United States, Court No. 05–00438, Slip Op. 08–61 (Ct. Int'l Trade) (May 29, 2008) (''*Wuhan v. U.S.*''), which challenged certain aspects of the Department of Commerce's (''the Department'') findings in *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 38873 (July 6, 2005) (''*Final Results*'') and the accompanying Issues and Decision Memorandum. As explained below, in accordance with the order contained in the CIT's May 29, 2008, *Wuhan v. U.S.*, the Department is amending the *Final Results* of the review to apply the recalculated surrogate value for labor in the Department's normal value calculation.

EFFECTIVE DATE: September 19, 2008.

FOR FURTHER INFORMATION CONTACT: Bobby Wong or Scot T. Fullerton, AD/CVD Operations, Office 9, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Room 4003, Washington, DC 20230; telephone: (202) 482–0409 or (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2005, the Department completed its *Final Results* of the second administrative review of honey from the People's Republic of China (''PRC''). On July 20, 2007, the CIT issued its order remanding the case to the Department, requesting that the Department explain its decisions, (1) to include data from high–wage countries in its non–market economy (''NME'') wage rate calculation, and (2) to exclude from that calculation data from twenty–two low–wage countries placed on the record by plaintiffs. *See Wuhan Bee Healthy Co., Ltd. v. United States*, 2007 Ct. Int'l. Trade, LEXIS 115, Slip Op. 07–113 (''*Wuhan Remand*''). Additionally, the Department requested a voluntary remand to recalculate the PRC wage rate using the data set out in its remand request. The CIT also directed the Department to reopen the record to provide parties an opportunity to submit comments regarding the Department's application of *ad valorem* versus per unit assessment rates. *See Wuhan Remand*, 2007 Ct. Int'l Trade, LEXIS 115, Slip Op. 07–113 at *63.

On August 3, 2007, the Department reopened the administrative record to allow parties an opportunity to comment on the Department's proposed change in methodology from an *ad valorem* to a per-unit duty assessment. Petitioners filed comments in support of the Department's proposed change. Respondents did not provide comments. On September 7, 2007, the Department released its draft remand results to interested parties for comments. Again, respondents did not provide comments.

On October 16, 2007, the Department submitted the final *Remand Results* to the CIT. On May 29, 2008, the CIT issued its ruling and sustained the Department's remand results. *See Wuhan v. U.S.*, Court No. 05–00438, Slip Op. 08–61, at 2. The CIT found that the Department provided a reasonable explanation and conducted a reasonable analysis, concerning the inclusion and exclusion of specific countries in the regression analysis, sufficient to address the court's concerns. Furthermore, the CIT found that, with respect to the voluntary remand, the Department explained its methodology reasonably, and thus sustained the Department's recalculation of the surrogate labor rate. No appeals were filed with the United States Court of Appeals for the Federal Circuit (''CAFC'').

Amendment to the Final Determination

Because there is now a final and conclusive court decision, effective as of the publication date of this notice, we are amending the *Final Results* and revising the weighted average dumping margins for Wuhan Bee Healthy Co., Ltd. (''Wuhan Bee''):

HONEY FROM THE PRC

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Wuhan Bee	101.48

We have calculated Wuhan Bee's company-specific antidumping margin as 101.48 percent. *See* the Memorandum to the File from Bobby Wong, ''Analysis Memorandum for the Draft Results of the Redetermination of the Wage Rate Remand for Antidumping Duty Administrative Review of Honey from the People's Republic of China for Wuhan Bee Healthy Co., Ltd.,'' dated September 6, 2007 (''Draft Results Analysis Memo''). There have been no changes to this analysis for these amended final results. In accordance with the Department's practice of applying importer–specific assessment rates, we will instruct United States Customs and Border Protection (''CBP'') to apply the importer-specific assessment rate for Wuhan Bee's exports to the United States. *See* Draft Results Analysis Memo at Attachment 2. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the publication of the final results of this review.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: September 8, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–21979 Filed 9–18–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–938]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

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

SUMMARY: The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers and exporters of citric acid and certain citrate salts from the People's Republic of China. For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* September 19, 2008.

FOR FURTHER INFORMATION CONTACT: Damian Felton, David Neubacher, or Shelly Atkinson, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0133, (202) 482–5823, or (202) 482–0116, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the publication of the Department of Commerce's (''Department'') notice of initiation in the **Federal Register**. *See Notice of Initiation of Countervailing Duty Investigation: Citric Acid and Certain Citrate Salts From the People's Republic of China*, 73 FR 26960 (May 12, 2008) (''*Initiation Notice*''), and the accompanying Initiation Checklist.

