sup> See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 75 FR 57444 (September 21, 2010) (Seamless Pipe from the PRC), and the accompanying IDM at Comment 20; OCTG from the PRC Investigation and accompanying IDM at Comment 13D; and 2013 Citric Acid Review and accompanying IDM at Comments 6 and 7.

<sup>344</sup> See Asia Symbol Companies Verification Report at 2 - 3.

<sup>345</sup> See Final Calculations Memorandum.

#### COMMENT 7: Whether to Revise the Provision of Coal for LEAR Benchmark

##### *Petitioners' Arguments*

- The Department should revise the coal benchmark used to calculate the Asia Symbol Companies' subsidy rate. In its initial questionnaire, AS Shandong reported that it consumed coal classifiable under HTS number 2701.19.00;<sup>346</sup> however, record evidence demonstrates that AS Shandong and AS Guangdong consume more costly bituminous coal in the production of electricity because it has a higher thermal content.<sup>347</sup>
- In the Asia Symbol Companies' third questionnaire response, AS Guangdong reported that it "purchased and consumed bituminous coal."<sup>348</sup> AS Guangdong made clear that "the correct HTS code for coal consumed by AS Guangdong should be 2701.12.00," covering bituminous coal. Similarly, AS Shandong confirmed that during the POI the company "consumed only the bituminous coal" and clarified that the correct HTS number for the coal it consumed was HTS 2701.12.00.<sup>349</sup>
- The exhibits collected at verification show that AS Shandong consumed bituminous coal, specifically, a purchase order from a supplier and documents submitted in verification exhibit 22 regarding AS Guangdong's purchases.<sup>350</sup>
- Therefore, the Department should rely only on HTS number 2701.12.00 covering bituminous coal, as opposed to HTS number 2701.19.00, covering sub-bituminous coal when measuring the adequacy of remuneration paid by AS Shandong and AS Guangdong for coal, because that is the type of coal consumed by the respondents.

##### *Asia Symbol Companies' Rebuttal Arguments*

- Asia Symbol does not import the coal it consumes, so it has never had to classify its coal under the HTS. Thus, its statements as to how its coal "should be" classified are not based on actual import transactions. Indeed, this issue of coal classification is one of first impression for the company. As such, for the final determination, the Department should rely on the factual coal information on the record which Asia Symbol submitted that supports the Department's use of HTS 2701.19.00.
- In the Asia Symbol Companies Verification Report, when discussing coal, the Department noted that the Asia Symbol Company officials state that the coal it consumes "should be classified as 'other' coal under HTS 2701.19.00."<sup>351</sup>

**Department's Position:** In the Preliminary Determination, the Department stated in order to derive the benchmark, we calculated HTS-specific benchmarks that correspond to the HTS categories of coal purchased by the Asia Symbol Companies during the POI. Our approach is consistent with the Department's practice of deriving benchmark prices by grade when such data are available and when the record evidence indicates that the respondent firm purchases the good

<sup>346</sup> See AS Shandong IQR at Exhibit 27.

<sup>347</sup> See the Asia Symbol Companies' 3SQR at 17.

<sup>348</sup> *Id.*

<sup>349</sup> *Id.*

<sup>350</sup> See the Asia Symbol Companies Verification Report at VI-22.

<sup>351</sup> *Id.* at 8.

in question on a grade specific basis.<sup>352</sup> In the Preliminary Calculation Memorandum,<sup>353</sup> we inadvertently utilized HTS 2701.19.00 based on the Asia Symbol Companies' initial questionnaire responses.<sup>354</sup> However, based on a review of the record evidence, we have revised our approach for the final determination and have utilized HTS 2701.12.00.<sup>355</sup>

At verification, AS Guangdong officials attempted to support its assertion that the company used "other coal" under HTS 2701.19.00 by translating the short text description of its goods receivable ledger to "raw coal" and providing a copy of the HTS schedule.<sup>356</sup> However, the record supports revising the benchmark from "other coal" under HTS 2701.19.00 to coal categorized under HTS 2701.12.00.<sup>357</sup> Therefore, we revised the benchmark price for the final calculations. See Final Calculation Memorandum for further discussion of business proprietary information.

#### COMMENT 8: Whether the Provision of Water for LITAR Confers a Benefit

##### *Petitioners' Arguments*

- Preferential water rates provided to the papermaking industry are specific and constitute a financial contribution.
- Respondents received water for LITAR through the Yinzhou Lake Paper Base, which provides water to companies within its borders at tiered rates depending on usage. The price of papermaking water is rate A per cubic meter whereas water to produce other products (such as calcium carbonate) is a higher rate B per cubic meter.<sup>358</sup> The difference between the two rates per cubic meter is the benefit received by AS Guangdong. The preferential water rates are specific because only enterprises in the Yinzhou Lake Paper Base are eligible to receive papermaking water for LITAR.

##### *Asia Symbol Companies' Rebuttal Arguments*

- In its third supplemental response, the Asia Symbol Companies explained that AS Guangdong does not purchase production-ready water from an authority.<sup>359</sup> Instead, AS Guangdong pumps raw water from Yinzhou Lake. To be able to use that water to produce paper, the company must then process that raw water. In addition, in the company's NSA response, the Asia Symbol Companies indicate that AS Guangdong pays a "water resources fee" to the local Water Resources Management Bureau for the ability to pump raw water from Yinzhou Lake.<sup>360</sup> As such, the record clearly demonstrates (and the Department verified), that AS Guangdong does not purchase useable/treated water

from a government authority. Instead, it simply pays a fee for the privilege of pumping raw water from a lake. The raw water has to be treated and processed before it can be used in the manufacturing process.

- Further, as the company reported, AS Onmya does not purchase water from any outside third party suppliers or authorities. Instead, it purchases its water from AS Guangdong.<sup>361</sup> The price paid for that water was a price mutually agreed upon between AS Guangdong and AS Onmya. That was not a price paid by AS Onmya to an outside party or any government authority. Instead, it was simply a price paid by AS Onmya to an affiliate (AS Guangdong).

**Department's Position:** AS Guangdong indicated in its NSA questionnaire response and at verification that its water suppliers are the Water Resource Management Bureau of Xin Hui (Xinhui District Local Water Bureau) and Shuangshui Waterworks Plant, Xinhui District (Xinhui District Water Factory).<sup>362</sup> In its NSA questionnaire response, the COC provided the rate schedule for the Guangdong Water Resource Fee Collection Standard Sheet.<sup>363</sup> At verification, AS Guangdong explained that it drew water from Yinzhou Lake and treats the "raw" water before it is used for power generation and paper production.<sup>364</sup> It further indicated that meters are placed by the water authority at the water source to measure and monitor intake to measure usage.<sup>365</sup>

Petitioners alleged that the Xinhui District government provides preferential water rates to enterprises within Yinzhou Lake Paper Base, a designated area in Xinhui District. As stated in the Post-Preliminary Determination<sup>366</sup> and as confirmed at verification, AS Guangdong paid the standard provincial rates for production and power generation and district tap water rates to the water authorities.<sup>367</sup> As such, we find that there was no government, preferential pricing scheme in place with regard to the water prices paid by AS Guangdong and, thus, there is no basis to conclude that the prices charged by the water authority conferred a benefit upon AS Guangdong under section 771(5A)(ix)(iv) of the Act.

During the FOI, AS Onmya purchased water from AS Guangdong. The record evidence indicates that AS Onmya pays AS Guangdong for its water usage at a rate negotiated between the two companies.<sup>368</sup> In keeping with our practice concerning transactions between cross-owned affiliates, we did not include prices charged between AS Guangdong and AS Onmya in our LITAR analysis.<sup>369</sup> Rather, we limited our analysis to the prices AS Guangdong paid to the local water

<sup>352</sup> See Steel Wheels from the PRG, CWA/SPP from the PRG, Hot Rolled Leds, and Softwood Lumber from Canada

<sup>353</sup> See Memorandum to the File, "Commerce Entry (CVP) Investigation on Uncoated Paper from the People's Republic of China (PRC), Preliminary Determination Calculations for the Asia Symbol Companies," (June 22, 2015) (Preliminary Calculation Memorandum).

<sup>354</sup> See AS Guangdong IQR at Exhibit 25 and AS Guangdong IQR at Exhibit 27.

<sup>355</sup> See Final Calculation Memorandum.

<sup>356</sup> *Id.* and Exhibit 93 and 94.

<sup>357</sup> See Asia Symbol Companies' JSQR at 17

<sup>358</sup> *Id.* at 15 and Exhibits 5 and 6.

<sup>359</sup> See Asia Symbol Companies' NSAQR at 11.

<sup>360</sup> See Asia Symbol Companies' JSQR at 15

<sup>361</sup> See Asia Symbol Companies' NSAQR at 11 and Asia Symbol Companies Verification Report at 9

<sup>362</sup> See COC NSAQR at 13 and Exhibit 66 and 67.

<sup>363</sup> See Asia Symbol Companies Verification Report at 9.

<sup>364</sup> *Id.*

<sup>365</sup> See Post-Preliminary Determination at 10 – 11.

<sup>366</sup> *Id.*, at VI-23 page 42-45

<sup>367</sup> *Id.*, at VI-23 page 48-62.

<sup>368</sup> See Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010) and accompanying IDN at 7-8, and 23, in which the Department did not include in its benefit analysis the prices for inputs that a respondent paid to its cross-owned affiliate.

utility. Thus, based on this analysis, we find that this program did not confer a benefit on the Asia Symbol Companies during the POI.

COMMENT 9: Whether the Provision of Land to SOEs for LTVAR is Countervailable

*Petitioners' Arguments*

- AS Shandong benefited from the provision of land to SOEs for LTVAR.
- AS Shandong's predecessors, Shandong Rizhao Wood Pulp Co., Ltd. or Shandong Asia Pacific SSYM3 Pulp & Paper Co., Ltd., were all SOEs and many of AS Shandong's land contracts were signed by those predecessors prior to 2005.<sup>370</sup>
- AS Shandong received granted land-use rights from the local GOC, the local municipal land bureau and Nanshihuang Village, therefore, the Department should find that AS Shandong's land use rights were provided by government authorities.<sup>371</sup>
- In prior proceedings, such as OTR Tires Investigation,<sup>372</sup> the Department determined that land leases from local village governments are countervailable. These land leases are specific because they are limited to SOEs. In addition, AS Shandong benefited from these land leases to the extent it paid less than the benchmark price for its land.
- No evidence was placed on the record to demonstrate that the benefits received under these contracts were extinguished during the sale of AS Shandong.
- As all land in China is owned by the GOC, Petitioners argued that the Department should follow its established practice and rely on an on-out-of-country benchmark to measure the adequacy of remuneration.
- Finally, the land leases should be ruled specific based on AFA, as the GOC refused to respond to the Department's two questions regarding the provision of land to SOEs for LTVAR. In its response to question 1 in the initial questionnaire, the GOC refused to provide any information on instances in which land and/or land-use rights were granted. Instead, the GOC referred the Department to the mandatory respondent's response.<sup>373</sup> In its response to question 2 in the initial questionnaire, the GOC refused to provide any provincial, county, or municipal land laws relevant to the location of the mandatory respondents in this proceeding.<sup>374</sup> Therefore, the Department should calculate a countervailable subsidy rate for the provision of land to AS Shandong for LTVAR.
- To the extent the Department does not find the provision of land to AS Shandong for LTVAR, the Department should conduct a change-in-ownership analysis to determine whether the land was provided in AS Shandong's SOE reform process.

<sup>370</sup> See AS Shandong IQR at 4-5 and 46. See also AS Shandong English Translation for Land (May 27, 2015).

<sup>371</sup> See AS Shandong English Translation for Land at Exhibit 33a.

<sup>372</sup> See Certain New Biometric Office-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances, 73 FR 40480 (July 15, 2008) (OTR Tires Investigation) and accompanying IDMA at 20 and Comment F.12.

<sup>373</sup> See GOC IQR at 37.

<sup>374</sup> Id.

<sup>375</sup> See OTR Tires Investigation and accompanying IDMA at Comment F.11.

*Asia Symbol Companies' Rebuttal Arguments*

- AS Shandong is a Sino-foreign joint venture that is majority-owned (90 percent) by a foreign entity, and has been since August 17, 2005. The Certificate of Approval and Business License demonstrate that AS Shandong is a Sino-foreign Joint Venture (and thus not an SOE).<sup>376</sup>
- On August 17, 2005, when the company was formed, it was originally named "Shandong Asia Pacific SSYM3 Pulp & Paper Co., Ltd."<sup>377</sup> On March 25, 2013, "Shandong Asia Pacific SSYM3 Pulp & Paper Co., Ltd." (Shandong Asia Pacific) changed its name to "Asia Symbol (Shandong) Pulp & Paper Co., Ltd."<sup>378</sup> However, the name change did not change the legal nature of the entity - Sino-foreign joint venture. As such, Petitioners are simply wrong when they state on page 10 of their case brief that Shandong Asia Pacific SSYM3 Pulp & Paper Co., Ltd. was an SOE, and the cited Exhibit 33a (footnote 39 of their case brief) does not demonstrate that fact.
- The creation of Shandong Asia Pacific occurred in 2005 when a Singapore-based affiliate of the Asia Symbol Companies purchased the majority of the shares of Shandong Rizhao SSYM3 Pulp and Paper Co., Ltd. -- an SOE.<sup>379</sup> As of the acquisition date (August 17, 2015), the SOE target was extinguished and a new legal entity (Sino-foreign joint venture) was created. The land contracts entered into by Shandong Rizhao Wood Pulp Co., Ltd. have nothing to do with Shandong Asia Pacific (AS Shandong). When the shares were acquired, the SOE was extinguished.
- Land from Nanshihuang Village is not purchased land but instead a leasing arrangement, whereby AS Shandong has signed a lease agreement with pays annual rent to Nanshihuang Village. AS Shandong signed the lease agreement on May 2010, after AS Shandong was formed as a Sino-foreign joint venture.
- The record does not establish Nanshihuang Village as a "local GOC."
- There has been no allegation in this investigation that the land was provided during any SOE reform process. As such, Petitioners' request that the Department conduct a "change in ownership analysis" is untimely.

Department's Position: In the Preliminary Determination, we preliminarily found the Provision of Land and/or Land-Use Rights to SOEs for LTVAR not used.<sup>380</sup> Further review of the record indicates that Shandong Rizhao SSYM3 Pulp & Paper Co., Ltd. extended one of its original land-use rights for a transfer price.<sup>381</sup> This event occurred during the 13-year AUL, and after the December 11, 2001, "cut-off" date. In OTR Tires Investigation, the Department found the program specific because respondent obtained its granted land-use rights as part of a government policy of SOE reform.<sup>382</sup> In that investigation, the record demonstrated that the respondent, Hebei Tire (as the SOE entity), received allocated land use rights as an SOE and maintained its allocated land-use rights until 2005 under policies designed for SOE reform. The subsequent

<sup>376</sup> See AS Shandong IQR at Exhibits 1 and 7.

<sup>377</sup> Id. at 4.

<sup>378</sup> Id. at 5. See also Asia Symbol Companies Verification Report at VI-2.

<sup>379</sup> See AS Shandong IQR at 4.

<sup>380</sup> See Preliminary Determination Memorandum at 39.

<sup>381</sup> See AS Shandong's Land Contracts (English Translation) (May 27, 2015) at Exhibit 33(a).

<sup>382</sup> See OTR Tires Investigation and accompanying IDMA at "Government Provision of Land to SOEs for Less Than Adequate Remuneration -- Shandong's Granted Land Use Rights."

conversion and sale of these land-use rights, i.e., granted land-use rights, to Starbright (foreign invested entity) was the final step in this reform process.<sup>363</sup> The Department found in QTR Ties Investigating that provisions in the Xinjiang Reform Implementation Circular were not available to all enterprises within the municipality but specified the exact number of firms who were eligible to take advantage of the regulation.<sup>364</sup> Thus, the Department found Starbright's granted land-use rights specific pursuant to section 77(5A)(D)(i) of the Act.<sup>365</sup>

In contrast to QTR Ties Investigating, the record evidence in this investigation, i.e., legislation, land contracts, and land-use certificates,<sup>366</sup> does not provide a factual basis to conclude that Shandong Rizhao Wood Pulp Co., Ltd., obtained the land-use rights because of preferential policies to SOEs, and the benefits transferred to AS Shandong. For example, the land contracts do not indicate Shandong Rizhao Wood Pulp Co., Ltd., received allocated land-use rights, which are exclusive to SOEs and do not expire.<sup>366</sup> Thus there is no record basis to conclude that any potential benefit is de jure or de facto specific pursuant to sections 77(5A)(D)(i) and (iii)(i) of the Act. If this investigation results in a CVD order, we will continue to examine this program in a subsequent administrative review, including any potential change in ownership analysis.

# X. RECOMMENDATION

We recommend that you approve the final findings described above.

✓ Agree Disagree

Paul Piquand  
Assistant Secretary  
for Enforcement and Compliance

(Date) 8 January 2016

<sup>363</sup> Id., at Comment F.11.

<sup>364</sup> Id.

<sup>365</sup> See GOC IOR at Exhibit 19, AS Shandong IOR at Exhibits J.1, J.2 and J.3, and AS Shandong's English Translation of Land Contracts (May 27, 2015) at Exhibits 30a through 33a.

<sup>366</sup> See AS Shandong's English Translation of Land Contracts (May 27, 2015) at Exhibit 31a.

V Other Tax Programs					
24	3	VAT and Tariff Exemptions for Use of Imported Equipment	8.13%	Calculated	Asia Symbol
25	2	VAT Rebates on FIE Purchases of Chinese Made Equipment	0.07%	Calculated	Asia Symbol
26	3	Administrative and Industrial Fee Exemptions in Yinzhou Lake Paper Base	0.01%	Calculated	Asia Symbol
VI Grant Programs					
27	1	Funds for Using Wood Pulp in Forestry-Paper Integration Projects	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
28	2	Interest Payments for Forestry-Paper Integration Projects	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
29	3	Support for Developing New Paper Products	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
30	4	State Key Technology Renovation Fund	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
31	5	Grants to Cover Legal Fees in Trade Remedy Cases	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
32	6	Grants for Listing Shares	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
33	7	Demolition and Relocation Assistance for Shandong Chenming	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
34	8	Jiangmen City - Honest Green Card Backbone Enterprises: Preferential Interest Rates and Guarantee Fees	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
35	9	Jiangmen City - Honest Green Card Backbone Enterprises: Grants	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
36	10	Interest Subsidy for Capital Increase and Production Expansion Projects in Xinhui District	0.58%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 79 FR 56560
Asia Symbol Grant Programs					
37	13	AS Shandong Grant 3 - Governmental subsidies for energy efficiency and environmental protection	0.10%	Calculated	Asia Symbol
38	17	AS Shandong Grant 5 - Support Fund for Energy Efficiency and Environmental Protection Project	0.07%	Calculated	Asia Symbol
39	13	AS Shandong Grant 17 - Support fund for environmental protection project	0.14%	Calculated	Asia Symbol
40	14	AS Shandong 19 - Support fund for environmental protection input	0.14%	Calculated	Asia Symbol
41	15	AS Shandong Grant 22 - Support fund for environmental protection project	0.15%	Calculated	Asia Symbol
42	16	AS Guangdong Grant 22 - City bonus for export activity from finance bureau	0.32%	Calculated	Asia Symbol
TOTAL FINAL AD VALOREM RATE:			176.75%		

(-570-023: UNCOATED PAPER FROM PKC - AJ & RATE (Public Information))					
PROGRAM		Rate Used	Description	Source	
I Loan Programs					
1	1	Policy Loans for Papermaking Industry	0.58%	Calculated	Asia Symbol
2	2	Preferential Loans for SOEs			
3	3	Export Buyer's Credit	5.13%	Identical Program	13-foot Domestic Dry Containers 80 FR 22206
4	4	Export Buyer's Credit	10.54%	Highest Rate for Similar Program Based on Benefit Type	Solar Cell Investigation 77 FR 62788
II Inputs for ITAF					
5	1	Calcium Carbonate for ITAF	0.74%	Calculated	Asia Symbol
6	2	Caustic Soda for ITAF	0.87%	Calculated	Asia Symbol
7	3	Titanium Dioxide for ITAF	22.02%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 75 FR 508
8	4	Provision of Water for ITAF	20.00%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 75 FR 56560
9	5	Provision of Electricity for ITAF	20.00%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 75 FR 56560
10	6	Provision of Coal for ITAF	0.58%	Calculated	Asia Symbol
11	7	Provision of Electricity for ITAF in Yinzhou Lake Paper Base	20.00%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 75 FR 56560
12	8	Provision of Steam for ITAF in Yinzhou Lake Paper Base	20.00%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 75 FR 56560
13	9	Provision of Water for ITAF in Yinzhou Lake Paper Base	20.00%	Highest Rate for Similar Program Based on Benefit Type	Chlorinated Isocyanurates 75 FR 56560
III Provisions of Land for ITAF					
14	1	Land-use Rights for ITAF in Certain Industrial/Development Zones	2.55%	Highest Rate for Similar Program Based on Benefit Type	OTC from PKC 74 FR 64041
15	2	Land to SOEs for ITAF	2.55%	Highest Rate for Similar Program Based on Benefit Type	OTC from PKC 74 FR 64041
IV Tax Benefit Programs					
16	3	Preferential Income Tax Program for High- or New-Technology Enterprises	21.00%		
17	2	Tax Exemptions for High- and New-Technology Enterprises Involved in Designated Zones			
18	3	Income Tax Exemptions for Forestry Projects			
19	4	Preferential Income Tax for Comprehensive Utilization Enterprise			
20	5	Tax Allowance for Special Equipment for Water and Energy Savings Purchased by Enterprises			
21	6	Tax Refund for Technology Renovation Projects in Xinhui District			
22	7	Jiangmen City - Honest Green Card Backbone Enterprises: Tax Refund			
23	8	Infrastructure Fee and Tax Refund for Enterprises in Xinhui District			



81 FR 3104, January 20, 2016

Non-Confidential Attachment C-1.3.2

DEPARTMENT OF COMMERCE

International Trade Administration

[C-560-829]

Certain Uncoated Paper From Indonesia: Final Affirmative  
Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration,  
Commerce.