On June 2, 2008, the Department selected three Chinese producers/exporters of citric acid and certain citrate salts (''citric acid'') as mandatory respondents, BBCA Group Corp., Shandong TTCA Biochemical Co., Ltd.

(''TTCA''), and Yixing Union Biochemical Co., Ltd. (''Yixing Union''). *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, ''Respondent Selection'' (June 2, 2008). This memorandum is on file in the Department's Central Records Unit in Room 1117 of the main Department building (''CRU''). Subsequently, on June 4, 2008, the Department issued a correction to the respondent selection memorandum, naming Anhui BBCA Biochemical Co., Ltd. (''Anhui BBCA'') as a mandatory respondent, and not BBCA Group Corp. *See* Memorandum to the File from Scott Holland, ''Correction to Respondent Selection Memorandum—Selection of Anhui BBCA Biochemical Co., Ltd.'' (June 4, 2008). On June 9, 2008, we issued the countervailing duty (''CVD'') questionnaires (''CVD questionnaire'') to the Government of the People's Republic of China (''GOC''), Anhui BBCA, TTCA, and Yixing Union.

On June 11, 2008, the International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly subsidized imports of citric acid from Canada and the People's Republic of China (''PRC''). *See Citric Acid and Certain Citrate Salts from Canada and China; Determinations*, Investigation Nos. 701–TA–456 and 731–TA–1151–1152, 73 FR 33115 (June 11, 2008).

On June 13, 2008, the Department postponed the preliminary determination of this investigation until September 12, 2008. *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 73 FR 33805 (June 13, 2008).

On July 16, 2008, we were notified by counsel for Anhui BBCA that the company would not be participating in the investigation.

We received responses to our questionnaire from the GOC, TTCA and Yixing Union on July 23, 2008. *See* the GOC's Original Questionnaire Response (July 23, 2008) (''GQR''); TTCA's Original Questionnaire Response (July 23, 2008) (''TQR''); and Yixing Union's Original Questionnaire Response (July 23, 2008) (''YQR''). We sent supplemental questionnaires on the following dates: August 1, 2008 (TTCA and Yixing Union); August 7, 2008 (TTCA); August 11, 2008 (Yixing Union); August 13 and 18, 2008 (GOC); and September 4, 2008 (GOC). We received responses to these supplemental questionnaires as follows: TTCA's First Supplemental Response (August 6, 2008) (''T1SR''); TTCA's Second Supplemental Response (August 27, 2008) (''T2SR (8/27)''); TTCA's Second Supplemental Response (August 28, 2008); Yixing Union's First Supplemental Response (August 7, 2008); Yixing Union's Second Supplemental Response (September 2, 2008) (''Y2SR''); GOC's First Supplemental Response (August 27, 2007) (''G1SR (8/27)''); GOC's First Supplemental Response (September 2, 2008) (''G1SR (9/2)''); GOC's Second Supplemental Response (September 2, 2008) (''G2SR (9/2)''); GOC's Second Supplemental Response (September 5, 2008) (''G2SR (9/5)''); GOC's Third Supplemental Response (September 9, 2008); and TTCA's Additional Translations of T1SR (8/27) (September 10, 2008).

On August 1, 2008, Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle America, Inc. (collectively, ''Petitioners'') requested that the Department extend the deadline for the submission of new subsidy allegations beyond the August 4, 2008, deadline established by the Department's regulations. *See* 19 CFR 351.301(d)(4)(i)(A). The Department granted the request and Petitioners submitted new subsidy allegations on August 8, 2008. The GOC and Yixing Union submitted comments on Petitioners' new subsidy allegations on August 18, 2008. We met with the GOC and Petitioners regarding the new subsidy allegations on August 22, 2008, and August 28, 2008, respectively.

On September 12, 2008, the Department determined to investigate certain of the newly alleged subsidies, specifically those relating to the Provision of TTCA's Plant and Equipment for Less Than Adequate Remuneration (''LTAR''); Provision of Land to SOEs for LTAR; Provision of Land in the YEDZ for LTAR; Provision of Land-use Fees in Jiangsu Province for LTAR; Provision of Land in the Anqiu City Economic Development Zone for LTAR; Administration Fee Exemption in Anqiu City; Exemption of Water and Sewage Fees in Anqiu City; Tax Grants, Rebates and Credits in the Yixing Economic Development Zone (''YEDZ''); Provision of Water in the YEDZ for LTAR; Provision of Electricity in the YEDZ for LTAR; Provision of Construction Services in the YEDZ for LTAR; Administration Fee Exemption in the YEDZ; and Grants to FIEs for Projects in the YEDZ. *See* Memorandum to Susan Kuhbach, Director, AD/CVD Operations, Office 1, ''New Subsidy Allegations'' (September 12, 2008). Questions regarding these newly alleged subsidies will be sent to the GOC and the respondent companies after this preliminary determination is issued.

On September 2, 2008, Petitioners requested that the final determination of this CVD investigation be aligned with the final determination in the companion antidumping duty (''AD'') investigation in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the ''Act'').

The GOC filed comments in advance of the preliminary determination on September 3, 2008 (''GOC Pre-Prelim Comments''). Petitioners provided comments on September 10, 2008, regarding certain issues in the GOC Pre-Prelim Comments.

On September 5, 2008, Petitioners submitted comments regarding the rate to be assigned to BBCA and the all-others rate (''Petitioners Comments on Anhui BBCA and the All-Others Rate''). The GOC responded to Petitioners' comments on September 9, 2008 (''GOC's Response to Petitioners'' Comments on Anhui BBCA and the All-Others Rate''). We address Petitioners' comments and the GOC's response below.

Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997), and *Initiation Notice*, 72 FR at 62210.

Timely comments were filed concerning the scope of the AD and CVD investigations of citric acid from Canada and the PRC on May 23, 2008, by Chemrom Inc., and by L. Perrigo Company on June 3, 2008. Petitioners responded to these comments on June 16, 2008.

On August 6, 2008, the Department issued a memorandum to the file regarding Petitioners' proposed amendments to the scope of the investigations. In response, on August 11, 2008, L. Perrigo Company and Petitioners' submitted comments to provide clarification of the term ''unrefined'' calcium citrate. We have analyzed the comments of the interested parties regarding the scope of this investigation. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, re: Antidumping Duty Investigation of

Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China (PRC), and CVD Investigation of Citric Acid and Certain Citrates Salts from the PRC, ''Whether to Amend the Scope of these Investigations to Exclude Monosodium Citrate and to Further Define the Product Referred to as 'Unrefined Calcium Citrate''' (September 10, 2008). Our position on these comments is reflected in the ''Scope of the Investigation'' section below.

Scope of the Investigation

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

Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

On May 12, 2008, the Department initiated the CVD and AD investigations of citric acid from Canada and the PRC. *See Initiation Notice* and *Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 73 FR 27492 (May 13, 2008). The CVD investigation and the AD investigations have the same scope with regard to the merchandise covered.

On September 2, 2008, Petitioners submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final determination in the companion AD investigations of citric acid from Canada and the PRC. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final determination in the companion AD investigations of citric acid from Canada and the PRC. Consequently, the final CVD determination will be issued on the same date as the final AD determinations, which are currently scheduled to be issued no later than January 26, 2009, unless postponed.

Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the period of investigation (''POI''), is January 1, 2007, through December 31, 2007.

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (''*CFS from the PRC*''), and the accompanying Issues and Decision Memorandum (''CFS Decision Memorandum''). In *CFS from the PRC*, the Department found that given the substantial differences between the Soviet-style economies and the PRC's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from the PRC.

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

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

Use of Facts Otherwise Available and Adverse Inferences

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

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

Anhui BBCA

In the instant investigation, Anhui BBCA did not provide the requested information that is necessary to determine a CVD rate for this preliminary determination. Specifically, Anhui BBCA did not respond to the Department's June 9, 2008, CVD questionnaire. On July 16, 2008, we were notified that Anhui BBCA would not participate in the investigation. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2)(A) and (C) of the Act, we have based the CVD rate for Anhui BBCA on facts otherwise available.

Petitioners argue that we should utilize reliable record evidence to compute a ''non-adverse facts available'' rate for Anhui BBCA, rather than follow the adverse facts available (''AFA'') methodology/approach the Department

developed in recent cases. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate, at page 5. Petitioners use record evidence to compute rates for: Certain grants, preferential policy loans, long-term loans provided to uncreditworthy companies, over rebate of VAT and the provision of land for LTAR. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate, at pages 7–15.