SUMMARY: The Department of Commerce (the Department) determines that  
countervailable subsidies are being provided to producers and exporters  
of certain uncoated paper from Indonesia. For information on the  
estimated subsidy rates, see the ``Final Determination and Suspension  
of Liquidation'' section of this notice. The period of investigation  
(POI) is January 1, 2014, through December 31, 2014.

DATES: Effective: January 20, 2016.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Brandon Custard,  
Office II, AD/CVD Operations, Enforcement and Compliance, International  
Trade Administration, U.S. Department of Commerce, 14th Street and  
Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-  
4136 or (202) 482-1823, respectively.

SUPPLEMENTARY INFORMATION:

Background

The events that occurred since the Department published the  
Preliminary Determination \1\ on June 29, 2015, are discussed in the  
Issues and Decision Memorandum, which is hereby incorporated in this  
notice.\2\ This memorandum also details the changes we made since the  
Preliminary Determination to the subsidy rates calculated for the  
mandatory respondents and all other producers/exporters. The Issues and  
Decision Memorandum is a public document and is on file electronically  
via Enforcement and Compliance's Antidumping and Countervailing Duty  
Centralized Electronic Service System (ACCESS). ACCESS is available to  
registered users at <http://access.trade.gov>, and is available to all  
parties in the Central Records Unit, room B8024 of the main Department  
of Commerce building. In addition, a complete version of the Issues and  
Decision Memorandum can be accessed directly at  
<http://enforcement.trade.gov/frn/index.html>. The signed Issues and Decision  
Memorandum and the electronic version of the Issues and Decision  
Memorandum are identical in content.

\1\ See Certain Uncoated Paper From Indonesia: Preliminary  
Affirmative Countervailing Duty Determination and Alignment of Final  
Determination With Final Antidumping Determination, 80 FR 36971  
(June 29, 2015) (Preliminary Determination), and accompanying  
Decision Memorandum for the Preliminary Affirmative Countervailing  
Duty Determination in the Countervailing Duty Investigation of  
Certain Uncoated Paper from Indonesia (Preliminary Decision  
Memorandum).

\2\ See memorandum entitled, ``Countervailing Duty Investigation

of Certain Uncoated Paper from Indonesia: Issues and Decision Memorandum for the Final Affirmative Determination,' dated concurrently with this notice (Issues and Decision Memorandum).

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## Scope of the Investigation

The product covered by this investigation is certain uncoated paper. For a complete description of the scope of the investigation, see Appendix I.

## Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum, dated concurrently with this notice. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice as Appendix II.

## Use of Facts Otherwise Available, Including Adverse Inferences

For purposes of this final determination, we continue to rely on facts available and to draw an adverse inference, in accordance with sections 776(a) and (b) of the Act, to determine the subsidy rates for Great Champ Trading Limited (Great Champ) and Indah Kiat Pulp & Paper TBK (IK) and Pabrik Kertas Tjiwi Kimia (TK) \3\ because these companies failed to participate in this investigation and the Government of Indonesia (GOI) failed to provide requested information with respect to certain programs upon which we initiated an investigation.\4\

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\3\ We found IK, TK, and PT Pindo Deli Pulp and Paper Mills to be cross-owned and, therefore, are assigning them a single countervailing duty rate. For further discussion, see Memorandum entitled, ``Cross-Ownership of Asia Pulp and Paper/Sinar Mas Group Companies: Countervailing Duty Investigation of Uncoated Paper from Indonesia,' dated June 22, 2015.

\4\ See Issues and Decision Memorandum, at pages 3-9.

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## Final Determination and Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for PT Anugrah Kertas Utama (AKU) and APRIL Fine Paper Macao Commercial Offshore Limited (AFPM) (collectively, the APRIL companies). Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, we will determine an ``all-others'' rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. Where the rates for investigated companies are zero or de minimis, or based entirely on facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an ``all-others'' rate using ``any reasonable method.'' As discussed above, we determined Great Champ's and IK's/TK's rates based entirely on AFA in accordance with sections 776(a) and (b) of the Act. Therefore, we used the rate calculated for the APRIL companies as the ``all-others'' rate. We intend to disclose to parties the calculations performed in this proceeding within five days of the public announcement of this final



determination in accordance with 19 CFR 351.224(b).

We determine the countervailable subsidy rates to be:

Company	Subsidy rate (percent)
APRIL Fine Paper Macao Commercial Offshore Limited/PT Anugrah Kertas Utama/PT Riau Andalan Kertas/PT Intiguna Primatama/PT Riau Andalan Pulp & Paper/PT Esensindo Cipta Cemerlang.....	21.22
Great Champ Trading Limited.....	104.00
Indah Kiat Pulp & Paper TBK/Pabrik Kertas Tjiwi Kimia/PT Pindo Deli Pulp and Paper Mills.....	109.15
All-Others.....	21.22

As a result of our affirmative Preliminary Determination, pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise from Indonesia which were entered or withdrawn from warehouse, for consumption on or after June 29, 2015, the date of the publication of the Preliminary Determination in the Federal Register.

[[Page 3105]]

In accordance with section 703(d) of the Act, we later issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after October 27, 2015, but to continue the suspension of liquidation of all entries from June 29, 2015, through October 26, 2015, as appropriate.

We will issue a CVD order and reinstate the suspension of liquidation in accordance with our final determination and under section 706(a) of the Act if the United States International Trade Commission (ITC) issues a final affirmative injury determination, and we will instruct CBP to require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded.

#### International Trade Commission (ITC) Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

#### Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written

notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: January 8, 2016.

Paul Piquado,  
Assistant Secretary for Enforcement and Compliance.

## Appendix I

### Scope of the Investigation

The merchandise covered by the investigation includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white paper with a GE brightness level \1\ of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

\1\ One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade. ``Colored paper'' as used in this scope definition means a paper with a hue other than white that reflects one of the primary colors of magenta, yellow, and cyan (red, yellow, and blue) or a combination of such primary colors.

Certain Uncoated Paper includes (a) uncoated free sheet paper that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope are (1) paper printed with final content of printed text or graphics and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered ``printed with final content'' where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 1802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for

convenience and customs purposes, the written description of the scope of the investigation is dispositive.

## Appendix II

### List of Topics Discussed in the Issues and Decision Memorandum

#### I. Summary

#### II. Background

#### III. Use of Facts Otherwise Available

#### IV. Subsidies Valuation

#### V. Analysis of Programs

#### VI. Analysis of Comments

##### 1. Adverse Facts Available for Great Champ

##### 2. Whether the Stumpage Program Meets the Specificity

##### Requirement

##### 3. Whether the Stumpage Program Applies to Purchases of Felled Trees

##### 4. Whether To Include APRIL's Harvest of Mixed Hardwood Timber in Calculating Countervailable Benefits

##### 5. Whether To Use Malaysian Stumpage Fees as a Benchmark

##### 6. Whether the Log Export Ban Constitutes a Countervailable Subsidy

##### 7. Selection of Timber Benchmark Values

##### 8. Adjustments to Log Benchmark Values

##### 9. Corrections and Revisions to APRIL's Log Harvesting and

##### Purchase Data

##### 10. Whether APRIL Received a Countervailable Debt Forgiveness Benefit

##### 11. Whether APRIL Received a Countervailable Benefit for Preferential Loans

##### 12. Uncreditworthiness

#### VII. Recommendation

[FR Doc. 2016-01026 Filed 1-19-16; 8:45 am]

BILLING CODE 3510-DS-P





C-560-829  
Investigation  
Public Document  
AD/CVDops111016

DATE: January 8, 2016

MEMORANDUM TO:

Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM:

Christian Marsh *(initials)*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT:

Countervailing Duty Investigation of Certain Uncoated Paper from  
Indonesian Issues and Decision Memorandum for the Final  
Affirmative Determination

## I. SUMMARY

The Department of Commerce (Department) determines that countervailable subsidies are being provided to producers and exporters of certain uncoated paper from Indonesia, as provided for in section 705 of the Tariff Act of 1930, as amended (the Act). The mandatory respondents in this investigation are Great Champ Trading Limited (Great Champ); Indah Kiat Pulp & Paper Tbk (IK) and Pabrik Kertas Tjiwi Kimia (TK); and PT Aneura Kertas Utama (AKU) and APRIL Fine Paper Macao Commercial Offshore Limited (AFPM) (collectively, the APRIL companies, or APRIL). The petitioners in this investigation are United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; Donlin Corporation; Finch Paper L.L.C.; P.H. Clatfelder Company; and Packaging Corporation of America (collectively, the petitioners). Below is the complete list of issues in this investigation for which we received comments from interested parties:

- Comment 1: Adverse Facts Available for Great Champ
- Comment 2: Whether the Stumpage Program Meets the Specificity Requirement
- Comment 3: Whether the Stumpage Program Applies to Purchases of Felled Trees
- Comment 4: Whether to Include APRIL's Harvest of Mixed Hardwood Timber in Calculating Countervailable Benefits
- Comment 5: Whether to Use Malaysian Stumpage Fees as a Benchmark
- Comment 6: Whether the Log Export Ban Constitutes a Countervailable Subsidy
- Comment 7: Selection of Timber Benchmark Values
- Comment 8: Adjustments to Log Benchmark Values
- Comment 9: Corrections and Revisions to APRIL's Log Harvesting and Purchase Data
- Comment 10: Whether APRIL Received a Countervailable Debt Forgiveness Benefit



Comment 11: Whether APRIL Received a Countervailable Benefit for Preferential Loans  
Comment 12: Uncreditworthiness

## II. BACKGROUND

### A. Case History

On June 29, 2015, we published the Preliminary Determination for this investigation.<sup>1</sup> We conducted verifications of the questionnaire responses submitted by the APRIL companies and the GOI between October 7 and October 15, 2015.<sup>2</sup>

On October 2, 2015, Gartner Studios Inc. (Gartner Studios) submitted its case brief regarding the scope of the antidumping duty (AD) and countervailing duty (CVD) uncoated paper investigations. On October 19, 2015, American Greetings Corporation (American Greetings) submitted its case brief regarding the scope of the investigations.<sup>3</sup> On October 29, 2015, the petitioners submitted their rebuttal brief regarding the scope of the investigations.<sup>4</sup> On November 13, 2015, we issued a post-preliminary analysis memorandum in this investigation.<sup>5</sup> We received a case brief from the petitioners,<sup>6</sup> and a consolidated brief from the APRIL companies and the Government of Indonesia (GOI)<sup>7</sup> on November 17, 2015. We received rebuttal briefs from the same parties on November 23, 2015.<sup>8</sup> We held a public hearing on December 2, 2015.

The Department is issuing a scope comments decision memorandum for the final determinations of the AD and CVD investigations of certain uncoated paper, which is incorporated by reference in, and hereby adopted by, this final determination.<sup>9</sup>

<sup>1</sup> See Certain Uncoated Paper From Indonesia, Preliminary Affirmative Countervailing Duty Determination and Determination of Final Determination With Final Antidumping Determination, 80 FR 36971 (June 29, 2015) (Preliminary Determination), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See Memorandum to the File, "Verification of the Questionnaire Responses of the APRIL Companies," dated November 9, 2015 (APRIL Verification Report); and "Verification of the Questionnaire Responses of the Government of the Republic of Indonesia (Indonesia)," dated November 9, 2015 (GOI Verification Report).

<sup>3</sup> See Letter from American Greetings entitled, "Certain Uncoated Paper From Australia, Brazil, The People's Republic of China, Indonesia, and Portugal: Case Brief of American Greetings Corporation," dated October 19, 2015.

<sup>4</sup> See Letter from the petitioners entitled, "Certain Uncoated Paper From Australia, Brazil, The People's Republic of China, Indonesia, and Portugal: Scope Rebuttal Brief," dated October 29, 2015.

<sup>5</sup> See memorandum entitled, "Post-Preliminary Analysis in the Countervailing Duty (CVD) Investigation of Certain Uncoated Paper from Indonesia," dated November 13, 2015 (Post-Preliminary Analysis Memo).

<sup>6</sup> Hereafter, Petitioners Case Brief.

<sup>7</sup> Although the brief represents both the APRIL companies' and the GOI's positions, for simplicity we refer to this brief hereafter as APRIL Case Brief.

<sup>8</sup> Hereafter, Petitioners Rebuttal Brief, and APRIL Rebuttal Brief, respectively. As with the APRIL Case Brief, the APRIL Rebuttal Brief includes both APRIL's and the GOI's rebuttal comments.

<sup>9</sup> See the Department's memorandum to the file entitled, "Less-Than-Fair-Value Investigations of Certain Uncoated Paper from Australia, Brazil, The People's Republic of China, Indonesia, and Portugal: and Countervailing Duty Investigations of Certain Uncoated Paper from the People's Republic of China and Indonesia: Scope Comments Decision Memorandum for the Final Determinations," dated January 8, 2016.

### B. Period of Investigation

The period of investigation (POI) is January 1, 2014, through December 31, 2014.

### III. USE OF FACTS OTHERWISE AVAILABLE

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, use the "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 (c) 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.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.<sup>16</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.<sup>17</sup>

Section 776(b) of the Act further provides that the Department may use an adverse inference in relying on the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>18</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.<sup>19</sup>

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>14</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>15</sup> Further, and under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.<sup>16</sup>

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.<sup>17</sup> The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.<sup>18</sup>

For purposes of this final determination, we find it necessary to rely on adverse facts available (AFA) for Great Champ and IK/TK,<sup>19</sup> as detailed below.

#### A. Application of AFA to Great Champ and IK/TK

As discussed in the PDM, the Department selected Great Champ and IK/TK as mandatory respondents, but these companies did not respond to the Department's CVD questionnaire and failed to participate in this investigation. Therefore, we find that Great Champ and IK/TK withheld information that had been requested and failed to provide information within the deadlines established. Further, by not responding to the questionnaire, these companies significantly impeded this proceeding. We reach the same finding for the GOI with respect to those programs for which it failed to provide pertinent information. Thus, in reaching our final determination, pursuant to sections 776(a)(1), (2)(A), (3) and (C) of the Act, we based the CVD rate for Great Champ and IK/TK entirely on facts otherwise available, as we did in the preliminary determination.

<sup>14</sup> See also 19 CFR 351.308(d).

<sup>15</sup> See SAA, at 870 (1994).

<sup>16</sup> See section 776(c)(2) of the Act; TPEA, section 502(2).

<sup>17</sup> See section 776(d)(1) of the Act; TPEA, section 502(3).

<sup>18</sup> See section 776(d)(3) of the Act; TPEA, section 502(3).

<sup>19</sup> We preliminarily found IK and TK (and PT Pindo Deli Pulp and Paper Mills) to be part of the Asia Pulp and Paper/Finar Mas Group (APP/SMG) and cross-owned under 19 CFR 351.525(b)(6)(v). See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Melissa G. Skinner, Director, Office of Antidumping and Countervailing Duty Operations, entitled "Cross-Ownership of Asia Pulp and Paper/Finar Mas Group Companies: Countervailing Duty Investigation of Uncoated Paper from Indonesia," dated June 22, 2015. No party commented on this determination. Therefore, we continued to treat these companies as cross-owned and accordingly assigned them the same CVD rate in the final determination.

Furthermore, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because by not responding to the Initial CVD Questionnaire, Great Champ and IK/TK failed to cooperate by not acting to the best of their ability to comply with a request for information in this investigation. Accordingly, we find that AFA is warranted to ensure that Great Champ and IK/TK do not obtain a more favorable result by failing to cooperate than had they fully complied with our request for information.<sup>20</sup>

In this investigation, the Department is examining the programs on which we originally initiated the investigation based upon information provided in the Petition, as well as programs on which we initiated based on additional information provided by the petitioners.<sup>21</sup> Because the GOI did not provide pertinent information on these 11 programs, we are making an adverse inference on financial contribution and specificity.<sup>22</sup> Therefore, as AFA, we determine that these 11 programs provide a financial contribution within the meaning of section 771(5)(D) of the Act, and are specific in accordance with section 771(5A) of the Act. Because Great Champ and IK/TK failed to act to the best of their ability in this investigation, as discussed above, we are making an adverse inference that each of these programs were used by Great Champ and IK/TK. As AFA, we also determine that the programs confer a benefit in accordance with section 771(5)(E) of the Act.

### B. Selection of the AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."<sup>23</sup> The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>24</sup>

<sup>20</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 104-316, Vol. 1 (SAA), at 870 (1994), reprinted at 1994 U.S.C.A.N. 4040, 4199.  
<sup>21</sup> See "Petitions for the Imposition of Antidumping Duties on Imports of Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal and Countervailing Duties on Imports from China and Indonesia," dated January 21, 2015 (Petition), at Exhibit IV-10 and IV-12, respectively; Department Memorandum regarding "Countervailing Duty Initiation Checklist: Certain Uncoated Paper from Indonesia" (February 10, 2015) (Initiation Checklist), at pages 7-19; and Post-Preliminary Analysis Memo.  
<sup>22</sup> In our AFA rate analysis, we did not include the Special Arrangements for the Depreciation of Tangible Assets Used by the Hardwood Plantations and Forestry Sectors for Income Tax Purposes because we verified that paper producing and/or exporting companies such as the companies at issue could not have used this program. See GOI Verification Report, at pages 9-10.  
<sup>23</sup> See, e.g., Drill Pipe From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 76 FR 1971 (January 11, 2011); see also Notice of Final Determination of Sales at Less Than Fair Value, Stainless Steel Bars, Rods, and Wire from Taiwan, 63 FR 8909, 8912 (February 23, 1998).  
<sup>24</sup> See SAA, at 870.

It is the Department's practice in CVD proceedings with cooperative respondents to compute an AFA rate for the non-cooperating company(ies) using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.<sup>25</sup> Specifically, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, even if the rate is the minimum, excluding a rate of zero. If no responding company used the identical program in the instant case, or if the rate of the identical case is zero, the Department will use the rate from the identical program from another CVD proceeding involving the same country, unless the rate is the minimum. If there is no identical program match within the investigation, or if the rate from the identical program from another CVD proceeding involving the same country is the minimum, the Department uses the highest above-the-minimum rate calculated for the same or for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country so long as the producer of the subject merchandise or the industry to which it belongs could have used the program for which the rate was calculated. Absent an above-the-minimum subsidy rate calculated for the same or for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating company(ies).<sup>26</sup>

In applying AFA to Great Champ and IK/TK, we are guided by the Department's methodology detailed above. As in the preliminary determination, we begin by selecting, as AFA, the highest calculated identical program-specific (non-zero) rates determined for the cooperating respondents in the instant investigation. Accordingly, we are applying the subsidy rate we calculated for the APRIL companies in the final determination for the following programs:

- Provision of Standing Timber for Less Than Adequate Remuneration
- Government Prohibition of Log Exports

For all programs other than those previously mentioned, we are applying, where available, the highest subsidy rate calculated for the same or similar program in a CVD investigation or administrative review involving Indonesia.<sup>27</sup> For the final determination, we are following the same

<sup>25</sup> See, e.g., Certain Tow-Highland Lawn Mowers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 70971, 70975 (November 24, 2008) (unpublished in Certain Tow-Highland Lawn Mowers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 29180 (June 19, 2009)), and accompanying Issues and Decision Memorandum, at "Application of Facts Available, including the Application of Adverse Inferences"; Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18321 (April 4, 2011), and accompanying Issues and Decision Memorandum, at "Application of Adverse Inferences: Non-Cooperative Companies"; and Circular Welded Carbon-Quenched Steel Pipe from India: Final Affirmative Countervailing Duty Determination, 77 FR 64468 (October 22, 2012), and accompanying Issues and Decision Memorandum, at "Selection of the Adverse Facts Available Rate."  
<sup>26</sup> Id.; see also Lightswitches from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008), and accompanying Issues and Decision Memorandum, at 8-10.  
<sup>27</sup> In our AFA rate analysis for Great Champ, we did not include the two debt forgiveness programs listed below, i.e., Debt Forgiveness through the Indonesian Government's Acceptance of Financial Instruments with No Market Value, and Debt Forgiveness through APRISNAC's Buyback of its Own Debt from the GOI, as these programs were specific to APRISNAC (which includes IK and TK).

methodology as we did in the preliminary determination and matched based on program name, description,<sup>28</sup> and treatment of the benefit, the following programs to the same programs from other CVD proceedings involving Indonesia:

- Debt Forgiveness through the Indonesian Government's Acceptance of Financial Instruments with No Market Value<sup>29</sup>
- Debt Forgiveness through AP/PSMG's Buyback of Its Own Debt from the GOI<sup>30</sup>
- Export Financing from Export-Import Bank of Indonesia<sup>31</sup>
- Export Credit Guarantees<sup>32</sup>
- Exemptions from Import Income Tax Withholding for Companies in Bonded Zone Locations<sup>33</sup>

For the following programs we were unable to find a similar program based on program type and treatment of the benefit from other CVD proceedings involving Indonesia:

- Export Credit Insurance
- Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by Indonesia's Investment Coordinating Board (BKPM) – Corporate Income Tax Deduction
- Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by BKPM – Accelerated Depreciation and Amortization
- Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by BKPM – Extension of Loss Carry-Forwards
- Preferential Treatment for Bonded Zone Locations – Waiver of License and Fee Requirements
- Exemptions from Sales Taxes for Capital Goods and Equipment Used to Produce Exports

With respect to the program rate for the three above-mentioned income tax programs alleged in the petition, which pertain to the reduction of income tax paid, we applied an adverse inference that Great Champ and IK/TK paid no income tax during the POI. The standard income tax rate for corporations in Indonesia in effect during the POI was 25 percent.<sup>34</sup> Thus, the highest possible benefit for these three income tax programs is 25 percent. Accordingly, we are applying the 25

<sup>28</sup> For descriptions of these programs, see Initiation Checklist, at pages 7-19.