Alternatively, should the Department calculate a total AFA rate for Anhui BBCA, Petitioners argue that we should not limit the computation to the rates of programs used by the cooperating respondents or from past cases. Petitioners believe that for certain programs, the rates calculated using publicly available information form a better source for facts available than does the information submitted by the cooperating respondents. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate, at page 16.

While the GOC agrees with Petitioners that the Department should use neutral (non-adverse) facts available whenever possible, the GOC notes that Petitioners' calculations for the aforementioned subsidy programs rely on highly adverse inferences to compute a supposed non-adverse rate. *See* GOC's Response to Petitioners' Comments on Anhui BBCA and the All-Others Rate, at pages 5 and 6.

For the preliminary determination, we are not computing a ''non-adverse facts available'' rate for Anhui BBCA. Instead, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit a response to the Department's initial questionnaire, Anhui BBCA did not cooperate to the best of its ability in this investigation. Accordingly, we find that an adverse inference is warranted to ensure that Anhui BBCA will not obtain a more favorable result than had it fully complied with our request for information.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) 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. It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding. *See, e.g., Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 71 FR 66165 (November 13, 2006), and the accompanying Issues and Decision Memorandum, at ''Analysis of Programs'' and Comment 1.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session (1994), at page 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *See Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

For the preliminary determination, consistent with the Department's recent practice, we are computing a total AFA rate for Anhui BBCA generally using program-specific rates determined for the cooperating respondents or past cases. Specifically, for programs other than those involving income tax exemptions and reductions, we will apply the highest calculated rate for the identical program in this investigation if the responding company used the identical program. If there is no identical program match within the investigation, we will use the highest non-*de minimis* rate calculated for the same or similar program in another China CVD investigation. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, we are applying the highest calculated subsidy rate for any program otherwise listed, which could conceivably be used by Anhui BBCA. *See Circular Welded Austenitic Stainless Pressure Pipe 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 39657, 39661 (July 10, 2008).

Also, as explained in *Lawn Groomers from the PRC*, where the GOC can demonstrate through complete, verifiable, positive evidence that non-cooperative companies (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department does not intend to include those provincial programs in determining the countervailable subsidy rate for the non-cooperative companies. *See Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 73 FR 42324 (July 21, 2008) (''*Lawn Groomers from the PRC*''), and the accompanying Initiation Checklist. In this investigation, the GOC has provided the business licenses of Anhui BBCA and its parent company, which indicate that these companies are located only in Anhui Province. *See* G2SR (9/2), at Exhibit S2–36. Therefore, we are including the Anhui Province programs in the calculation of Anhui BBCA's rate, but not the other sub-national subsidy programs. In addition, information supplied by Petitioners indicates that all of Anhui BBCA's cross-owned affiliates are either located in Anhui Province or outside the PRC. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate, at Exhibit 2, page 26. Therefore, we do not reach the issue of attributing subsidies received by these cross-owned affiliates for sub-national subsidy programs, pursuant to 19 CFR 351.525(b)(6)(ii).

For the following ten alleged income tax programs pertaining to either the reduction of the income tax rates or exemption from income tax, we have applied an adverse inference that Anhui BBCA paid no income tax during the POI: (1) ''Two Free, Three Half'' program, (2) Reduced income tax rates for foreign-investment enterprises based on location, (3) Income tax exemption program for export-oriented foreign-investment enterprises, (4) Reduced income tax rate for high or new technology enterprises, (5) Reduced income tax rate for technology or knowledge intensive foreign-investment enterprises, (6) Preferential income tax rate for research and development at foreign-investment enterprises, (7) Preferential tax programs for encouraged industries, (8) Preferential tax policies for township enterprises, (9) Local income tax exemption and reduction program for productive foreign-investment enterprises, and (10)

Reduced income tax rates for encouraged industries in Anhui Province. The standard income tax rate for corporations in the PRC is 30 percent, plus a 3 percent provincial income tax rate. Therefore, the highest possible benefit for these ten income tax rate programs is 33 percent and we are assigning that rate to these ten programs.