<sup>29</sup> See *United Free Steel Paper from Indonesia*, Final Affirmative Countervailing Duty Determination, 72 FR 60642 (October 23, 2007) (CIS Final), and accompanying Issues and Decision Memorandum (CIS IDM), at "4, Debt Forgiveness Through the GOI's Acceptance of Instruments that Limit No Market Value."

<sup>30</sup> See CIS Final, and CIS IDM at "VI.A.3, Debt Forgiveness through SMGAP's the Buyback of its Own Debt from the GOI."

<sup>31</sup> See Final Affirmative Countervailing Duty Determination, Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia, 64 FR 73153, 73161-2 (December 29, 1999), at "F, Reducement Loan Program."

<sup>32</sup> *Id.* The name of the program we initiated on was "Preferential Treatment for Bonded Zone Locations-Income Tax Reductions on Imported Capital Goods, Equipment, and Raw Materials for the Portion of the Production Destined for Export." We revised the title of the program based on the description provided by the GOI.

<sup>34</sup> See GOI Supplemental Questionnaire Response, dated June 15, 2015 (GOI SQR), at page 2.

percent AfVA rate on a combined basis (i.e., the three programs combine to provide a 25 percent benefit).

For each of the other programs, we used the highest calculated rate from any non-company-specific program, 14.2 percent,<sup>35</sup> from other CVD proceedings involving Indonesia that could have been used by Great Champ and IK/TK.<sup>36</sup>

Accordingly, we determine the AfVA countervailable subsidy rate for Great Champ to be 104.00 percent and valorem, and for IK/TK to be 109.15 percent and valorem.<sup>37</sup> For further discussion regarding the AfVA rate for Great Champ, see Comment I below.

## 1D. Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."<sup>38</sup> The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.<sup>39</sup> The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.<sup>40</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. Moreover, as stated above, we are applying subsidy rates which were calculated in previous CVD investigations or reviews. Additionally, no information has been presented which calls into question the reliability of these previously calculated subsidy rates. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a

<sup>35</sup> See CIS Final, and CIS IDM, at "1, GOI Provision of Standing Timber for Loss Than Adequate Reimbursement."

<sup>36</sup> Based on the AVRIL companies' and GOI submissions and our verification findings, we found that the AVRIL companies did not use the special arrangements for depreciation for income tax purposes. See Post-Preliminary Analysis Memo.

<sup>37</sup> See attached Appendix. While we initiated an investigation of "Exemption from Import Duties for Capital Goods and Equipment for Companies in Bonded Zone Locations," we are finding this program not countervailable and, therefore, we did not include it in the AfVA rate calculation. For further discussion, see section "V, Analysis of Programs," below.

<sup>38</sup> See SAA, at 870.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*, at 869-870.



countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>41</sup>

In the absence of record evidence concerning the alleged programs, the Department reviewed for the preliminary determination the information concerning Indonesian subsidy programs in other cases. Where we have a program-type match, we found that, because these are the same or similar programs, they are relevant to the programs in this case. Additionally, the relevance of these cases is that they are actual calculated CVD rates for Indonesia programs from which the non-cooperative respondents could actually receive a benefit. We affirm this analysis for the final determination. Thus, due to the lack of participation of Great Champ and IK/TK, and the resulting lack of record information from the COI concerning these programs as they relate to these companies, the Department has corroborated the rates it selected to use as AFA to the extent practicable for the final determination.

#### IV. SUBSIDIES VALUATION

##### A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets of the industry under consideration. Pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's Table of Class Lives and Recovery Periods, the AUL for assets used to manufacture certain uncoated paper is 13 years.<sup>42</sup> No party in this proceeding disputes this allocation period.

Furthermore, for non-recurring subsidies, we apply the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (e.g., total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

##### B. Attribution of Subsidies

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

<sup>41</sup> See, e.g., *Fresh Cut Flowers From Mexico*, Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996).

<sup>42</sup> See U.S. Internal Revenue Service Publication 946 (2013), "Appendix B - Table of Class Lives and Recovery Periods," submitted in the Petition, at Volume IV, Exhibit IV-1.

According to 19 CFR 351.525(b)(6)(v), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>43</sup>

As we discussed in the PDM, AIPM notified the Department that it is a trading company located in Manado that exports, but does not produce, subject merchandise. It is part of a group of companies including forestry/logging companies, pulp producers, and paper producers linked by varying degrees of common ownership.

In this investigation, we are examining whether the producers/exporters of the subject merchandise are cross-owned with one another, and with their input suppliers, as outlined in 19 CFR 351.525(b)(6)(iv). The alleged subsidies pertaining to stumpage that we are investigating are conferred on the forestry/logging companies which harvest standing timber and sell pulpwood to the pulp producers that supply pulp to the paper producers/exporters. Therefore, we must examine whether cross-ownership exists among and across the suppliers of pulpwood, the pulp producers, and the paper producers/exporters. Accordingly, as we discussed in the PDM, the companies under examination are as follows:<sup>44</sup>

- AIPM – exporter of subject merchandise;
- AKU – producer of subject merchandise;
- PT Rina Andalan Kertas (RAK) – producer of subject merchandise;
- PT Intiguna Primatama (IP) – producer and supplier to AKU of pulp which AKU uses in the production of subject merchandise;
- PT Rina Andalan Pulp & Paper (RAPP) – harvester of standing timber and producer of woodchip and pulp; supplier of woodchip to IP and pulp to RAK; and
- PT Pesisirindo Cipta Cemerlang (PCC) – producer and supplier to AKU and RAK of filler, used in the production of subject merchandise.

Based on Asia Pacific Resources International Holdings Limited's (Bernuda's) ultimate majority ownership of the companies listed above (with the exception of PCC, as discussed below), we find that these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).

AKU and RAK are producers of the subject merchandise. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we attributed subsidies that these companies received to the combined sales of these companies, net of intercompany sales.

<sup>43</sup> See *Enbridge de Fer de Chine*, 66 F. Supp. 2d 593, 603 (CIT 2001).

<sup>44</sup> While PT Rina Prima Energi and PT Asia Prima Kimbara, suppliers of electricity and steam to the APTKL companies, respectively, provided responses to our Initial CVD Questionnaire, we determine not to attribute any of their subsidies to the paper producers under examination.

RAFP produced and supplied inputs to IP and RAK. IP used the input it received (i.e., woodchips) to produce an intermediate product (i.e., pulp), which in turn, AKU used to produce paper. RAK used the input it received (i.e., pulp) to produce paper. Hence, these inputs are dedicated to the production of higher value-added products (including paper) by IP, RAK, and AKU. As such, these inputs are "merely (links) in the overall production chain."<sup>45</sup> Therefore, we find that the inputs RAFP supplied to IP and RAK, and that IP supplied to AKU, are primarily dedicated to the production of paper, pursuant to 19 CFR 351.525(b)(6)(iv).<sup>46</sup> Regarding attribution of the subsidies that RAFP and IP received, 19 CFR 351.525(b)(6)(iv) states the following:

If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

Therefore, pursuant to 19 CFR 351.525(b)(6)(iv), we attributed subsidies received by RAFP to the combined sales of RAFP, IP, and the subject merchandise producers (i.e., AKU and RAK), net of intercompany sales. We attributed subsidies received by IP to the combined sales of IP and the subject merchandise producers (AKU and RAK), net of intercompany sales.<sup>47</sup>

As we discussed in the PIDM, the APRIL companies reported that ECC was 51 percent owned by a third party company Inerays Pigment Pte. Ltd. (now known as Inerays Asia Pacific Pte. Ltd. (Singapore)), while the APRIL company group controls 49 percent of ECC's shares. In addition, ECC supplies virtually all of the filler used in the production of the subject merchandise by AKU and RAK. For the reasons explained in the PIDM and the Preliminary Calculation Memorandum,<sup>48</sup> which includes business proprietary information regarding the relationship between ECC and the APRIL companies, we continue to find ECC to be cross-owned with the APRIL companies within the meaning of 19 CFR 351.525(b)(6)(v). In addition, we continue to find that the input supplied by ECC to AKU and RAK can be used, in whole or in part, in the production of subject merchandise or in intermediate goods that are subsequently used to make subject merchandise. Thus, we find that filler provided by ECC is primarily dedicated to the production of paper, pursuant to 19 CFR 351.525(b)(6)(iv). Accordingly, we are attributing subsidies received by ECC to the combined sales of ECC and the subject merchandise producers (AKU and RAK), net of intercompany sales.

<sup>45</sup> See *Countervailing Duties*, Final Rule, 63 FR 65347, 65401 (November 25, 1998) (CVD Rule).

<sup>46</sup> See *Certain Coated Paper from Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 75 FR 10761 (March 9, 2010) (CCTP Prelim), unchanged in *Certain Coated Paper Subject for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination*, 75 FR 59209 (September 27, 2010) (CCTP Final).

<sup>47</sup> See, e.g., *Certain Coated Paper Subject 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) (Consolidated Paper from the PRC), and accompanying Issues and Decision Memorandum, at 9-10, where we discuss the attribution methodology for cross-owned input suppliers under a similar corporate structure.

<sup>48</sup> See Memorandum to the File, "Preliminary Determination Benefit Calculations for the APRIL Companies," dated June 22, 2015 (Preliminary Calculation Memorandum).

#### i. Entered Value Adjustment

The APRIL companies reported that AKU's affiliate, AIPM, issued invoices for AKU's sales of subject merchandise to the United States. In the preliminary determination, the Department made an adjustment to the calculated subsidy rate to account for the mark-up between the export value from Indonesia and the entered value of subject merchandise into the United States. We made this adjustment based on the following reasons asserted by the APRIL companies in their questionnaire responses: 1) the U.S. invoice is issued through AKU's affiliate, AIPM, and includes a mark-up from the invoice issued from AKU to AIPM; 2) the exporter, AKU, and the party that invoices the customer, AIPM, are affiliated; 3) the U.S. invoice establishes the customs value to which countervailing duties are applied; 4) there is a one-to-one correlation between the AKU invoice and the AIPM invoice; 5) the merchandise is shipped directly to the United States; and 6) the invoices can be tracked as back-to-back invoices that are identical except for price.<sup>49</sup>

The Department has a practice of making an adjustment to the calculated subsidy rate when the sales value used to calculate that subsidy rate does not match the entered value of the merchandise, e.g., where subject merchandise is exported to the United States with a mark-up from an affiliated company, and where the respondent can provide data to demonstrate that the six criteria above are met.<sup>50</sup> In the instant case, the information submitted by the APRIL companies and our verification findings support their claim for an adjustment,<sup>51</sup> and the information also permits an accurate calculation of the adjustment. Therefore, we continued to make the adjustment in the final determination.<sup>52</sup>

#### c. Denominators

When selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. Similarly, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.

#### 1) Loan Benchmarks and Interest Rates

19 CFR 351.509(a)(2) states that when a program provides for a deferral of direct taxes, a benefit exists to the extent that appropriate interest charges are not collected. Consistent with 19 CFR

<sup>49</sup> See APRIL's May 26, 2015, initial CVD questionnaire response (APRIL, QIR), at pages 3, 13-14, and Exhibit 28; and APRIL's June 15, 2015, supplemental questionnaire response (APRIL, SQR), at pages 8-10.

<sup>50</sup> See *Whitewater Wheel Flooring from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011), and accompanying Issues and Decision Memorandum, at 7-8.

<sup>51</sup> See APRIL, Verification Report, at page 4.

<sup>52</sup> See Memorandum to the File "Final Determination Benefit Calculations for the APRIL Companies," dated concurrently with this memorandum (Final Calculation Memorandum).

351.505(a)(2)(iv), we used the Indonesian short-term monthly lending rates in foreign currency, as compiled by the International Monetary Fund (IMF) in its International Financial Statistics.<sup>53</sup>

## V. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, including parties' comments addressed below, we determine the following:

### A. Programs Determined to Be Countervailable

#### 1. Provision of Standing Timber for Less Than Adequate Remuneration

The petitioners contend that the GOI controls nearly all of Indonesia's harvestable forest land and leases logging rights to companies, charging a royalty (stumpage rate) for the right to harvest roundwood (i.e., logs). The petitioners claim that numerous studies and the Department's determinations in CCP Final and CFS Final demonstrate that the stumpage rates charged by the GOI are far less than the value of the stumpage.<sup>54</sup>

In both the CFS and CCP investigations, the GOI reported that virtually all harvestable forest land is owned by the GOI.<sup>55</sup> While the GOI reported that harvests from private forest land ownership in Indonesia have increased since the CFS and CCP investigations, the GOI reports that it still owned the vast majority of the forest land in Indonesia during the POI.<sup>56</sup> We found that the GOI allows timber to be harvested from government-owned land under two main types of concession licenses: (1) IUP/HK/HPT licenses to harvest timber in the natural forest; and (2) IUP/HK/HPT licenses to harvest timber from plantations. During the POI, the official fee of IUP/HK was regulated by Minister of Forestry Regulation No. 76/Menhut-II/2014. This fee depends on the size and location of the forest area. Each time a company harvests timber, pursuant to its IUP/HK, the company must issue a production report. Fees charged by the GOI for Provisi Sumber Daya Hutan (PSDH), Dana Reboisasi (DR), and Penggantian Nilit Tegakan (PNT) are calculated based on this production report.<sup>57</sup> HPT license holders pay PSDH fees ("cash stumpage" or royalty fees) based on the per unit of timber harvested. In addition to paying PSDH fees, IUP/HK license holders pay DR fees (per-unit

rehabilitation fees) and PNT fees (replacement of stumpage fees) for timber harvested from natural forests. According to the GOI, the purpose of the IUP/HK, PSDH, DR and PNT is to implement sustainable forestry management.<sup>58</sup>

Based on the foregoing facts, we determine that the GOI provides a financial contribution as described in section 771(5)(D)(iii) of the Act because it provides a good (standing timber) other than general infrastructure.

Information provided by the GOI recognizes 32 industry categories for goods in Indonesia. Of these 32 categories, standing timber was provided by the GOI to four industries during the POI, including the paper industry.<sup>59</sup> As such, we determine that the provision of stumpage is specific in accordance with section 771(5)(D)(iii)(I) of the Act, because the actual recipient industries are limited in number. See also discussion below under Comment 2.

The provision of standing timber provides a benefit as described in section 771(5)(E)(iv) of the Act, to the extent that the GOI received less than adequate remuneration when measured against a market benchmark for stumpage. The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying benchmarks to determine whether a government good or service is provided for less than adequate remuneration. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) prices consistent with market principles based on an assessment by the Department of the government-set price. This hierarchy reflects a logical preference for achieving the objectives of the statute. The most direct means of determining whether the government required adequate remuneration is by comparison with private transactions for a comparable good or service in the country. Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country or outside the country (the latter transaction would be in the form of an import). This preference is because such prices generally would be expected to reflect most closely the commercial environment of the purchaser under investigation.

In accordance with the first preference in the hierarchy, to determine the existence and extent of the benefit, we would need to identify an observed market stumpage price from a private supplier in Indonesia. As noted above, the GOI reported private forests accounted for only 12 percent of the total harvest in 2014 (5,320,695 m<sup>3</sup> out of a total of 45,034,394 m<sup>3</sup>).<sup>60</sup> Additionally, in CFS Final, the Department found that there were only 233,811 hectares of private forest land out of 57 million hectares of harvestable forest land in Indonesia.<sup>61</sup> The GOI did not provide any updated information on the percentage of government ownership of forest land other than the total harvest from publicly- and privately-owned forests. Thus, the GOI continues to play a predominant role in the market for standing timber. As such, we determine that there are no market-determined stumpage fees in Indonesia upon which to base a "first tier" benchmark. Furthermore, because the GOI dominates the

<sup>53</sup> While we requested a short-term loan interest rate benchmark from the respondent, the respondent provided a short-term interest rate associated with bank cash deposits, rather than a short-term loan. See APPRI, SQR, at pages 19-20. Therefore, we did not consider this rate as a benchmark for this program.

<sup>54</sup> See CCP Final, and accompanying Issues and Decision Memorandum (CCP IDMA); CFS Final, and CFS IDMA. This program was also found to provide a benefit in Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia, 71 FR 47174 (August 16, 2006), and accompanying Issues and Decision Memorandum.

<sup>55</sup> See CFS Final and CFS IDMA at page 18; and CCP Final and CCP IDMA, at page 12.

<sup>56</sup> See GOI's May 26, 2015, Initial CVD Questionnaire Response (GOI IDR), at page 12 ("the proportion of forest areas on state-owned land and privately-owned land... is around 88% and 12% (respectively)"). The GOI derived these percentages using the harvests from private lands and state-owned forest areas. See GOI IDR, at page 8 and Exhibit 4.

<sup>57</sup> IUP/HK, previously known as "Iuran Loka Penggantian Lintasan Hutan," was established in 1967 based on Government Regulation No. 22 tahun 1967. Later, in 2007, based on Government Regulation No. 6 of 2007, Iuran Loka Hutan became PSDH and DR. PNT was established in 2014 based on Minister of Forestry Regulation No. 52 of 2014. The calculation rates for PSDH, DR, and PNT were established pursuant to the Minister of Forestry Regulation No. 18 of 2007, which was replaced by the Minister of Forestry Regulation No. 52 of 2014. See GOI IDR, at page 14.

<sup>58</sup> See GOI IDR, at pages 12-15 and Exhibit 8.

<sup>59</sup> See GOI's June 15, 2015, supplemental questionnaire (GOI SQR), at pages 3-4.

<sup>60</sup> See GOI IDR, at page 8 and Exhibit 4.

<sup>61</sup> See CFS Final and CFS IDMA, at page 18.

Indonesian stumpage market and because stumpage and pulpwood markets are inextricably intertwined, it is inappropriate to use import prices into Indonesia for pulpwood as a starting point to determine whether Indonesian stumpage prices reflect market prices. This determination is consistent with our findings in CES Final and CCP Final, and is undisputed by the parties in this investigation.

A "second tier" benchmark, according to the regulations, relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving the particular producer. In selecting a world market price under this second approach, the Department examines the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in-country purchaser. As discussed in the CVD Preamble, the Department will consider whether the market conditions in the country are such that it is reasonable to conclude that a purchaser in the country could obtain the good or service on the world market. For example, a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America. However, as another example, the world market price for commodity products, such as certain metals and ores, or for certain industrial and electronic goods commonly traded across borders, could be an acceptable comparison price for a government-provided good, provided that it is reasonable to conclude from record evidence that the purchaser would have access to such internationally traded goods.<sup>62</sup>

The APRL companies suggested that the most accurate and preferred methodology for calculating the stumpage benchmark under the second tier would be to compare Indonesian stumpage fees with the stumpage fees in another country such as Malaysia. However, standing timber (and stumpage fees) in one country are not available to users in another country because standing timber cannot be traded across borders; only the logs produced from the standing timber can be traded. Thus, there are no world market prices for stumpage, and, therefore, we cannot apply stumpage fees in another country as a "second tier" benchmark.<sup>63</sup> See also discussion below under Comment 5.

Because we are not able to conduct our analysis under the "second tier" of the regulations, consistent with the hierarchy, we are measuring the adequacy of remuneration by assessing whether the government price is consistent with market principles (i.e., the "third tier" as described in the Department's regulations). This approach is set forth in 19 CFR 351.511(a)(2)(iii) and is explained further in the CVD Preamble at 65378:

Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. The regulations do not specify how the Department is to conduct such a market principles analysis. By its nature, the analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case-by-case basis.

<sup>62</sup> See CVD Preamble at 65377.

<sup>63</sup> See CCP Final and CCP IDM, at page 8.

The GOI did not provide information or documentation to demonstrate that the stumpage fees it charges are established in accordance with market principles. Although the PSDI, DR and PNT fees are established as percentages of the reference price of forest products, we cannot conclude that the reference price is reflective of market principles or is a market-determined price. However, because a log export ban is in place (see further discussion below), the reference price is currently determined solely from domestic prices.<sup>64</sup> Through its ownership of a large majority of Indonesia's harvestable forests, the GOI has almost complete control over access to the timber supply. In addition, the ban on the export of logs affects the price for logs.<sup>65</sup> As such, the reference prices for logs cannot be considered to be market-based. Furthermore, the percentage that is applied to the reference price to calculate the PSDI, DR, and PNT fees is administratively set by the GOI. Thus, we determine that the stumpage fees, charged by the GOI as a percentage of a non-market-determined reference price, are not based on market principles.<sup>66</sup>

Because the government price is not set in accordance with market principles, we looked for an appropriate proxy to determine a market-based stumpage benchmark. It is generally accepted that the market value of timber is derivative of the value of the downstream products. The species, dimension, and growing condition of a tree largely determine the downstream products that can be produced from a tree; the value of a standing tree is derived from the demand for logs produced from that tree and the demand for logs is, in turn, derived from the demand for the products produced from those logs.<sup>67</sup>

Both the petitioners and the APRL companies made recommendations for the appropriate basis for calculating benchmark prices. These proposals are discussed in detail below under Comments 5 and 7. Our analysis and selection of benchmark prices are discussed below in our response to Comment 7. As a result of the geographic proximity and the similarities of forest conditions, climate, and tree species between Indonesia and Malaysia, we continue to find Malaysian log prices to be the most appropriate source to use in our benchmark analysis, where available. Specifically, for the final determination, we used the species-specific prices from a price survey of acacia pulpwood as reported in an independent market study of the pulpwood and woodchip industry in Malaysia as the starting price for the acacia stumpage rate benchmark. For calculating the stumpage rate benchmarks for MLIV and eucalyptus timber, we relied on CITA export statistics for Malaysia and Thailand, respectively. See Comment 7 below for further discussion.

In order to derive a stumpage benchmark value, we adjusted the benchmark log prices to remove the Indonesian costs of extraction (harvesting) of the standing timber. To determine the Indonesian harvesting costs (including a reasonable amount for profit associated with extraction), we used RAIPT's reported harvesting costs as verified by the Department. We also used profit information contained in "Addicted to Rent: Corporate and Spatial Distribution of Forest Resources in Indonesia:

<sup>64</sup> See GOI IOR, at Exhibit 8.4.

<sup>65</sup> See GOI SQR, at pages 5-6.

<sup>66</sup> See Control Price Sheet Paper from Indonesia, Notice of Preliminary Administrative Countervailing Determination, 71 FR 17498 (April 9, 2007), unchanged in CES Final.

<sup>67</sup> See, e.g., Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews, Certain Softwood Lumber Products from Canada, 69 FR 75917 (December 20, 2004), and the accompanying Issues and Decision Memorandum, at 16-18.

Implications of Forest Sustainability and Government Policy.”<sup>68</sup> This study is an independent source on the record that provides information on profit in Indonesia.<sup>69</sup> See also Comments 7 and 9 below, and the Final Calculation Memorandum for further discussion of benchmark price adjustments.

The deduction of the harvesting costs, and profit associated with harvesting, from the unit values results in a derived benchmark stumpage price for each species. We compared these derived benchmark prices for each type or species of standing timber to the Indonesian stumpage fees, and found the GOI’s stumpage fees to be lower than the market benchmark prices. Accordingly, we determine that a benefit is provided in accordance with section 771(5)(E)(iv) of the Act because the GOI provides standing timber for less than adequate remuneration.

To calculate the benefit received under this program, we first multiplied the benchmark prices for each type of timber by the quantity harvested by APRIL during the POI. After multiplying each stumpage benchmark by the appropriate harvest quantity, we summed all the values to calculate the total amount of fees that should have been paid at the market-based benchmark stumpage rate. We then subtracted the total of the actual PSDI, IDR and PNT fees paid by RAPP during the POI, from the total amount of stumpage fees that should have been paid.

In accordance with 19 CFR 351.525(a), we then divided the benefit by the total external sales of AKU, RAK, RAPP, and IP (i.e., the total FOB sales values of the pulp and paper producers minus any cross-owned inter-company sales) to calculate a net countervailable subsidy rate of 9.81 percent ad valorem for this program.<sup>70</sup>

## 2. Government Prohibition of Log Exports

The petitioners alleged that the GOI provides a countervailable subsidy to pulp and paper producers through the GOI’s ban on log exports. As support for their allegation, they relied on CFS Final and CCP Final in which the Department found that the GOI’s imposition of an export ban on logs and chipwood provided a countervailable subsidy to downstream wood processing industries, including the pulp and paper producing industries.<sup>71</sup>

In CFS Final and CCP Final, the Department determined that the Log Export Ban provided a financial contribution in accordance with sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act. Specifically, the Department found that the GOI, through the Log Export Ban, entrusted or directed forestry/harvesting companies to provide lower-priced inputs (logs and chipwood) to companies in the pulp and paper producing industries. The Department determined that the Log Export Ban provided a benefit in accordance with section 771(5)(E)(iv) of the Act. Specifically, the GOI’s Log Export Ban allowed the cross-owned forestry companies in the respondent’s corporate group to purchase inputs (logs and chipwood) from unaffiliated forestry companies below market prices.

Finally, in the CFS Final, the Department determined that the Log Export Ban was specific under section 771(5A)(D)(i) of the Act. Specifically, the Department found the GOI’s decree banning the exports of logs and chipwood to be de jure specific within the meaning of section 771(5A)(D)(i) of the Act, because it is restricted by law to only a limited group of industries and because it covers only a small number of products within those industries. Furthermore, in the CCP Final, the Department determined the Log Export Ban is de facto specific pursuant to section 771(5A)(D)(iii)(I) of the Act because the industries receiving subsidies from the operation of the ban are limited in number.

In their questionnaire responses, the GOI and the APRIL companies state that the World Trade Organization (WTO) has ruled that this type of government action cannot constitute a subsidy program.<sup>72</sup> As an initial matter, our finding here and our CVD law are consistent with our WTO obligations. Moreover, it is the Act and the Department’s regulations that have direct legal effect under U.S. law, and not the WTO Agreements or WTO reports.<sup>73</sup> In this regard, WTO reports “do not have any power to change U.S. law or to order such a change.”<sup>74</sup> Instead, Section 129 of the Uruguay Round Agreements Act addresses the implementation of WTO dispute settlement reports.<sup>75</sup> Therefore, the Department is obligated to follow U.S. law in reaching its CVD determinations, and, as discussed below, the GOI’s Log Export Ban constitutes a countervailable subsidy under U.S. law. See also discussion below under Comment 6.

In CFS Final, we stated that the GOI had submitted that the stated intent of the log and chipwood export ban was to reduce environmental degradation and to manage the forest in a sustainable manner.<sup>76</sup> Nonetheless, based on the totality of the evidence on the record in the CFS Final, including independent studies on the impact of the Log Export Ban in Indonesia, we found that the record evidence refuted the GOI’s claim that the Log Export Ban is used to protect forest resources, and instead showed that the GOI imposed or maintained the Log Export Ban in order to provide lower-priced inputs (i.e., logs and chipwood) to industries that consume those inputs.<sup>77</sup> Thus, in CFS Final, we concluded that one of the purposes of the GOI’s ban was to develop the downstream industries, which was the basis on which the Department determined that the GOI entrusts or directs domestic log suppliers to sell logs at suppressed prices to domestic consumers, thus providing a good to pulp and paper producers for less than adequate remuneration.<sup>78</sup> In CCP Final, we found that although the GOI may have begun the process of legalizing exports on certain forest products, the ban on exports on logs was still in effect.<sup>79</sup>

<sup>72</sup> See WT/DS 194 United States – Measures Treating Export Restraints As Subsidies (adopted by WTO DSB August 23, 2001).

<sup>73</sup> See, e.g., *Canada Steel BV v. U.S.*, Dep’t of Commerce, 395 F.3d 1343, 1347-1349 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023 (2006).

<sup>74</sup> See SNA, at 659. See also CFS Final and CVS IDMA, at page 97; and CCP Final and CCP IDMA, at Comment 4.

<sup>75</sup> See 19 U.S.C. 3538.

<sup>76</sup> See CFS IDMA, at page 27.

<sup>77</sup> *Id.*, at pages 29-31.

<sup>78</sup> See CFS Final and CVS IDMA, at page 27; and CCP Final and CCP IDMA, at page 13.

<sup>79</sup> See CCP Final, at pages 12-13.

In the instant case, the GOI confirmed that a ban on the exportation of logs was still in effect during the POI, although under a new Ministry of Trade decree.<sup>80</sup> It also noted that during the POI it was not illegal to export chipwood or pulpwood.<sup>81</sup> Neither the GOI nor the APRII, companies placed any additional information on the record to counter our preliminary determination that the ban on log exports continues to be in effect (only downstream log products (e.g., wood chips and wood pulp) are allowed to be exported). In addition, the petitioners and the GOI submitted information showing that the Log Export Ban's effect is to grow the wood processing industry, to encourage processing industries in Indonesia, and to suppress prices in Indonesia.<sup>82</sup> As such, we determine that the Log Export Ban continues to provide a countervailable subsidy to pulp and paper producers. The ban constitutes a financial contribution in accordance with sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act through the GOI's entrustment or direction of forestry/harvesting companies to provide goods (i.e., logs). See also further discussion below under Comment 6. Furthermore, the Log Export Ban is de facto specific pursuant to section 771(5A)(D)(ii)(1) of the Act because the industries receiving subsidies from the operation of the ban are limited in number.<sup>83</sup>

Moreover, the Log Export Ban provides a benefit in accordance with section 771(5)(E)(iv) of the Act to extent that the prices paid by the APRII, companies to unaffiliated forestry/harvesting companies for their purchases of logs are for less than adequate remuneration (i.e., for less than the benchmark price). To determine whether the Log Export Ban provided a benefit to the APRII, companies during the POI, the Department compared the price paid by the APRII, companies for the logs they purchased during the POI from unaffiliated forestry/harvesting companies to a benchmark priced based on the criteria stipulated in 19 CFR 351.511(a)(2).

We explain above what the Department's regulations at 19 CFR 351.511(a)(2) state regarding the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration. In the instant case, there are no meaningful or usable private domestic prices for logs or actual import prices to evaluate for purposes of identifying a "first tier" benchmark (i.e., market prices from actual transactions within the country under investigation). As discussed above, the GOI reported that the harvest from privately-owned forest land is only 12 percent of the country's total harvest.<sup>84</sup> We also note that all logs, including logs harvested from private land, are subject to the export ban.<sup>85</sup> Therefore, because of the GOI's predominant role in the Indonesian market for logs, we find that it is not possible to determine a private domestic log benchmark price in Indonesia, pursuant to 19 CFR 351.511(a)(2)(i), for the GOI's Log Export Ban. Accordingly, Indonesian import prices likewise would not reflect market prices.

Because there are no market prices from actual transactions in the country to use as a benchmark, we next looked for a "second tier" benchmark which, according to the regulations, relies on world market prices that would be available to the purchasers in the country in question, through not

<sup>80</sup> See GOI IQR, at page 33 and Exhibit 15, and GOI SQR, at pages 5-6.

<sup>81</sup> See GOI SQR, at pages 5-6.

<sup>82</sup> *Id.*, at Exhibit S-12; and Petition, at IV-21-22, and Exhibits IV-31 and IV-32.

<sup>83</sup> As noted above, information provided by the GOI recognizes 32 industry categories for goods. Of these 32 categories, logs were provided in four industries during the POI, including the paper industry. See GOI SQR, at pages 5-6.

<sup>84</sup> See GOI IQR, at page 12.

<sup>85</sup> *Id.*, at page 33 and Exhibit 15.

necessarily reflecting prices of actual transactions involving that particular producer. In selecting a world market price under this second approach, the Department examines the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in-country purchaser. As noted above, as well as in *CFS Final* and *CCP Final*, Indonesia and Malaysia are geographically proximate and have similar forest conditions, climate, and tree species. Both the petitioners and the APRII, companies made recommendations for the appropriate basis for calculating benchmark prices. These proposals are discussed in detail below under Comment 7. Our analysis and selection of benchmark prices are discussed below in our response to Comment 7. For calculating the benchmark prices for acacia and MHV logs, we relied on CITA export statistics for Malaysia. Under the Department's regulations, applicable delivery charges and import duties should be added to the benchmark price before determining whether the Indonesian price for pulpwood confers a benefit.<sup>86</sup> We made the applicable adjustments to the benchmark price, as discussed below under Comments 8 and 9, and in the Final Calculation Memorandum.

When we compare the benchmark prices to the prices that RAPP paid to the unaffiliated pulpwood suppliers on a per-unit basis, we find that there is a benefit conferred through the GOI's Log Export Ban and, thus, entrustment or direction to forestry/harvesting companies to provide logs to pulp and paper producers for less than adequate remuneration. To calculate the subsidy, we first calculated a per-cubic meter benefit for each species of logs. We then multiplied the volume of each species purchased by RAPP from unaffiliated forestry/harvesting companies in order to calculate the total benefit for each species.

We then summed the benefit for each species and divided this amount by the total FOB external sales values of the APRII, companies' pulp and paper producers (i.e., RAPP, IP, RAK, and AKU). We did not include in this Log Export Ban calculation any of RAPP's harvested pulpwood because we captured any benefit it receives on that wood from the Log Export Ban, in the stumpage benefit calculation. On this basis, we calculated a net countervailable subsidy rate of 11.41 percent ad valorem for the APRII, companies.<sup>87</sup>

#### B. Program Determined Not to Have Conferred a Measurable Benefit

##### Exemption from Import Income Tax Withholding for Companies in Bonded Zone Locations<sup>88</sup>

The GOI explained that the purpose of bonded zones is to facilitate processing goods for export under duty free conditions. The GOI stated that goods processed in a bonded zone may be sold for domestic consumption up to 50 percent (or more, based on Ministry of Industry's approval) of a company's prior year export value. The GOI indicated that any company from any industry can apply for a bonded zone facility provided it can fulfill all the requirements in the bonded zone

<sup>86</sup> See 19 CFR 351.511(a)(2); see also *U.S. Steel Corp. v. United States*, No. 08-00239, Slip Op. 09-152, at 17-18 (CIT Dec. 30, 2009).

<sup>87</sup> See Final Calculation Memorandum.

<sup>88</sup> We initiated this program as "Preferential Treatment for Bonded Zone Locations-Income Tax Reductions on Imported Capital Goods, Equipment, and Raw Materials for the Portion of the Production Destined for Export." We revised the title of the program based on the description provided by the GOI.

regulations. The GOI explained that the bonded zone facilities are outside the Indonesian customs territory. The GOI noted that companies in bonded zones are required to file reports every four months, and are obligated to keep accurate records related to the movement of equipment, goods, and inventory in and out of their bonded zones. These requirements are subject to audit by the Directorate General of Customs and Excise.<sup>89</sup>

Income tax in Indonesia is administered based on a combination of self-assessment and withholding tax systems. According to the system, certain types of income and transactions are subject to withholding taxes which are collected by its payer or withholding. At the end of the respective fiscal year, the withholding tax paid will be credited against total income tax payable. Under Article 22 of Indonesia's Income Tax Law, imports into Indonesia are subject to an income tax withholding equal to either 2.5 percent or 7.5 percent of the import value, depending on whether the importer owns an Import Identification Number.<sup>90</sup>

Specifically, when a company that is not located in a bonded zone imports merchandise, that company is required to pay a "withholding" amount for "import income tax" upon importation of capital goods, equipment, or raw materials. Any import income tax collected (or prepaid) through this withholding is credited towards the company's total income tax payable at the end of the tax year. However, when a company imports into a bonded zone, that company is not required to pay any import income tax withholding upon entry. The GOI claims that, as a result, there is no withholding or prepaid import income tax to be credited towards the bonded zone company's end-of-year income tax payable. Thus, according to the GOI, whether a company is subject to withholding import income tax or not, the ultimate net effect on its overall income tax liability for the year stays the same. As a result, the GOI contends that there is no revenue forgone by the government as a result of this program.<sup>91</sup>

The APRIL companies reported, and we verified, that they were exempted from the tax withholding requirement because of their bonded zone location.<sup>92</sup> We find that such withholding exemption for companies in bonded zones constitutes a deferral of direct taxes within the meaning of 19 CFR 351.509(a)(2), according to which a benefit exists to the extent that appropriate interest charges are not collected.

As a result, we determine that this import income tax program provides a financial contribution in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act. The GOI stated that activities in a bonded zone must primarily be for export, and record information ties this program to exportation.<sup>93</sup> Therefore, the import income tax withholding exemptions are contingent upon export performance and, thus, specific pursuant to section 771(5A)(B) of the Act. Consistent with 19 CFR 351.509(a)(2), we are treating the import income tax otherwise subject to withholding, i.e., the tax amount deferred, as a government-provided loan that provides a benefit in the form of uncollected interest charges.

<sup>89</sup> See GOI IQR, at pages 59-67.

<sup>90</sup> *Id.*, at page 63.

<sup>91</sup> *Id.*, at pages 63-64.

<sup>92</sup> See APRIL IQR, at page 35.

<sup>93</sup> See GOI IQR, at pages 59-60.

To calculate the benefit from this program, we summed the import income tax withholding exempted for each of the cross-owned APRIL companies during the POI, applied the monthly short-term interest benchmark discussed above in the "Subsidies Valuation" section, and summed the uncollected interest for the entire POI. We divided the summed amount for each company by its respective external sales value, and then added the resulting company-specific percentages to obtain the overall subsidy rate. However, the calculation of the benefit results in a rate that is less than 0.005 percent and, as such, does not have an impact on the APRIL companies' overall subsidy rate.<sup>94</sup> This calculation is unchanged from our preliminary determination. Consistent with our past practices, we did not include this program in our net subsidy rate calculations for the APRIL companies.

#### C. Program Determined Not to Be Countervailable

##### Exemption from Import Duties for Capital Goods and Equipment for Companies in Bonded Zone Locations

As noted above, the GOI asserted that bonded zones are outside the customs territory of Indonesia and are subject to audits by the Indonesian customs authority. The GOI explained that imports into bonded zones are exempt from import duties based on their location outside the Indonesian customs territory. The GOI noted that import duties are still payable if the capital goods or equipment that had been imported into a bonded zone are subsequently sold in the domestic market within four years after the initial importation into the bonded zone.

The APRIL companies' location in a bonded zone places them outside of the customs territory of Indonesia.<sup>95</sup> Consequently, imports of capital goods and equipment by the APRIL companies that stay within the bonded zone are not subject to import duties in Indonesia. The APRIL companies explained that they did not sell capital goods in Indonesia during the POI or throughout the ADL. They claimed that because imports of capital goods and equipment by the APRIL companies are not subject to duties in Indonesia, the GOI has not forgone revenue by not collecting duties on the companies' imports.

In *CWP from Vietnam*, we found a similar type of program not countervailable, reasoning that goods imported from foreign countries into non-tariff zones outside the customs territory of Vietnam for use only in non-tariff zones are not liable for import duties and, as such, there is no financial contribution by the government because the government has not forgone revenue by not collecting taxes. Furthermore, we noted that such free trade areas must be subject to rigorous customs enforcement measures that ensure goods entering the free trade area are accounted for through exportation or entry into the country's customs territory and, in the latter case, appropriate duties are collected.<sup>96</sup> In this case, the GOI explained that bonded zones are subject to customs reports and

<sup>94</sup> See Final Calculation Memorandum.

<sup>95</sup> See APRIL IQR, at page 30, and ARU SQR, at pages 15-16.

<sup>96</sup> See *Chrysler, Welded Carbon-Quenched Steel Pipe from the Socialist Republic of Vietnam*, Final Negative Countervailing Duty Determination, 77 FR 60477 (October 22, 2012) (*CWP from Vietnam*), and accompanying Issues and Decision Memorandum, at pages 4 and 13-15.



audits.<sup>97</sup> The Department verified that the GOI's customs enforcement system is extensive; it includes physical inspection of goods entering and exiting the bonded zones by customs officials assigned to each zone, routine reporting requirements, and periodic audits.<sup>98</sup> Therefore, because the APRL companies are located in a bonded zone that is subject to rigorous customs enforcement measures, and their imports within the bonded zone are not subject to Indonesian customs duties, we determine there is no financial contribution within the meaning of section 771(5)(D)(ii) of the Act, and accordingly find this program not to be countervailable. This finding is unchanged from the preliminary determination.

#### D. Programs Determined To Be Not Used

1. Debt Forgiveness through the Indonesian Government's Acceptance of Financial Instruments with No Market Value
2. Debt Forgiveness through AP/PSMG's Buyback of Its Own Debt from the GOI
3. Export Financing from Export-Import Bank of Indonesia
4. Export Credit Insurance
5. Export Credit Guarantees
6. Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by Indonesia's Investment Coordinating Board (BKPM) -- Corporate Income Tax Deduction
7. Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by the BKPM -- Accelerated Depreciation and Amortization
8. Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by the BKPM -- Extension of Loss Carry-Forwards
9. Preferential Treatment for Bonded Zone Locations
  - a. Waiver of License and Fee Requirements
  - b. Exemption from Sales Taxes for Capital Goods and Equipment Used to Produce Exports
10. Debt Forgiveness to the RGM Group and Asia Pacific Resources International Limited Companies
11. Special Arrangements for the Depreciation of Tangible Assets Used by the Hardwood Plantations and Forestry Sectors for Income Tax Purposes

#### VI. ANALYSIS OF COMMENTS

##### Comment 1: Adverse Facts Available for Great Champ

In the Preliminary Determination, because Great Champ failed to cooperate by not acting to the best of its ability to respond to the Department's requests for information, pursuant to section 776(b) of the Act, in selecting from among the facts otherwise available, we drew an adverse inference that the programs upon which we initiated were used by Great Champ and conferred a benefit. Therefore,

<sup>97</sup> See GOI IOR, at pages 59-67, and GOI SQR, at pages 10-11.

<sup>98</sup> See COI Verification Report, at pages 7-9, and APRL Verification Report, at pages 14-15, see also Foreign Manufacturer Shipped from the Republic of Indonesia: Final Negative Countervailing Duty Determination, 78 FR 50383 (August 19, 2013), and accompanying Issues and Decision Memorandum, at Comment 17.

the Department applied an adverse inference in its calculation of the ad valorem estimated countervailable subsidy rate for Great Champ.<sup>99</sup>

The petitioners argue that, because Great Champ refused to respond to the Department's questionnaire, the Department should conclude, as AFA, that Great Champ is a non-producing trading company<sup>100</sup> that exported subject merchandise produced only by the AP/PSMG companies. Accordingly, the petitioners urge the Department to apply a total AFA rate to Great Champ equal to the total AFA rate for the AP/PSMG companies, including the subsidy margins for the two AP/PSMG debt forgiveness programs (i.e., Debt Forgiveness through the Indonesian Government's Acceptance of Financial Instruments with No Market Value and Debt Forgiveness through AP/PSMG's Buyback of Its Own Debt from the GOI). The petitioners maintain that, under the Department's regulations and practice, if Great Champ as a trading company had exported subject merchandise produced by AP/PSMG, then Great Champ's CVD rate would account for AP/PSMG's total company-specific rate, including the two debt forgiveness programs.<sup>101</sup> According to the petitioners, the fact that Great Champ's preliminary AFA rate was lower than the total AFA rate for AP/PSMG means that Great Champ may obtain a more favorable result by failing to cooperate than if it had cooperated fully, contrary to the Department's stated intentions.<sup>102</sup> In addition, the petitioners argue that, regardless of whether the Department applies these adverse inferences to Great Champ, the AP/PSMG rate should be assessed prospectively for all entries of the subject merchandise produced by AP/PSMG, even if the subject merchandise is exported by Great Champ.

No other party commented on this issue.

##### Department's Position:

We disagree with the petitioners. As we stated in the PDM and as discussed under III.B. Selection of the AFA Rate above, consistent with our normal AFA methodology in CVD proceedings, we did not include the two debt forgiveness programs, i.e., Debt Forgiveness through the Indonesian Government's Acceptance of Financial Instruments with No Market Value and Debt Forgiveness through AP/PSMG's Buyback of Its Own Debt from the GOI, in our AFA rate analysis for Great Champ, because these programs were specific to the AP/PSMG companies.<sup>103</sup> We see no reason in this investigation to deviate from our normal practice of calculating company-specific AFA rates in

<sup>99</sup> See PDM at pages 6-11.

<sup>100</sup> According to the petitioners, Great Champ's name indicates that it is a trading company and a nonproducing exporter of subject merchandise. In addition, the petitioners point out that the CIP data placed on the record for respondent selection purposes indicates that Great Champ may have exported subject merchandise originating from a location in Indonesia where one of the AP/PSMG companies' mills are located. See, e.g., Memorandum entitled "Respondent Selection for the Countervailing Duty Investigation of Uncoated Paper from Indonesia," dated March 5, 2015, at Attachment 1.

<sup>101</sup> See, e.g., 19 CFR 351.525(c); Countervailing Duty Investigation of 1, 1, 1, 2-Tetrahydrocane from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 79 FR 62594 (October 20, 2014), and accompanying Issues and Decision Memorandum at 7-8; Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from Brazil, 67 FR 62128 (October 3, 2002), and accompanying Issues and Decision Memorandum at "Trading Companies."

<sup>102</sup> See PDM at page 7.

<sup>103</sup> Id., at page 9, and Department Memorandum regarding "Countervailing Duty Initiation Checklist: Certain Uncoated Paper from Indonesia" (February 10, 2015) at pages 10-12.



CVD cases.<sup>164</sup> There is no evidence on the record of this investigation that would lead us to conclude that Great Champ actually sold merchandise only produced by the APP/SMG companies, or that Great Champ and the APP/SMG companies are cross-owned. We find insufficient the facts, such as Great Champ's use of a port near one APP/SMG mill or the presence of "trading" in Great Champ's corporate name, upon which the petitioners rely in support of their conclusion that Great Champ is a trading company that exported subject merchandise produced only by the APP/SMG companies. These facts are an insufficient evidentiary basis on which to assign Great Champ a total AFA rate that is equal to the total AFA rate for the APP/SMG companies. Similarly, we have no basis upon which to apply the APP/SMG cash deposit rate on all entries of the subject merchandise produced by APP/SMG. If the subject merchandise is exported by Great Champ, as requested by the petitioners.

Comment 2: Whether the Stumpage Program Meets the Specificity Requirement

APRIL contends that the Department should find the Provision of Standing Timber for Less Than Adequate Remuneration (Stumpage Program) is not a countervailable subsidy because the Stumpage Program does not meet the specificity requirement under section 771(5A)(D)(iii) of the Act. APRIL disputes the Department's assessment in the PDM that, because standing timber was provided by the GOI to four industries during the POI, including the paper industry, the program is specific because it is limited to a group of industries. According to APRIL, that only a certain group of industries availed themselves of the program does not provide a sufficient record basis to conclude that the program was de jure or de facto limited to any group of companies.

The petitioners counter that the Department has found the Indonesian Stumpage Program to be de facto specific in previous proceedings under section 771(5A)(D)(iii) because five industries, including the paper industry, actually used the program and thus constituted a limited group of industries within the universe of 23 industries identified by the GOI.<sup>165</sup> In this investigation, the petitioners contend that the Department's preliminary determination that the Stumpage Program is specific because the GOI reported that it provided standing timber during the POI only to four industries within the universe of 32 industry categories was correct. Therefore, the petitioners assert that the Department should continue to find the Stumpage Program to be specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the subsidy are limited in number to a group of industries, and under section 771(5A)(D)(iii)(I) of the Act because a group of industries is the predominant user of the subsidy.

Department's Position:

As discussed above, the GOI reported that it recognizes 32 industry categories for goods in Indonesia. Within these 32 categories, standing timber was provided by the GOI to only four

categories of industries during the POI, including the paper industry.<sup>166</sup> APRIL argues that the fact that only a certain group of industries availed themselves of the Stumpage Program does not mean that the program was de jure or de facto limited to a certain group of industries, and thereby specific under section 771(5A)(D)(iii)(I) of the Act because, for example, there are numerous other industries in Indonesia relying on timber as an upstream input. We note that section 771(5A)(D)(iii)(I) of the Act is not governed by what industries "avail themselves of a subsidy." Rather, under section 771(5A)(D)(iii)(I) of the Act, a subsidy is specific when the "actual recipients of the subsidy," whether considered on an enterprise or industry basis, are limited in number. In this case, the GOI stated that standing timber was only provided to four out of the 32 industry categories of goods recognized in Indonesia,<sup>167</sup> which demonstrates that the "actual recipients" of standing timber was limited in number, and that the Stumpage Program meets the specificity criterion under section 771(5A)(D)(iii)(I) of the Act. In this regard, the reliance of other industries on upstream inputs made from the standing timber would not detract from this specificity determination because the specificity analysis is focused on whether the recipients of the subsidy, itself, were limited in number, not on whether the recipients of an upstream product were limited in number. APRIL also argues that multiple industries fall under each industry category and, as such, the standing timber subsidy is not specific. We find that even assuming for argument's sake that this is correct, it would not rebut the basic premise that, even under the GOI's own classification system, only a limited segment of goods industries within Indonesia receives the subsidy. Moreover, subsidies are de facto specific if they are limited to specific industries or a specific group of industries.<sup>168</sup> Finally we note that in the previous investigations of paper from Indonesia, we determined that the actual use of this program by this limited number of industries met the statutory definition of a de facto subsidy.<sup>169</sup> For all these reasons, we continue to find that the Stumpage Program is de facto specific under section 771(5A)(D)(iii)(I) of the Act.

Comment 3: Whether the Stumpage Program Applies to Purchases of Felled Trees

If the Department continues to countervail the Stumpage Program, APRIL asserts that its purchases of felled trees from long-term suppliers are not countervailable because there is no involvement of any government authority in these transactions and thus no financial contribution. APRIL notes that, unlike trees harvested from its own plantations where it pays stumpage fees directly to the GOI, APRIL does not interact with the GOI with respect to these transactions. While APRIL may reimburse the supplier for the stumpage fees, it is the supplier, not APRIL, who pays stumpage fees to the GOI, and thus it would be the supplier, not APRIL, who would receive any alleged benefit under the Stumpage Program.

The petitioners dispute APRIL's contention that the GOI does not confer a benefit through the Stumpage Program on APRIL's purchases from long-term suppliers. The petitioners note that APRIL's reimbursement of stumpage fees to the suppliers is simply one step removed from paying the GOI directly, as APRIL reimburses the suppliers the exact amount of government-levied stumpage fees it would have paid directly if APRIL had harvested the felled trees from its own

<sup>164</sup> See GOI SQR at pages 3-4.

<sup>165</sup> *Id.*

<sup>166</sup> See, e.g., SVA at 931 (explaining that specificity analyses focus on "enterprises, industries or groups thereof").

<sup>167</sup> See CFS IDM at pages 18-19, 65-66; and CCP IDM at page 7.

concessions. Moreover, the petitioners claim that AFRIL's argument is untimely because AFRIL did not report that it reimbursed the suppliers for the stumpage fees, rather than paid the fees directly, until verification.<sup>110</sup>

#### Department's Position:

We agree with the petitioners that the record is unambiguous that AFRIL reimburses its long-term suppliers for the total amount of stumpage fees paid to the GOI for the felled trees that AFRIL harvested.<sup>111</sup> Whether AFRIL pays the fees directly to the GOI, or indirectly through reimbursement of its suppliers' stumpage, the AFRIL companies receive the benefit offered by the GOI through the Stumpage Program. Section 771(5)(B) of the Act does not require that the Department find that a single entity received both the financial contribution and the benefit to determine that a subsidy exists. Rather, the Department must find that an authority provides a financial contribution and that a benefit is thereby conferred.<sup>112</sup> Thus, where a government makes an initial financial contribution, there is no requirement that the Department also find that the government was involved in the ensuing transaction involving the proceeds of the financial contribution.<sup>113</sup> Here, we must determine whether the GOI provided a financial contribution and it is undisputed that the GOI provides a financial contribution, standing timber, to the AFRIL companies' long-term suppliers.<sup>114</sup> Thus, the Act's requirement that an authority provides a financial contribution has been met. As discussed above, *subra* at Section A.1 Provision of Standing Timber for Less Than Adequate Remuneration, the Department has constructed a market-based benchmark to separately determine whether a benefit was conferred. Accordingly, we continue to include the timber AFRIL harvested from its long-term suppliers in the benefit calculation for the Stumpage Program.

#### Comment 4: Whether to Include AFRIL's Harvest of Mixed Hardwood Timber in Calculating Countervailable Benefits

AFRIL contends that the Department should not countervail AFRIL's harvests and purchases of mixed hardwood (MHW) timber because AFRIL does not consume MHW to produce the subject merchandise. According to AFRIL, its questionnaire responses and the AFRIL Verification Report provide sufficient record evidence to demonstrate that all wood pulp consumed to produce uncoated paper was made from acacia timber and not MHW.<sup>115</sup> AFRIL concludes that any benefits granted with respect to MHW apply to non-subject merchandise and therefore are not countervailable in accordance with 19 CFR 351.525(b)(5), which instructs the Department to tie the subsidies to the production or sale of a particular product.

<sup>110</sup> In addition, the petitioners argue that the Department should countervail AFRIL's purchases of felled trees from long-term suppliers under the Log Export Ban even if the provision of this timber is determined not to be countervailable under the Stumpage Program.

<sup>111</sup> See, e.g., AFRIL Verification Report at VF-10, page 2.

<sup>112</sup> See Section 771(5)(B) of the Act.

<sup>113</sup> See *Certain Kitchen Shelving and Baskets from the People's Republic of China*, Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009), and accompanying Issues and Decision Memorandum, at Comment 6.<sup>114</sup> In this regard, as indicated above, we note that AFRIL reimburses its long-term suppliers for the exact amount of government-levied stumpage fees. See AFRIL Verification Report, at VF-10, page 2.

<sup>115</sup> In support of its statement, AFRIL cites to the AFRIL IQR, at page 15, and the AFRIL Verification Report, at page 11 and VE-33.

According to the petitioners, the Department's regulations require the attribution of domestic subsidies to "all products sold by a firm," and the Department may depart from this rule and attribute a subsidy only to certain products sold by a firm only where that subsidy is "tied to the production or sale of a particular product."<sup>116</sup> While the petitioners acknowledge that the regulations do not define "tied" in this context, the petitioners note that, with respect to analyzing whether a benefit exists, the CVD Preamble provides that the Department is "concerned with what goes into a company, such as enhanced revenues and reduced-cost inputs in the broad sense that we have used the term, not with what the company does with the subsidy."<sup>117</sup> The petitioners point to a number of cases to support their position that the Department has consistently included a subsidy in the benefit calculation despite the fact that the subsidy was only ultimately used in the production or sale of non-subject merchandise, where a respondent fails to demonstrate that the subsidy, at the time of its bestowal, was explicitly tied solely to non-subject merchandise and acknowledged as such by the granting authority prior to, or at the time of, bestowal.<sup>118</sup>

The petitioners contend that in this investigation that neither AFRIL nor the GOI have demonstrated that the GOI restricted AFRIL's use of MHW to the production of non-subject merchandise at the time AFRIL procured MHW, nor that the GOI was aware at the time of the subsidy bestowal that AFRIL intended to use the MHW solely for the production of non-subject merchandise. Moreover, the petitioners assert that the record indicates that MHW can be used to produce the subject merchandise.<sup>119</sup> The petitioners conclude that, as AFRIL and the GOI have failed to tie the provision of MHW to non-subject merchandise within the meaning of the Department's attribution regulations, the Department should continue to include MHW in its benefit calculations for the Stumpage Program and the Log Export Ban.

#### Department's Position:

While we recognize that the information on the record supports AFRIL's contention that it did not use MHW timber in the production of subject merchandise, the Department's consistent practice requires that the respondent must demonstrate that the subsidy is tied to the subject merchandise in order to exclude goods or services attributable to non-subject merchandise from the benefit calculation.

<sup>116</sup> See 19 CFR 351.525(b)(3) and 351.525(b)(5)(X).

<sup>117</sup> See CVD Preamble, 63 FR, at 65361.

<sup>118</sup> See *Polychlorinated Biphenyls from India*, Final Results of Countervailing Duty Administrative Review, 2012, 80 FR 11163 (March 2, 2015), and accompanying Issues and Decision Memorandum, at Comment 2. The petitioners also cite other cases, including *Chester Welded Austenitic Stainless Pressure Pipe From the People's Republic of China*, Preliminary Affirmative Countervailing Duty Determination and Attachment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 73 FR 39657, 39663 (July 10, 2008); and *Draft Page From the People's Republic of China*, Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, 76 FR 1971 (January 11, 2011), and accompanying Issues and Decision Memorandum, at Comment 6. Similarly, the petitioners cite court proceedings such as *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1296 (CIT Trade 2010), that affirm the Department's practice of attributing subsidies without regard to how they are used.

<sup>119</sup> The petitioners cite AFRIL's statement at page 20 of the AFRIL SQR that "MHW can be used in the production of the merchandise under investigation...."

The Department's practice is to identify the purpose of the subsidy at the time the subsidy is bestowed, and not to examine the use or effect of subsidies, i.e., to trace how the benefits are used by companies.<sup>120</sup> A subsidy is determined to be tied to a particular product when the intended use is known to the subsidy provider (in this case the GOI) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy.<sup>121</sup> For instance, to determine whether a loan is tied to a particular product, the Department examines the loan approval documents. Similarly, to determine if a grant is tied to a particular product, the Department examines the grant approval documents. The Department's tying analysis has been upheld in various cases at the Court of International Trade (CIT).<sup>122</sup> As previously mentioned, the primary focus of the Department's attribution regulations is "the stated purpose of the subsidy . . . at the time of bestowal."<sup>123</sup>

In this case, there is no evidence on the record that the GOI was aware of APRII's intended use of MHW timber or restricted APRII's usage of MHW timber to the production of non-subject merchandise. Moreover, while APRII asserts that MHW timber was not used to produce subject merchandise during the POI, APRII never claimed that MHW timber could not be used to produce subject merchandise. The CIT has held that "as long as the subject merchandise could be produced, it is immaterial whether and how such subject merchandise is actually produced."<sup>124</sup> Accordingly, for the final determination, we continue to include MHW timber in APRII's benefit calculations for the Stumpage Program and Log Export Ban.

#### Comment 5: Whether to Use Malaysian Stumpage Fees as A Benchmark

In the preliminary determination, we calculated a stumpage program benefit using Malaysian pulp log export prices of acacia mangium and MHW, and Australian export prices of eucalyptus hardwood chips as benchmarks. We then deducted harvesting costs, and profit associated with harvesting, from the benchmark data to derive benchmark stumpage prices on a species-specific basis. We applied this methodology under the "third tier" of the benchmark hierarchy outlined at 19 CFR 351.511(a)(2) (assessing whether the government price is consistent with market principles). We rejected APRII's proposal to compare Indonesian stumpage fees with the Malaysian stumpage fees as standing timber (and stumpage fees) in one country are not available to users in another country because standing timber cannot be traded across borders; only the logs produced from the standing timber can be traded. As a result, there are no world market prices for stumpage that can be considered as a benchmark under the "second tier" of the benchmark hierarchy outlined at 19 CFR

351.511(a)(2) (world market prices that would be available to purchasers in the country under investigation).

APRII contests the Department's preliminary determination to reject the Malaysian stumpage fee information as a benchmark, asserting that the Malaysian government stumpage fee (or levy) information<sup>125</sup> should be used because it satisfies the requirements for a second tier benchmark under 19 CFR 351.525(b)(5). Alternatively, APRII proposes that the Malaysian stumpage fee information constitutes a better third tier benchmark specific to the Indonesian fees at issue, as compared to the indirect, derivative benchmark methodology applied in the preliminary determination.

While APRII notes that the CVD Preamble indicates that a world market price is generally not available to purchasers in other countries if the goal is not traded on an international basis,<sup>126</sup> APRII also points out that the Department already has relied on Malaysia as the primary benchmark source for Indonesian timber products for reasons including geographical proximity and similar wood species. APRII continues that, for those reasons, the level of Malaysian government levies for forest products should be comparable for the purpose of benchmarks for Indonesian stumpage fees. APRII adds that Malaysian levies may even result in the overstatement of benefits when compared to Indonesian fees, because Malaysian timber concession holders are provided with infrastructure that Indonesian concession holders do not receive, and thus the Malaysian levies likely include the value of the infrastructure improvements.

If the Department were to find that a third tier benchmark is more appropriate, APRII contends that the Malaysian fees are a better benchmark than an indirect benchmark derived from log values, as the price at issue is for the right to harvest timber on public land, rather than for wood logs. APRII cites Department practice in CWCO Steel Line Pipe from China, where the Department applied Thai land values as a benchmark for Chinese land values, rather than a derivative value, such as one based on land leasing costs.<sup>127</sup> For the final determination, APRII proposes that the Department should use the Malaysian state of Sabah Royalty Schedule<sup>128</sup> as the source for benchmarks to compare to the Indonesian stumpage fees.

The petitioners contend that the Department should continue to reject Malaysian stumpage rates as a second tier benchmark, as it has in the preliminary determination and in past cases, because, as noted above, standing timber cannot be traded across borders; only the logs produced from the standing timber can be traded.<sup>129</sup> The petitioners also object to the use of Malaysian stumpage rates because, according to the petitioners, unlike Indonesian stumpage rates, the Malaysian stumpage rates are not

<sup>120</sup> See, e.g., *Polysulfone Terephthalate Film, Sheet, and Strip from India*, Final Results of Countervailing Duty Administrative Review, 2012, 80 FR 11163 (March 2, 2015), and accompanying issues and Decision Memorandum at Comment 2, and *Laine Residential Washers from the Republic of Korea*, Final Affirmative Countervailing Duty Determination, 77 FR 75975 (December 26, 2012), and accompanying issues and Decision Memorandum, at Comment 7.

<sup>121</sup> See CVD Preamble, 63 FR, at 65393.

<sup>122</sup> See, e.g., *East Steel*, 721 F. Supp. 2d at 1296 n.24; *East Steel Ltd. v. United States*, 678 F.2d 1268, 1274 (Fed. Cir. 2012); *MTZ Polyfilms, Ltd. v. United States*, 659 F. Supp. 2d 1303, 1314-15 (CIT 2009); *Royal Thai Government v. United States*, 441 F. Supp. 2d 1350, 1363-64 (CIT 2006); *Samsung Electronics Co. v. United States*, 973 F. Supp. 2d 1321, 1329-30 (CIT 2014).

<sup>123</sup> See *Countervailing Duties: Final Rule*, 63 FR 65348, 65403; *Royal Thai Government v. United States*, 441 F. Supp. 2d 1350, 1363-64 (CIT 2006).

<sup>124</sup> See *MTZ Polyfilms, Ltd. v. United States*, 659 F. Supp. 2d at 1314 (citing *Endurance de Ferale Chimierol v. United States*, 166 F. Supp. 2d 593, 601-04 (CIT 2001)).

<sup>125</sup> APRII placed Malaysian stumpage fees, also referred to as royalty fees, on the record in its June 3, 2015, submission on benchmarks (June 3 Submission), at Exhibit 1, and in its August 3, 2015, submission on benchmarks (August 3 Submission), at Exhibit 18.

<sup>126</sup> See CVD Preamble, at 65377.

<sup>127</sup> See *Chinese Welded Carbon Steel Line Pipe from the People's Republic of China*, Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008) (*CWCO Steel Line Pipe from China*), and accompanying issues and Decision Memorandum, at pages 16-17.

<sup>128</sup> See August 3 Submission, at Exhibit 18.

<sup>129</sup> See Preliminary Decision Memorandum, at page 19; see also CFS IDM, at page 20, and CCP IDM, at page 8. The petitioners' support of the derivative benchmark for stumpage based on log prices is further discussed under Comment 7.

species-specific. Further, the petitioners assert that APRII, has failed to demonstrate that the Malaysian stumpage rates are market-based, as required by statute and regulations.<sup>140</sup> Finally, the petitioners contend that the Malaysian stumpage royalty charge information is incomplete because Malaysia or its constituent states may assess other charges or fees upon harvesting, and because APRII, has not asked the Department to examine stumpage rates from Peninsular Malaysia.<sup>141</sup> As a result, the petitioners state that there is insufficient evidence on the record to determine what the total stumpage costs in Malaysia might be, and therefore, the stumpage fees in Malaysia, which APRII, supports as a benchmark, are not an appropriate benchmark for this investigation.

#### Department's Position:

We agree with the petitioners that there is inadequate information on the record to establish that the royalty fees in the Malaysian states of Sabah and Sarawak are market-based, as required under section 771(5)(E) of the Act and 19 CFR 351.511(a)(2). Therefore, we continue our practice set forth in the CFS Final and the CCP Final of determining a third tier benchmark for stumpage according to a species-specific market-based price for logs.

We find no basis to consider the Malaysian stumpage fees as benchmarks under the Department's second tier benchmark, as suggested by the APRII, companies. As we explained in the preliminary determination, and consistent with our findings in past cases, standing timber, and its associated stumpage fees, in one country are not available to users in another country because standing timber cannot be traded across borders; only the logs produced from the standing timber can be traded. Thus, there are no world market prices for stumpage. In the absence of such world market prices, we cannot apply stumpage fees in another country as a "second tier" benchmark.<sup>142</sup>

For consideration of a benchmark under the third tier, we are not limited to identifying world market prices that would be available to purchasers in Indonesia. Thus, it is possible to consider the Malaysian royalty fees on this record as benchmarks for the Indonesian stumpage rates if it can be demonstrated that these Malaysian government prices are based on market principles. The available information indicates that, as in Indonesia, the Malaysian government plays the predominant role in the market for standing timber through the issuance and administration of concession licenses by state forestry departments.<sup>143</sup> While APRII, submitted information on the royalty fee schedules in effect during the POI for the Malaysian states of Sarawak and Sabah, there is no information on the record with respect to how these fees were established and whether they are consistent with market principles. Without this necessary information on the record to determine how the Malaysian royalty fees are developed and whether they are consistent with market principles, we cannot consider if it would be appropriate (or not) to use these fees as benchmarks for the Indonesian stumpage rates under 19 CFR 351.511(a)(2)(iii). As discussed in detail below under Comment 7,

<sup>140</sup> The petitioners cite section 771(5)(E) of the Act and 19 CFR 351.511(a)(2) in support of this position.

<sup>141</sup> The petitioners refer to the APRII, June 3 submission, at Exhibit 1, and the petitioners' June 15, 2015, submission, at pages 4-9, and Exhibits 1, 2, 3, 5, and 7, for additional information regarding Malaysian stumpage fees and charges.

<sup>142</sup> See CCP Final and CFS Final, at 8.

<sup>143</sup> See APRII, August 3 submission, at Exhibit 6, which consists of excerpts from "Handwood Pulpwood and Woodchip Industry and Trade," published by Pöyry Management Consulting (Pöyry Report), at page 20 of the report. See also the discussion of the Malaysian forestry management in the APRII, June 3 submission, at Exhibit 1, and the Malaysian logging industry study excerpts in the petitioners' June 3, 2015, submission, at Exhibit 23.

we selected species-specific log or wood chip prices based on market principles as the starting point for determining stumpage rate benchmarks, consistent with our methodology applied in CFS Final and CCP Final.

#### Comment 6: Whether the Log Export Ban Constitutes a Countervailable Subsidy

In the Preliminary Determination the Department found that the GOI provided a financial contribution that benefited APRII, through the Log Export Ban program by directing and entrusting private forestry/harvesting companies to provide goods (i.e., logs) to domestic purchasers.

APRII/GOI<sup>144</sup> argue that the Department should find that the Log Export Ban is not a countervailable subsidy because there is no evidence that the export ban has created an artificial market for low-value pulpwood. APRII/GOI maintain that, because the export ban is clearly directed at the protection of high-value wood from natural forests, not pulpwood grown in plantations, it does not impact the prices for the low-value/residual pulpwood and chipwood used by APRII.<sup>145</sup> APRII/GOI add that the fact that a primitive downstream product (i.e., wood chips) can be exported from Indonesia demonstrates that the Log Export Ban is intended to protect Indonesia's natural hardwood forests.

Furthermore, APRII/GOI assert that the record of this investigation is meaningfully different from those in the previous cases. First, according to APRII/GOI, the GOI listed 26 other countries that impose limitations on the exportation of logs, and specified the particular form of limitation adopted by each country, thus corroborating the GOI's response that export bans in effect during the POI also extended to products in other sectors.<sup>146</sup> Second, the GOI submitted a 2014 study regarding the social and economic impact of the Log Export Ban in support of the GOI's belief that, in the absence of the Log Export Ban, irrational overcutting and illegal logging would, in the long term, cause domestic prices to drop below the current level.<sup>147</sup> More importantly, according to APRII/GOI, the study defines the term "wood processing industry" in a manner consistent with GOI information that the furniture industry alone is responsible for 75 percent of the impact of the Log Export Ban. Finally, APRII/GOI submit that, unlike the previous two Indonesia cases, the GOI allowed the exportation of woodchips, chipwood, and pulpwood during the POI in this proceeding. According to APRII/GOI, the ability to export these products during the POI refutes the petitioners' argument because, given the low value-added nature of the chipping process and the prevalence of international trade in woodchips, any protectionist intent regarding the pulp and paper industry would be rendered ineffective due to such a large loophole.

In addition, APRII/GOI argue that, if the Department counterwails the Log Export Ban program, it should not counterwail APRII, s/rAPRII's purchases from long-term suppliers because such purchases are not subject to the Log Export Ban. APRII/GOI maintain that no authority is involved in such

<sup>144</sup> Elsewhere in this memorandum, we refer to "APRII," or "the APRII, companies" for the respondents, although the case and rebuttal briefs were filed on behalf of the GOI as well. For this issue, however, we refer to the respondents as "APRII/GOI" as the arguments are reflective of the GOI's position in particular.

<sup>145</sup> APRII/GOI cite the Pöyry Report, which they claim provides reliable evidence that the Indonesian hardwood pulpwood prices are not distorted.

<sup>146</sup> See GOI QOR, at pages 31-32.

<sup>147</sup> See GOI SQRI, at Exhibit 12.

transactions – they are purely arrangements between private parties. Moreover, APRIL/GOI contend that there is no factual basis to analyze the long-term supplier purchases under the Log Export Ban because the scope of that program is limited to logs purchased by the mandatory respondents, while RAPP's long-term purchases are for unprocessed trees, which the Department recognizes are different than logs. APRIL/GOI continue that what RAPP purchases from its long-term suppliers is the right to felled trees, which must also include the granting of a right to access the land. APRIL/GOI argue that the right to felled trees obtained by RAPP is neither tradeable nor subject to any GOI restrictions as to private transfers, adding that this right cannot simply be exported and then exercised in a foreign country. In addition, APRIL/GOI maintain that the Log Export Ban lifts the government-provided financial contribution element because the requirements for government-trusted or directed subsidies are not met. Because there are no GOI restrictions on the private transfer of cut trees, APRIL/GOI claim that one cannot argue that the same requirements have been met with respect to the right freely transferred by the long-term suppliers.

Finally, APRIL/GOI argue that the Department should find that the Log Export Ban is not a countervailable subsidy because there is no financial contribution by an authority, and no entrustment or direction of a private entity by an authority to make a financial contribution. APRIL/GOI reason that for this new element of a countervailable subsidy to have any meaning, the entrustment and direction prong of the "authority" analysis must entail express government delegation and require one of the prescribed forms of financial contributions (e.g., provision of goods or services to certain selected beneficiaries, to be an intended result of the government action complained about). According to APRIL/GOI, if mere effects on private parties are sufficient, that would open the door to the countervailing of benefits from any sort of formal government measures, regardless of whether it is in a specified form that constitutes a financial contribution. In addition, APRIL/GOI contend that government direction or entrustment must be intentional – it cannot be based on transfers of financial resources that are an inadvertent result of a mere by-product of certain government action.<sup>138</sup>

The petitioners protest that, despite APRIL's repeated acknowledgement that it purchased logs from unaffiliated suppliers, all of those suppliers are presumed to be covered by the Log Export Ban, and that there are no exceptions to the Log Export Ban. APRIL now claims the opposite. In its preliminary comments APRIL argued that the ban did not distort the market for plantation logs because the GOI permits the exportation of a further processed product made from such plantation logs, which APRIL interchangeably referred to as "wood chips" and "chipwood."<sup>139</sup> The GOI stated that it is not illegal to export "woodchips," "chipwood," or "pulpwood" from Indonesia but, according to the petitioners, offered no evidence to support these statements and no definitions of these terms.<sup>140</sup> The petitioners maintain, however, that the list of downstream wood products that can be exported, which was provided in response to a supplemental questionnaire, does not include wood used to make pulp, as the GOI's use of the term pulpwood originally implied.<sup>141</sup> The petitioners contend that, while the translation of the schedule of permitted export products submitted

by the GOI contains the word "pulpwood," the totality of the evidence demonstrates that this refers to pulp made from wood, as opposed to wood used to make pulp. Thus, the petitioners believe that any references to pulpwood in the translations of this measure should be understood to refer to pulp, not wood. Moreover, the petitioners cite other record evidence which they claim confirms that all three of the items – wood chips, chipwood, and wood pulp – are downstream wood products processed from logs, and do not include the types of logs that APRIL purchases from its unaffiliated suppliers. The petitioners argue that, regardless of the nature of the wood purchased by APRIL, it is clearly covered by the Log Export Ban.

With respect to whether the Log Export Ban provides a countervailable financial contribution, the petitioners claim that although APRIL/GOI argue that entrustment and direction can only occur through explicit delegation of government authority, they cite no provision of the statute, regulations, or prior cases to support their proposition. The petitioners note that APRIL/GOI claim that the purpose of the export ban is to protect forests, as opposed to subsidizing downstream producers; however, the petitioners also note that the policy instituting the ban directly states that one of the reasons exports are prohibited is to develop downstream industries in Indonesia.<sup>142</sup> In addition, although APRIL/GOI claim that the ban does not suppress log prices, or prices are only suppressed to benefit wood processing industries other than the pulp and paper industry, the petitioners argue that the record shows that the Log Export Ban significantly suppresses log prices in Indonesia, thus benefiting all log purchasers regardless of the downstream use of the log. Finally, the petitioners refute APRIL/GOI's claim that the fact that downstream products such as wood chips are permitted to be exported shows that the log ban does not confer a benefit to downstream products, arguing that the fact that upstream logs are not allowed to be exported while downstream products can be exported only confirms that the ban provides a financial contribution.

#### Department's Position:

For the reasons stated above under V. Analysis of Programs, we continue to find the Log Export Ban to be a countervailable subsidy. As we stated in the PDM, the GOI confirmed that a ban on the exportation of logs was still in effect during the POI of this investigation, although under a new Ministry of Trade decree.<sup>143</sup> While the petitioners and APRIL differ regarding the proper translation of the items exempted from the GOI's Log Export Ban, the list of downstream wood products permitted to be exported does not include logs or wood used to make pulp. Thus, while it was not illegal to export certain downstream wood products during the POI,<sup>144</sup> the ban on log exports remained in effect, and the record is clear that the APRIL companies purchased logs, not wood chips, during the POI,<sup>145</sup> which are covered under the Log Export Ban. In addition, as discussed above, the record shows that the Log Export Ban's effect is to grow the wood processing industry, to encourage processing industries in Indonesia, and to suppress prices in Indonesia.<sup>146</sup> As such, the financial

<sup>138</sup> See Issues and Decision Memorandum CFS DPM, at page 32 ("the benefits of the log export ban to the downstream consumers, as noted in the statutes, cannot reasonably be considered inadvertent or a mere by-product of the ban").

<sup>139</sup> See APRIL, June 16, 2015, submission, at pages 19-20 and at 32; APRIL, June 3 submission, at Exhibit 6.

<sup>140</sup> See GOI SQR 1, at pages 5-6.

<sup>141</sup> See GOI July 30, 2015, supplemental questionnaire response, at page 3 and Exhibit S2-7, at Attachment 1, Group 13.

<sup>142</sup> See Regulation No. 44/M-DAG/PER/7/2012, attached to GOI IQR, at Exhibit 15.

<sup>143</sup> See GOI IQR, at page 33 and Exhibit 15, and GOI SQR at pages 5-6.

<sup>144</sup> See GOI SQR, at pages 5-6.

<sup>145</sup> See, e.g., APRIL, IQR, at pages 21 and 27; and APRIL, Verification Report, at VE-12.

<sup>146</sup> See GOI SQR, at Exhibit S-12; and Petition, at IV-21-22, and Exhibits IV-31 and IV-32.

contribution by the GOI through contrivance or direction of log suppliers cannot reasonably be considered inadvertent or unintentional.<sup>147</sup>

With respect to APRIL/GOI's argument that, because the export ban is directed at the protection of high-value wood from natural forests, not pulpwood grown in plantations, it does not impact the prices for the low-value/residual pulpwood and chipwood used by APRIL, we note that: 1) APRIL purchased wood from natural forests as well as wood from plantations during the POI;<sup>148</sup> and 2) APRIL's pricing argument relates to the downstream wood products, not logs covered under the Log Export Ban.

With respect to APRIL/GOI's claim that the Log Export Ban does not suppress log prices, as allegedly supported by studies that APRIL/GOI placed on the record,<sup>149</sup> the petitioners point to other information on the record that contradicts APRIL/GOI's assertions and indicates that log prices in Indonesia are far below regional and international prices.<sup>150</sup> In particular, the CFI's own commissioned study concludes that "[t]he Indonesian government should consider taking measures to increase domestic log price, which is currently much cheaper than the price in the international market. Repeal ban [sic] on log exports will increase domestic log price."<sup>151</sup> (emphasis added). APRIL's argument to the contrary relies on a statement in another GOI study that long term log prices would decrease in the absence of the export ban, possibly because higher prices could spur illegal logging and irrational "overcutting."<sup>152</sup> However, the same paragraph of that study concedes that "high international prices [are] prevailing at this time," and therefore, at least "in the short term," Indonesian firms would "enjoy the revenue from the high price of logs" if the ban were lifted. Thus, this June 2014 study concedes the price-suppressing effects of the Log Export Ban during the POI. The study's further proposition that "in the long term the price will go towards a new equilibrium (and) can even be smaller than the original domestic prices"<sup>153</sup> is not relevant to the POI, and in any event is not further explained. Accordingly, we continue to find that the Log Export Ban distorted prices in the Indonesian market during the POI.

Finally, with respect to APRIL/GOI's argument that, if the Department counterwaits the Log Export Ban program, it should not counterwaile APRIL's purchases from long-term suppliers because such purchases are not subject to the Log Export Ban, we determine that these purchases are properly considered under the Stumpage Program. See Comment 3 above.

#### Comment 7: Selection of Timber Benchmark Values

In the preliminary determination, we based benchmark prices for purposes of determining benefits under the Stumpage and Log Export Ban programs on Malaysian pulp log export prices of acacia

manjung and MIW derived from the Global Trade Atlas (GTA), and Australian export prices of eucalyptus hardwood chips. APRIL argues that, for benchmark prices based on log values, the Department should apply a different set of benchmarks. APRIL stresses the importance of identifying a benchmark that corresponds to the type of wood consumed by APRIL, asserting that pulpwood consumed to produce the subject merchandise is fundamentally different than wood logs used for high-value applications such as furniture and flooring manufacture.<sup>154</sup>

APRIL contends that the Malaysian export prices used in the preliminary determination are distortive because roundwood-based export values are aberrational and unrepresentative. According to APRIL, pulpwood is a thinly traded product and, due to a supply shortage, export prices arise from a very different context than the prevailing price in the domestic market, so that the transactions giving rise to the export values are not comparable to the government provision of a good or service in the domestic context. Furthermore, APRIL asserts that the Malaysian export statistics include various ITIS-code misclassifications. In addition, APRIL maintains that pulpwood is rarely traded internationally and it has largely been replaced by trade in woodchips.<sup>155</sup>

For the final determination, APRIL proposes new benchmark values for acacia manjung based on a) the value of Malaysian export price statistics for woodchips; b) the average value of Indian imports of woodchips from Malaysia and of Japanese woodchip imports from Vietnam; or c) market survey prices for Malaysian pulpwood, corroborated by the unit value of Malaysian exports of pulpwood to India.<sup>156</sup> If the Department relies on a woodchip benchmark value, APRIL adds that chipping costs and a reasonable profit should be deducted from that value, based on RAPP's own chipping costs, or average Australian chipping cost and profit data.<sup>157</sup> For eucalyptus, APRIL proposes new benchmark values based on Thai export price statistics for woodchips, South African woodchip prices, or Australian export price statistics, adjusted for chipping costs and profit.<sup>158</sup>

With respect to MIW, APRIL asserts that the Malaysian export statistics value used as the MIW benchmark in the preliminary determination should not be used because the underlying statistics relate to high-value sawlogs and veneer logs. APRIL notes that there is little available information for valuing MIW products appropriate for pulp making due to significantly reduced world demand for this pulp input. Instead, APRIL proposes a benchmark value for MIW based on the average of the acacia and eucalyptus benchmark values, adjusted by either the discount percentage observed for

<sup>147</sup> APRIL includes a detailed discussion of the relevant wood types in pages 25-32 of the APRIL Case Brief.

<sup>148</sup> APRIL discusses wood trade and ITIS classification issues in detail in pages 32-46 of the APRIL Case Brief. To support its argument, APRIL cites the 2013 RISI "International Pulpwood Trade Review" (RISI Report), submitted in the June 3 Submission, at Exhibit 6, and excerpts from the Pogy Report.

<sup>149</sup> See APRIL Case Brief, at pages 46-53. APRIL submitted the Malaysian woodchip export price data at Exhibit 7 of the August 3 Submission; the Indian and Japan import values at Exhibit 5 of the August 3 Submission and page 28 of the RISI Report, respectively; and the Malaysian pulpwood pricing data at page 23 of the Pogy Report.

<sup>150</sup> See APRIL Case Brief, at pages 43-46. RAPP's shipping cost data was reported at Exhibit 17 of the August 3 Submission. Australian chipping cost information was included in the record at Attachment 5 of the Preliminary Determination. APRIL cites to page 16 of the Pogy Report for the estimated chipping profit percentage.

<sup>151</sup> See APRIL Case Brief, at pages 53 - 60. APRIL submitted the Thai export price data at Exhibit 10 of the August 3 Submission, the South African price in page 28 of the RISI Report, and the Australian export statistics at Exhibit 13 of the August 3 Submission.

MIW in the Malaysian wood trade, or the Sabah state royalty fee difference between natural forest pulpwood and plantation forest pulpwood.<sup>159</sup>

The petitioners support the Department's selection of timber benchmarks in the preliminary determination, citing the Department's finding in previous Indonesian paper cases that available Malaysian pulpwood log export prices are a reliable proxy for establishing a third tier, market-based benchmark for stumpage and log purchase prices. These prices, the petitioners continue, represent market-determined pulp log prices based on prices from private transactions between Malaysian pulp log sellers and pulp log buyers in the international market.<sup>160</sup> However, the petitioners state that, with respect to the benchmark for the acacia sub-species, *acacia crassicaarpa*, for which the Department was unable to identify a specific benchmark in the preliminary determination and used the average of the acacia mangium and eucalyptus benchmarks, the Department should use the acacia mangium benchmark as APRIL reports that the two species are comparable and that APRIL does not differentiate between them in the pulpmaking process.<sup>161</sup> For this reason, the petitioners also assert that the acacia mangium benchmark alone, rather than the average of the acacia mangium and eucalyptus benchmarks used in the preliminary determination, should be applied to the benefit calculations for APRIL's purchases of unspecified acacia timber.

The petitioners dispute APRIL's assertions regarding the ITIS-code misclassifications that APRIL contends make the GTVA data for acacia mangium prices unreliable.<sup>162</sup> The petitioners also contend that the 2014 GTVA export prices for acacia mangium and MIW are not aberrational, as APRIL claims, when compared to pricing based on the relevant ITIS codes in recent years.<sup>163</sup>

With respect to APRIL's proposals to use benchmarks based on woodchip prices, the petitioners object, stating that logs, not wood chips, are the products affected by the Long Export Ban, and logs are the closest things to standing timber that can be sold in the world market. While the petitioners concede that the woodchip trade may be more prolific than the pulpwood log trade, as APRIL and the GOI suggest, the petitioners emphasize that it does not mean that the woodchip and pulpwood log markets are interchangeable. Moreover, the petitioners assert there is still an international market for pulpwood logs. Should the Department nevertheless decide to use woodchip prices as benchmarks, the petitioners contend that the Department should not introduce further distortions into the analysis by deducting chipping costs and profit from the woodchip prices, as APRIL advocates, or if such adjustments were to be made, the Department should rely instead on APRIL's stated chipping costs. As further detailed in its rebuttal brief, the petitioners raise additional objections to APRIL's proposed alternative benchmarks for acacia mangium and MIW, based on factors such as the "hodgepodge" nature of the data selection and the lack of species specificity.<sup>164</sup>

<sup>159</sup> See APRIL Case Brief, at pages 61 – 66. APRIL cites to page 16 of the Poyry Report for information on the MIW market and at page 23 for the MIW discount percentage. The Sabah Royalty Schedule with the different fees charged for natural forest pulpwood and plantation pulpwood was submitted at Exhibit 18 of the August 3 Submission. At pages 22-23 of the APRIL IQR, APRIL explains that MIW is sourced only from natural forests, before plantations are developed, and subsequently acacia trees are harvested on these plantations.

<sup>160</sup> See CFS IDMA, at page 20; and CCF IDMA, at page 10.

<sup>161</sup> See APRIL July 30, 2015, supplemental questionnaire response (APRIL-SQR2n11), at page 4.

<sup>162</sup> See Petitioners' Rebuttal Brief, at pages 34-37 for a more detailed discussion of the petitioners' rebuttal analysis concerning APRIL's objections to the GTVA acacia export price data.

<sup>163</sup> *Id.*, at pages 37-39.

<sup>164</sup> *Id.*, at pages 45-47 and 49-50.

With respect to the eucalyptus benchmark value, the petitioners do not object to the Australian woodchip price benchmark used in the preliminary determination, but they assert that the Department should revise its conversion of this benchmark value from a "bone dry metric ton" (BDMT) to cubic meters by using either the conversion factor for "Dense Hardwood Residues," rather than that for "Wood Residues," from the Global Wood "Timber and Technology Center," or the series of conversions from BMDT to "bone dry unit" (BDU) and BDU to cubic meters from the RISI Report.<sup>165</sup> In addition, the petitioners state that the 2012 Australian eucalyptus benchmark value should be adjusted for inflation to a 2014 level using Indonesian inflation rates published by the IMF.<sup>166</sup> The petitioners dismiss the alternative eucalyptus woodchip benchmark values offered by APRIL, because they claim none of them are species-specific to plantation eucalyptus; the reported unit of measurement for the Thai export price data is unclear; the source for one of them, South Africa, is not geographically close to Indonesia; and the record does not establish that South Africa's forest conditions, climate, and tree species are similar to those of Indonesia.

In rebuttal to the petitioners' case brief arguments, APRIL disagrees with the petitioners regarding the application of the acacia mangium benchmark to unspecified acacia purchases, stating that it does not distinguish its purchases of pulpwood at the subspecies level,<sup>167</sup> and there is no evidence on the record that its purchases of unspecified acacia logs are more comparable to acacia mangium than to eucalyptus. APRIL also contests the petitioners' proposed adjustments to the Australian eucalyptus benchmark value used in the preliminary determination, if the Department were to rely on that benchmark for the final determination. APRIL contends that the BDMT-to-cubic-meters conversion factor used in the preliminary determination is more appropriate than the petitioners' alternative, based on information on the record.<sup>168</sup> In addition, APRIL opposes the petitioners' suggestion to inflate the 2012 Australian eucalyptus woodchip benchmark using Indonesian inflation rates, stating that the Department should elect to use one of the more contemporaneous benchmarks advocated by APRIL, or if relying on the 2012 Australian price, the Department should consider the fact that the information on the record indicates that world eucalyptus wood chip prices have declined since 2012.<sup>169</sup>

#### Department's Position:

Based on our analysis of the record information, and the separate criteria for determining the benchmark prices for calculating the standing timber benchmark price under the Stumpage Program,

<sup>165</sup> See Preliminary Calculation Memorandum, at pages 3-4 for an explanation of our conversion from BDMT to cubic meters. The Global Wood "Timber and Technology Center" conversion factors discussed by the petitioners are included as Attachment 3 to the Preliminary Calculation Memorandum. The BMDT-BDU and BDU-cubic meters conversion factors are at pages six and six of the RISI Report and explained in more detail in page 6 of the Petitioners' Case Brief.

<sup>166</sup> The petitioners placed IMF inflation rate data on the record at Exhibit IV-29 of the Petition, and Exhibit 27 of the Petitioners' June 3, 2015, submission.

<sup>167</sup> See APRIL-SQR2n11, at pages 5-6.

<sup>168</sup> APRIL provides a more detailed analysis of the BDMT conversion factor at pages 3 – 9 of the APRIL Rebuttal Brief.

<sup>169</sup> See RISI Report, at pages 267 – 271. APRIL, June 3 submission, at Exhibit I, and the petitioners' June 15, 2015, submission, at pages 4-9, and Exhibits I, 2, 3, 5, and 7, for additional information regarding Malaysian stumpage fees and charges.



and the log purchase price benchmark under the Log Export Ban, we revised our selection of benchmark prices for acacia mangium standing timber and log purchases, and eucalyptus standing timber for the final determination. Specifically, for the acacia log benchmark price under the Log Export Ban, we continued to rely on the GTA export statistics for Malaysia but with additional ITIS categories. For calculating the benchmark for acacia timber under the Stumpage Program, we used the acacia price survey information from the Phytory Report. For calculating the benchmark for eucalyptus timber under the Stumpage Program, we relied on the GTA export statistics for Thailand. Due to the lack of reliable, alternative world- or market-based prices for MIIW, we continue to base the benchmark prices for MIIW under both the Stumpage and Log Export Ban programs on the GTA export statistics for Malaysia. The bases for these determinations are detailed below. In addition, we made certain revisions to our adjustments of the benchmark prices, as discussed further below in response to this comment and Comment 8.

In the preliminary determination, as in the CCP Final, although we based our benchmark price selection under different criteria for the Stumpage Program and the Log Export Ban (i.e., third tier benchmark and second tier benchmark, respectively), we used the same benchmark price for each log species to calculate the respective countervailable benefit. For the final determination, our analysis results in the selection of a different price for acacia mangium logs to derive the stumpage rate benchmark than the price for benchmarking APRIL's purchases of acacia logs from short-term suppliers.

#### A. Selection of Benchmark Prices Under Tier 2 for Log Export Ban Benefit Calculations

As explained above, we identified the appropriate benchmark log prices for benefit analysis under the Log Export Ban in accordance with 19 CFR 511(a)(2)(ii), where we "seek to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question." For world market prices, our practice is generally to rely on export prices, such as the average unit prices derived from Malaysian export statistics reported in the GTA, which we used in the preliminary determination and in the CCP Final. The Department noted in CCP Final and CCP Final that Indonesia and Malaysia share a geographic proximity and the similarities of forest conditions, climate, and tree species. In those proceedings, as well as in the preliminary determination, the Department found that the public export statistics of Malaysian pulpwood reported in the GTA are reliable for establishing a benchmark under the "second tier" as a world market price that would be available to a purchaser in Indonesia.

The APRIL companies offer prices based on exports of acacia woodchips as their preferred source for a benchmark log price, due to reports of limited international trade in pulpwood and inclusion of higher-value acacia products within the ITIS categories for logs in the GTA data for Malaysia. However, APRIL provided information for the record identifying shipments of Malaysian acacia mangium pulpwood logs to India that demonstrates pulpwood is, in fact, traded across international borders, and moreover, the GTA data include exports of acacia mangium pulpwood (although these exports were reported under an ITIS number not included in the Malaysian GTA-based export value

used in the preliminary determination).<sup>170</sup> As this information demonstrates that the available record information includes world market prices for acacia pulpwood, we find no basis to reject the acacia log pricing data in favor of acacia woodchip pricing.

At the same time, APRIL has identified discrepancies in the ITIS categories relied upon in the CCP Final and the preliminary determination for acacia logs, based in part on changes in Malaysia's application of ITIS categories since 2007.<sup>171</sup> APRIL provided an alternative calculation for an acacia benchmark price derived from GTA data for Malaysia that includes exports under additional ITIS categories.<sup>172</sup> These data include the Malaysian exports of acacia mangium pulpwood to India specifically identified by APRIL and described above. Because this calculation represents a broader, more robust average unit price, we find this value from the GTA export statistics for Malaysia to be a more representative price than the preliminary determination value for acacia mangium logs that would be available to purchasers in Indonesia, consistent with the benchmark selection criterion under 19 CFR 511(a)(2)(ii). Accordingly, for the final determination, we are relying on this value from APRIL's June 3 submission as the benchmark price for acacia to determine the benefit APRIL received under the Log Export Ban. In addition, we agree with the petitioners that this benchmark value for acacia mangium logs should also be applied to APRIL's purchases of acacia logs not identified by subspices, based on APRIL's explanation that the acacia subspices in question are similar and comparable.<sup>173</sup> Furthermore, we note that, while APRIL did not specify the acacia subspices in its questionnaire responses, the actual invoices and accounting records indicate that these purchases were mostly or entirely of acacia mangium.<sup>174</sup>

For a MIIW benchmark price to compare APRIL's purchases of MIIW logs, the only world market price for MIIW logs on this record is the Malaysian GTA export statistics-based price used in the preliminary determination. As we noted above, the Department has found this source to be reliable in past Indonesia paper cases for establishing a "second tier" benchmark price for MIIW. While noting APRIL's objections to using this price information, we do not believe that they provide a sufficient basis to reject this MIIW benchmark price given our past acceptance of the Malaysian GTA export statistics and the absence of any other appropriate alternative under Tier 2. Thus, for the final determination, we continue to rely on the Malaysian GTA data for the MIIW benchmark price for purposes of calculating APRIL's benefit under the Log Export Ban.

#### B. Selection of Benchmark Prices Under Tier 3 for Stumpage Benefit Calculations

Our selection of benchmark prices to measure APRIL's benefit under the provision of standing timber for less than adequate remuneration is based on a different criterion than that for the benchmarks to measure benefits under the Log Export Ban. We explained above under V. Analysis of Programs that, because there were no market-determined prices for stumpage in Indonesia during the POI and there is no evidence on the record of world market prices for standing timber that would

<sup>170</sup> See APRIL Case Brief at pages 41 and 51-52, citing APRIL's August 3 submission at Exhibit 5, and the RISI Report at page 55.

<sup>171</sup> *Id.*, at pages 33, 36, and 42.

<sup>172</sup> See APRIL's June 3 Submission, at Exhibit 3. The average unit value for acacia logs derived from the GTA data for Malaysia using the additional ITIS categories is shown at page 1 of the exhibit.

<sup>173</sup> See APRIL's SQR2011, at page 4.

<sup>174</sup> See APRIL Verification Report, at VI-12 and VI-34.



be available to purchasers in Indonesia, we are measuring the adequacy of remuneration by assessing whether the government price is consistent with market principles (i.e., the "third tier" as described in the Department's regulations). Consistent with our practice in CFS Final and CCP Final, we determined a market-based stumpage benchmark on the principle that the market value of timber is derivative of the value of the downstream products. Accordingly, the value of a standing tree is derived from the demand for logs produced from that tree and the demand for logs is, in turn, derived from the demand for the products produced from those logs. Consistent as well with our practice in CFS Final and CCP Final, we determined a benchmark for stumpage derived from a market-based species-specific price for logs or, in the case of eucalyptus timber, wood chips.

For determining a stumpage benchmark for acacia timber, in addition to the Malaysian GTVA export price data, the other appropriate option on the record is the pricing for acacia pulpwood obtained as part of an independent market study of the pulpwood and woodchip industry in Malaysia. The firm conducting the study explained that it "undertakes routine research and survey of Acacia prices in Malaysia. It's [sic] most recent market survey was undertaken in Malaysia in March 2014. Surveyed at mill gate prices for Acacia pulpwood ranged between USD38-54/m<sup>3</sup> with an average of USD46/m<sup>3</sup>."<sup>175</sup> Our analysis of the Pöyry Report, as well as other record information concerning the Malaysian timber industry,<sup>176</sup> supports a finding that these observed prices reflect private party transactions based on market prices. There is no information on the record to challenge the accuracy or reliability of this market study, nor do the petitioners provide any basis to challenge the accuracy or reliability of it. Furthermore, there is no information on the record to indicate that log market in Malaysia is distorted.

Moreover, the Pöyry acacia pulpwood pricing reflects the specific type of acacia timber harvested by the APRIL companies,<sup>177</sup> and does not include prices for acacia logs to be consumed outside of the paper industry. The data also represents acacia log prices at the mill gate, thus we do not need to make adjustments for freight expenses, as we would need to do with respect to the GTVA export price data from Malaysia. Accordingly, in this instance, we find that the Pöyry Report prices are more appropriate than the Malaysian GTVA export prices as starting prices for calculating the acacia stumpage rate benchmark. Therefore, for the final determination, we used the average observed price in the Pöyry Report as the acacia log benchmark price. For the reasons stated above regarding the similarity among acacia subspecies, we used this benchmark price to calculate the stumpage rate benchmark for both acacia mangium and acacia crassipes.

For MIIW, APRIL proposed using the information in the Pöyry Report to estimate a MIIW pulpwood price according to a discount applied to the acacia price.<sup>178</sup> In contrast to the acacia prices from this study, which reflect actual prices observed for acacia logs, the MIIW price levels are based on estimates. Such estimated prices are not necessarily grounded in market experience sufficient to

satisfy the Tier 3 regulatory requirement of a market-based benchmark price. As a result, the most appropriate source for the MIIW stumpage benefit benchmark is the same Malaysian GTVA export price used in the preliminary determination and for the Log Export Ban price benchmark in the final determination, as discussed above. This benchmark price is an export FOB price. Accordingly, for the final determination, we adjusted this price to deduct inland freight expenses (as discussed below under Comment 8) that would be incurred to deliver the MIIW logs from port to mill.<sup>179</sup>

For eucalyptus, we relied on 2012 Australian export prices of wood chips as the best available information for this stumpage rate benchmark in the preliminary determination. We have additional, more contemporaneous, information on the record for the final determination. Rather than inflate the 2012 Australian export prices to FOB levels, as the petitioners propose, we consider the 2014 Thai and Australian export price data to be superior for benchmark price purposes as they are contemporaneous with the POI. However, the Australian export price data is based on an HTS category that may include other species besides eucalyptus, as noted by the petitioners, while the Thai export statistics are based on a specific eucalyptus HTS category.<sup>180</sup> Given both their contemporaneity and their specificity, we selected the 2014 Thai GTVA eucalyptus woodchip export price data as the starting price for determining the eucalyptus stumpage rate benchmark in the final determination.

The unit of measurement reported for the eucalyptus woodchip exports in the GTVA statistical data is kilograms.<sup>181</sup> The petitioners' objection to the selection of this price information for the eucalyptus benchmark is that it is unclear whether this weight measurement reflects a "Bone Dry" weight or other type of weight measurement.<sup>182</sup> APRIL refers to other information on the record to support its assumption that the GTVA data are on a Bone Dry basis, citing in particular the RISI Report BDMT figure for Thai eucalyptus woodchip exports in 2014 as "generally consistent" with the GTVA data.<sup>183</sup> The source of the Thai export statistics is the Thai Customs Department; the RISI Report cites pulpwood resource owners, wood fiber export companies, trading companies and end-users as the source for their export trade data.<sup>184</sup> This difference in sources for the export data may account, at least in part, for the different quantity totals reported in the two sets of data. According to the RISI Report, "[t]he primary international pricing unit used by exporters and importers has traditionally been ... US dollars per BDMT (for the hardwood trade)."<sup>185</sup> The only other metric weight measurement applicable to wood chips discussed in the RISI Report is Green Metric Tons (GMT).

<sup>175</sup> See Final Calculation Memorandum. In the absence of information on the record regarding Malaysian inland freight costs between port and mill, we used APRIL's reported inland freight expenses between an Indonesian port and its mill. See APRIL, SQR2.pdf, at page 7.

<sup>176</sup> The Australian export price data are reported under "Non-Conglomerate Wood, in Chips Or Particles." See APRIL, August 3 Submission, at Exhibit 13. The Thai export data are reported under a specific category for eucalyptus. See APRIL, August 3 Submission, at Exhibit 10.

<sup>177</sup> See Petitioners' Redaction Brief, at page 18.

<sup>178</sup> See APRIL, Case Brief, at pages 54-55, and RISI Report, at page 191. According to the Thai GTVA data, 2.55 million MT of eucalyptus wood chips were exported in 2014. The RISI Report states that woodchip exports to Asian countries totaled 2.1 million BDMT in 2014. At page 192 of the RISI Report, a graph clarifies that the total refers to Thai exports to India, Timor, Korea, China, and Japan. The total of exports to those five countries according to the GTVA data in the APRIL, August 3 submission is 2.5 million MT.

<sup>179</sup> See APRIL, August 3 submission, at Exhibit 10, and RISI Report, at page xviii, respectively.

<sup>180</sup> See RISI Report, at page xviii.

Using the information in the RISI Report to test whether the CITA export quantity total was reported in GMT (versus BDMT) and comparing that figure against the comparable RISI Report total quantity in BDMT demonstrates that it is unlikely the Thai CITA quantity data are on a GMT basis.<sup>186</sup> Considering the totality of the record information concerning the Thai export data, we agree with APRIL that it is reasonable to assume that the Thai CITA export data for eucalyptus woodchips was reported on a Bone Dry basis.

With respect to converting the eucalyptus price from a BDMT basis to a cubic-meter basis in order to calculate the stumpage benefit, we revised our calculation from the preliminary determination methodology and used information in the RISI Report. According to this market study, “[m]ost eucalyptus producers would assume that around 2.3 m<sup>3</sup> of roundwood over bark per BDMT of marketable chips is a reasonable average figure.”<sup>187</sup> Considering the available information on the record, we believe this conversion factor provides the most reasonable basis for our calculation. In calculating the stumpage rate benchmark from the eucalyptus woodchip price, we deducted wood chipping costs based on APRIL’s chipping costs,<sup>188</sup> in addition to APRIL’s reported timber harvesting costs. Finally, as this benchmark price is an export FOB price, we also adjusted the price to deduct inland freight expenses representing the cost between port and mill, as discussed above with respect to the MHW benchmark price.

#### Comment 8: Adjustments to Log Benchmark Values

In the preliminary determination, we added applicable ocean and inland freight costs, as well as brokerage and handling expenses, to the log benchmark prices before determining whether the Indonesian price for pulpwood confers a benefit. For ocean freight, we used a Malaysian barge shipment value of \$19.50/MT,<sup>189</sup> based on information submitted by APRIL.<sup>190</sup>

According to APRIL, if the Department identifies a benchmark under the second tier of 19 CFR 351.511(a)(2), no additional freight costs or import duties should be added because, with respect to the Log Export Ban, the point of the benchmark exercise is to determine what APRIL should have paid for logs in Indonesia if their prices were not suppressed by the export ban. In that light, APRIL contends that the benchmark should be the export price alone, with nothing more added. Nevertheless, if the Department adjusts the benchmark, APRIL asserts that pulpwood is not heavily-traded merchandise, and even when it is exported, it is only within the nearby region due to the high ocean freight which would make it otherwise uneconomical to export. Accordingly, to avoid distortions generated by unrepresentative freight costs, APRIL states that the international freight adjustment should either be the Malaysian barge shipment value, or the alternative value should be capped at \$19.50/MT.

<sup>186</sup> GMT to BDMT conversion information is discussed in the RISI report at page xix. According to the RISI Report, converting from GMT to BDMT is dependent on the moisture content of the wood. If we were to assume that the Thai GTA were reported on a GMT basis, and using a typical example of a 50 percent moisture content, applying the GMT-to-BDMT conversion factor of .5 to the Thai GTA export total results in a BDMT equivalent of about 1,275 million BDMT, compared to the RISI Report export quantity of 2.1 million BDMT.

<sup>187</sup> See RISI Report, at page xx.

<sup>188</sup> See August 3 submission, at Exhibit 17.

<sup>189</sup> See Preliminary Calculation Memorandum, at page 6.

The petitioners counter that the Department’s regulations require that a second tier benchmark be adjusted to reflect the price a firm paid, or would pay, for the product at issue, inclusive of delivery charges, and the Department’s practice in the previous paper cases and other proceedings is to make such adjustments.<sup>190</sup> The petitioners do not object to the use of the Malaysian barge shipment value as an adjustment to the log benchmark price, if the Department relies on the same log benchmarks as in the preliminary determination, but they claim that the Department should apply the Indonesian value-added tax (VAT) rate to this amount.<sup>191</sup> Should the Department select alternative log benchmark prices based on non-Malaysian sources, the petitioners contend that an alternative ocean freight rate should be used, such as the average of the Malaysia-to-Japan freight rates the petitioners placed on the record.<sup>192</sup> However, the petitioners do not agree with APRIL that an alternative international freight adjustment should be capped by the Malaysian barge cost, as such a cap would not capture the additional amount for VAT.<sup>193</sup> In addition, the petitioners contend that the Department should replace the inland freight adjustment value used in the preliminary determination, based on information in the publication “Doing Business in Indonesia,” with inland freight expense data reported by APRIL.<sup>194</sup>

With respect to the petitioners’ argument to apply an adjustment to the barge freight for Indonesian VAT, APRIL responds that it did not actually pay VAT on its barge freight expenses because, in Indonesia, VAT is not a tax ultimately paid by a manufacturer of a good or provider of a service, but rather is paid by the end-user.<sup>195</sup>

#### Department’s Position:

When relying on a second tier benchmark price under 19 CFR 351.511(a)(2)(ii), 19 CFR 351.511(a)(2)(iv) instructs the Department to “adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. This adjustment will include delivery charges and import duties.” As discussed above under Comment 7, we are relying on Malaysian export prices of acacia and MLIW as benchmark prices to measure the benefit received under the Log Export Ban. Accordingly, we find it proper to continue to adjust the FOB benchmark price for ocean freight according to the barge freight expense reported by APRIL. In addition, we agree with the petitioners that the adjustment for inland freight, representing the expense to transport the logs from the Indonesian port to APRIL’s factory, should be based on APRIL’s reported inland freight expense. These adjustments are discussed in the Final Calculation Memorandum.

With respect to VAT assessed on the barge freight expense, APRIL states that it does not ultimately pay such tax, and we have no information on the record to dispute this claim. We note that we did not add VAT to either the log price benchmark or the barge freight expense in CCP Final.<sup>195</sup>

<sup>190</sup> See 19 CFR 351.511(a)(2)(iv). For precedent, the petitioners also cite, *inter alia*, CCP IDM, at pages 13 and Comment 12, and *CMCO Steel Line Pipe from China*, at Comment 7.

<sup>191</sup> The petitioners cite business proprietary information on the record, including the APRIL Verification Report, at VE-28, in support of their position. See Petitioners Brief, at pages 10-12.

<sup>192</sup> See the petitioners June 3, 2015, benchmark submission, at Exhibit 24.

<sup>193</sup> The petitioners submitted the publication “Doing Business in Indonesia,” at Exhibit 26 of their June 3, 2015, submission. The petitioners cite to inland freight expense data reported by APRIL, at page 7 of the APRIL SQ22a11.

<sup>194</sup> APRIL cited to its August 3 submission at Exhibit 19 to arrive at this interpretation.

<sup>195</sup> See CCP IDM, at Comment 12.

Accordingly, we did not add an amount for Indonesian VAT to the barge freight adjustment made to the benchmark price in the final determination in this investigation.

Comment 9: Corrections and Revisions to APRIL's Log Harvesting and Purchase Data

In the July 20, 2015, memorandum entitled "Ministerial Error Allegations in the Preliminary Determination" (Ministerial Error Memo), we acknowledged two errors in our preliminary determination benefit calculation: a) we failed to adjust certain log purchase prices paid by APRIL for delivery charges identified as "loading and unloading" and "transportation" costs; and b) we used incorrect data for calculating certain portions of the stumpage fee benefits. We did not issue an amended preliminary determination to account for these errors because correcting them did not result in a change in APRIL's calculated subsidy rate that would meet the definition of a "significant" ministerial error under 19 CFR 351.224(g).

For the final determination, APRIL contends that the Department should include these corrections in its benefit calculation, as well as the minor corrections to its data reported at the commencement of verification, and the additional revisions identified during verification.<sup>196</sup> In addition, APRIL argues that the Department should adjust the reported price for its purchased logs for depreciation and road maintenance expenses.<sup>197</sup>

The petitioners caution that the only adjustments to the prices that should be made for purposes of the Log Export Ban benefit calculation should be those expenses where the record clearly demonstrates that the adjustment accounts for actual log or delivery prices.

Department's Position:

For the calculation of benefits in the final determination, we made the corrections identified in the Ministerial Error Memo, and the revisions to RAPP's harvesting and logistics costs identified prior to, or during, verification. However, for purposes of calculating the benefit under the Log Export Ban, we did not deduct depreciation and road maintenance expenses from RAPP's log purchase price. These expenses are part of RAPP's harvesting costs used to adjust the benchmark price for calculating the stumpage benefit, but not part of the RAPP logistics expenses that are added to RAPP's log purchase price in order to bring the purchase price to the same delivered price level as the benchmark price.<sup>198</sup>

Comment 10: Whether APRIL Received a Countervailable Debt Forgiveness Benefit

In the Department's Post-Preliminary Analysis Memo, we found that, with respect to the petitioners' allegation that the APRIL companies benefited from countervailable debt forgiveness from the GOI,

<sup>196</sup> See April's submission of October 13, 2015, APRIL Verification Report, at VI-1 and VI-25, and APRIL's letter of November 12, 2015, transmitting the Excel file of data included in VI-25.

<sup>197</sup> See APRIL Rebuttal Brief, at page 71.

<sup>198</sup> See APRIL IQR, at page 17 and Exhibit 35 (later revised in APRIL Verification Report at VI-25); and APRIL Verification Report, at VI-27.

our analysis of APRIL's questionnaire responses and our verification results showed no evidence of such debt forgiveness for RAPP or RAK between 2002 and 2014.<sup>199</sup>

The petitioners dispute this finding, claiming that the 2002 debt restructuring agreements (collectively, 2002 RA)<sup>200</sup> resulted in an effective debt forgiveness by the GOI. According to the petitioners, the APRIL companies (RAPP and RAK, in this specific instance) were in default of their existing obligations at the time of the 2002 RA. The 2002 RA, they continue, included changes to the principal and interest due from RAPP's and RAK's previous obligations that resulted in a net reduction in the companies' obligations to the state-owned banks, Bank Mandiri (BM) and Bank Negara Indonesia (BNI).<sup>201</sup> The petitioners conclude that this reduction amounts to a countervailable debt forgiveness benefit. In addition, the petitioners assert that the record evidence demonstrates that BM and BNI are public bodies and government authorities capable of conferring a financial contribution.<sup>202</sup> To calculate this benefit, the petitioners propose considering the amount forgiven to be a non-recurring subsidy, and allocating the benefit over the AUL using an interest rate that reflects a discount rate for an uncreditworthy company.<sup>203</sup>

APRIL responds that the record, including the GOI Verification Report and the APRIL Verification report, fully support the Department's Post-Preliminary Analysis Memo determination that the APRIL companies did not use the alleged debt forgiveness program. In particular, APRIL asserts that it is not true that its debt was due in full at the time of the 2002 RA, nor that BM wrote off any part of the APRIL companies' debt, as the petitioners claim. With respect to the petitioners' claim that the 2002 RA reduced the total amount of principal and interest RAPP and RAK owed prior to that point, APRIL responds that this claim is false, as no interest or principal due was forgiven or reduced, and that the impact of restructured interest rates was prospective to the 2002 RA. Moreover, while APRIL states that, in the absence of any debt forgiveness, the status of BM and BNI as public bodies is moot, APRIL and the GOI contend that these state-owned banks were not public bodies at the time of the 2002 RA, and the 2006 debt restructuring agreements for RAPP and RAK (collectively, 2006 RA).<sup>204</sup>

Department's Position:

In the Post-Preliminary Memo at page 3, we stated:

Our verification revealed no evidence of debt forgiveness for RAPP or RAK based on the 2002 and 2006 restructuring agreements through the end of 2014. Both of these

<sup>199</sup> See Post-Preliminary Analysis Memo, at pages 2-3; and APRIL Verification Report, at pages 12-14.

<sup>200</sup> The 2002 RAs were submitted at Exhibit 13 (RAPP) and Exhibit 14 (RAK) of the SQR2a11.

<sup>201</sup> See discussion in Petitioners' Case Brief, at pages 37-40, which includes business information reported in, or derived from, APRIL's questionnaire responses. The petitioners base the amount of the alleged benefit that the APRIL companies received from the state-owned banks BM and BNI on the information summarized at Exhibit 1 of APRIL's September 8, 2015, supplemental questionnaire response (APRIL SQR3a11).

<sup>202</sup> See Petitioners' Case Brief, at pages 45 - 49 for further discussion of this assertion.

<sup>203</sup> The petitioners provide a proposed benefit calculation, including interest rate to be applied, at Exhibit 1 of the Petitioners' Case Brief.

<sup>204</sup> See APRIL Rebuttal Brief, at pages 20 - 22 for further discussion of APRIL's and GOI's rebuttal of the petitioners' assertion.

APRIL companies made principal and interest payments according to the schedules in the restructuring agreements. We observed no evidence of missed or forgiven payments between 2002 and 2014.

While the petitioners dispute that claim and assert that the reduced amount of obligations owed to state-owned banks as a result of the 2002 RA was debt forgiven, the evidence on the record does not support this conclusion. Therefore, we find that the APRIL companies did not benefit from debt forgiveness as alleged by the petitioners.

The Department analyzed in detail the supplemental questionnaire responses APRIL submitted in response to the petitioners' debt forgiveness subsidy allegation. The Department conducted a thorough review of this information at verification.<sup>205</sup> Our analysis revealed no evidence that any of RAPP's or RAK's debt principal was forgiven as part of the 2002 RA. Our analysis also revealed no evidence that any of the accrued interest incurred by RAPP or RAK was forgiven as part of the RA.

The petitioners' claim that an amount of principal and interest was forgiven derives from summary charts in APRIL's supplemental questionnaire responses, which show amounts under the column "Benefits" in summarizing the terms of the RAs.<sup>206</sup> The alleged benefit amounts, however, do not represent any reduction of the principal or of the accrued interest owed as of the 2002 RA. A more detailed examination of the alleged amounts, as presented elsewhere on the record,<sup>207</sup> confirms this assessment. With respect to the 2002 RA and the alleged benefit amount, APRIL notes that "(w)hile interest rates were restructured, they were always done so prospectively, and never retroactively."<sup>208</sup> The benefit alleged by the petitioners relates to prospective interest payments, and not to any interest amount that accrued prior to the 2002 RA.

Based on the foregoing, in this final determination, we continue to find that the debt forgiveness program at issue was not used by the APRIL companies.

#### Comment 11: Whether APRIL Received a Countervailable Benefit for Preferential Loans

The petitioners claim that the 2006 RA confers a countervailable benefit on the APRIL companies through the granting of an interest rate on government-provided loans that was lower than the interest rate for a comparable commercial loan, consistent with 19 C.F.R. 351.505(a)(1). According to the petitioners, the 2006 RA should be treated as new long-term loans, consistent with the Department's practice.<sup>209</sup> The petitioners assert that the new loans arising out of the 2006 RA are not comparable to commercial loans that RAPP and RAK could actually obtain on the market because RAPP and RAK did not obtain those loans on the market. Furthermore, even though private

banks as well as state-owned banks participated in the 2006 RA, the petitioners contend that the loan rates under the 2006 RA do not represent the considerations of a commercial lender evaluating a borrower seeking new financing. When compared to the 15.22 percent benchmark interest rate calculated by the petitioners, which includes a premium for the alleged uncreditworthiness of the APRIL companies,<sup>210</sup> the petitioners allege that the level of the 2006 RA interest rates indicate that the APRIL companies received a benefit from preferential loans from the state-owned banks. Therefore, the petitioners argue that the Department should calculate a benefit to the APRIL companies for the restructured loan benefit they obtained under the 2006 RA.<sup>211</sup>

APRIL responds that the petitioners' claim amounts to an untimely new subsidy allegation.

#### Department's Position:

On June 18, 2015, the Department initiated an investigation to determine whether the APRIL companies benefited from debt forgiveness from the GOB, pursuant to the petitioners' allegation in their letter of May 13, 2015.<sup>212</sup> The Department issued supplemental questionnaires and received responses to those questionnaires, as identified above, in order to determine whether the APRIL companies received a countervailable benefit from debt forgiveness according to the allegation made by the petitioners. Our investigation focused on this debt forgiveness allegation, and as a result, we did not develop sufficient information on the record to analyze and determine whether the APRIL companies received preferential loan benefits from state-owned banks. For example, we do not have sufficient information on the record to determine how the interest rates in the 2006 RA were established, and the role commercial banks played in setting those rates.<sup>213</sup>

The petitioners raised the matter of a preferential loan benefit for the first time on November 17, 2015, in the Petitioners Case Brief, after the issuance of the supplemental questionnaire responses and the completion of the Department's verification, and less than two months before the final determination of this investigation is due. There was insufficient time left in this investigation to obtain and analyze the information necessary to make a determination regarding whether terms of the 2006 RA result in a countervailable benefit from preferential loans. Therefore, we are unable to make a finding on this matter in our final determination. If a CVD order is issued as a result of this investigation, the Department intends to look into this issue in the context of an administrative review.

#### Comment 12: Uncreditworthiness

<sup>210</sup> See Petitioners Case Brief, at Exhibit 1.

<sup>211</sup> The specific details of the petitioners' claim that the APRIL companies received a preferential loan benefit is derived from business proprietary information obtained from APRIL's supplemental questionnaire responses. See Petitioners Case Brief, at pages 40 - 42.

<sup>212</sup> See Letter from the petitioners, "Certain Unseasoned Paper from Indocina - Petitioners' New Subsidy Allegations and Uncreditworthiness Allegation for the Regis Garuda Mas Group and APRIL Companies for 2002-2006," dated May 13, 2015; and memorandum entitled "New Subsidy Allegations," dated June 18, 2015.

<sup>213</sup> In addition to JPM and BNP, commercial banks were also involved in the 2002 RA and the 2006 RA. See, in particular, APRIL, SQR2.pdf, at Exhibits 13 - 15, and APRIL, SQR3.pdf, at pages 8 and 16.

The petitioners maintain that the Department should find that RAPP, RAK, and IEC were uncreditworthy from 2002 to 2006; AKU was uncreditworthy in 2006; and IP was uncreditworthy in 2004 and 2006. In support of this argument, the petitioners assert that none of the above-mentioned APRIL companies received short-term or long-term commercial loans, except for IP in 2005.<sup>214</sup> The petitioners also argue that the evidence on record indicates that the APRIL companies were financially unhealthy and unable to meet their fixed financial obligations with their cash flow during the 2002-2006 period.<sup>215</sup> Additionally, the petitioners argue that the Department should conclude, based on AFA, that RAPP was uncreditworthy from 2002 to 2006 because APRIL failed to cooperate by not acting to the best of its ability to provide certain RAPP financial statements requested by the Department. The petitioners assert that the requested financial statements contained essential information that the Department needed to analyze RAPP's creditworthiness during the 2002 to 2006 period. Accordingly, the petitioners claim that the Department should use an interest rate for uncreditworthy companies in calculating the benefit of the APRIL Companies' debt forgiveness program.

APRIL responds that the Department was correct in declining to analyze the APRIL companies' creditworthiness in the Post-Preliminary Analysis Memo given that the Department did not find any countervailable long-term loans or non-recurring subsidies that are allocable under 19 CFR 351.524(b)(2) and require the use of long-term loan benchmarks or discount rates. APRIL argues that the APRIL companies' financial ratios, which were fully examined by the Department at verification, support the conclusion that the APRIL companies are creditworthy.<sup>216</sup> APRIL connects that the APRIL companies had debt restructuring during the AFA, but argues that banks would not have restructured the APRIL companies' debt had they not been creditworthy. Additionally, APRIL maintains that the fact that IP, a member of the APRIL companies, received a long-term loan in 2005, demonstrates that the APRIL companies, as a group, are creditworthy. Furthermore, APRIL argues that finding RAPP uncreditworthy based on AFA, as the petitioners advocate, is not warranted because before applying AFA to a company for not cooperating to the best of its ability, the Department must identify the deficiency and provide an opportunity for the company to correct the deficiency, especially when the deficiency is due to an oversight by the company. APRIL asserts that the Department never requested RAPP's omitted financial statements, and was able to fully verify the financial ratios of each of the APRIL companies using the financial statements that were requested at verification.

#### Department's Position:

As discussed above under Comment 10, we determined that the APRIL companies did not use the alleged debt forgiveness program. Further, we did not review any long-term loan programs involving the APRIL companies in this investigation. Accordingly, for the final determination, we find that no analysis of whether the APRIL companies were uncreditworthy during the period 2002 to 2006 is warranted because we are not countervailing any long-term loans or any non-recurring subsidies that are allocable under 19 CFR 351.524(b)(2).

<sup>214</sup> See APRIL SQR2a11, at page 27.

<sup>215</sup> The petitioners refer to business proprietary information derived from the financial ratios and financial statements of the APRIL Companies, included in APRIL SQR2a11 at Exhibits 27, 32, 34, and APRIL SQR3a1 at Exhibits 1-3.

<sup>216</sup> APRIL cites to the APRIL Verification Report at page 16 in support of its statement.

#### VII. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the Federal Register and will notify the U.S. International Trade Commission of our determination.

Agree ☒ Disagree ☐

Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

Date 8 5 2006 Aug 2016

APPENDIX

AfA Rates Determined for Programs Used by Great Champ and IK/TK

Program	Subsidy Rate (%)
Provision of Standing Timber for Less Than Adequate Remuneration	9.81
Government Prohibition of Log Exports	11.41
Exemptions from Import Income Tax Withholding for Companies in Bonded Zone Locations	5.05
Export Financing from Export-Import Bank of Indonesia	5.05
Export Credit Insurance	14.21
Export Credit Guarantees	5.05
Income Tax Programs:	
<ul style="list-style-type: none"> <li>Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by Indonesia's Investment Coordinating Board (BKPM) – Corporate Income Tax Deduction</li> <li>Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by BKPM – Accelerated Depreciation and Amortization</li> <li>Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by BKPM – Extension of Loss Carry-Forwards</li> </ul>	25.00
Preferential Treatment for Bonded Zone Locations – Waiver of License and Fee Requirements	14.21
Exemptions From Sales Taxes for Capital Goods and Equipment Used to Produce Exports	14.21
Total AfA Rate Before Adding Company-Specific Subsidy Programs	104.00

Great Champ (No Company-Specific Subsidy Programs)	
Total AfA Rate	Rate %
	104.00
IK/TK (Including Company-Specific Subsidy Programs)	
Debt Forgiveness through the Indonesian Government's Acceptance of Financial Instruments with No Market Value	Rate %
	0.75
Debt Forgiveness through AP/PSMG's Buyback of Its Own Debt from the GOI	Rate %
	4.40
Total AfA Rate for AFP Companies	109.15