This 33 percent AFA rate does not apply to income tax credit or refund programs. For the ''Income Tax Credits on Purchases of Domestically Produced Equipment,'' program, we have preliminarily determined to use Yixing Union's rate from this investigation, which is 0.11 percent. Neither respondent used the ''Tax benefits to foreign-investment enterprises for certain reinvestment of profits,'' program and the Department has not calculated a rate for this program in any prior investigation. Therefore, we have preliminarily determined to use the highest non-*de minimis* rate for any indirect tax program from a China CVD investigation because there were only *de minimis* rates for income tax credit or refund programs from prior investigations. The rate we selected is 1.51 percent, respondent GE's rate for the ''Value added tax on Tariff Exemptions on Imported Equipment,'' program. *See CFS from the PRC* and CFS Decision Memorandum, at pages 13–14.

For indirect tax and import tariff programs, we have preliminarily determined to use TTCA's rate from this investigation for the ''Value Added Tax Rebate for Purchases by Foreign-Investment Enterprises of Domestically Produced Equipment,'' program (0.23 percent) and Yixing Union's rate for ''Value Added Tax and Duty Exemptions on Imported Equipment,'' program, (0.69 percent).

For loan programs, we have preliminarily determined to use TTCA's rates from this investigation for the following programs: ''National-Government Policy Loan Program,'' (0.01 percent); and ''Other Policy Bank Loans,'' (0.48 percent). Neither respondent used the following programs: ''Discounted Loans for Export-Oriented Industries,'' and ''Funds Provided for the Rationalization of the Citric Acid Industry,'' and the Department has not calculated rates for any of these programs in prior investigations. Therefore, for these two programs, we have preliminarily determined to use the highest non-*de minimis* rate for any loan program from a China CVD investigation, which is 4.11 percent, respondent GE's rate for the ''Government Policy Lending'' program. *See CFS from the PRC* and CFS Decision Memorandum, at page 9–10.

For grant programs, we have preliminarily determined to use Yixing Union's rate from this investigation for the ''Famous Brands'' program (0.03 percent *ad valorem*). Neither respondent used the following programs: ''State Key Technology Program Fund,'' ''National level grants to loss-making state-owned enterprises,'' and ''Provincial level grants to loss-making state-owned enterprises,'' and the Department has not calculated rates for any of these programs in prior investigations. Moreover, all previously calculated rates for grant programs have been *de minimis*. Therefore, for each of these programs, we have preliminarily determined to use the highest calculated subsidy rate for any program otherwise listed, which could conceivably have been used by Anhui BBCA. The rate was 13.36 percent for the ''Government Provision of Land for Less Than Adequate Remuneration,'' program from *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (''*LWS from the PRC*'') and the accompanying Issues and Decision Memorandum, at 14–18.

Finally, for the ''Provision of Land for Less than Adequate Remuneration in Anhui Province'' program, we have preliminarily determined to use the highest non-*de minimis* rate for the provision of land from prior determinations (13.36 percent from *LWS from the PRC*).

For further explanation of the derivation of Anhui BBCA's AFA rate, see the Memorandum to the File, ''Adverse Facts Available Rate for Anhui BBCA Biochemical Co., Ltd'' (September 12, 2008) (''Anhui BBCA AFA Calc Memo'').

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 ''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.'' *See e.g.*, SAA, at page 870. The Department considers information to be corroborated if it has probative value. *See id.* To corroborate secondary information, 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. *See* SAA, at page 869.

When the Department applies AFA, to the extent practicable, it will determine whether such information has probative value by evaluating the reliability and relevance of the information used. With regard to the reliability aspect of corroboration, we note that these rates were calculated in prior final CVD determinations. No information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. 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.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

In the absence of record evidence concerning these programs due to Anhui BBCA's decision not to participate in the investigation, the Department has reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that programs of the same type are relevant to the programs of this case. For the programs for which there is no program-type match, the Department has selected the highest calculated subsidy rate for any PRC program from which Anhui BBCA could conceivably receive a benefit to use as AFA. The relevance of this rate is that it is an actual calculated CVD rate for a PRC program from which Anhui BBCA could actually receive a benefit. Due to the lack of participation by Anhui BBCA and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to the extent practicable.

On this basis, we preliminarily determine that the AFA countervailable subsidy rate for Anhui BBCA is 97.72 percent *ad valorem*. *See* Anhui BBCA AFA Calc Memo.

Subsidies Valuation Information

Allocation Period

The average useful life (''AUL'') period in this proceeding as described in 19 CFR 351.524(d)(2) is 9.5 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture the subject merchandise. Consistent with the Department's practice, we have rounded the 9.5 years up to 10 years for purposes of setting the AUL. *See Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review*, 72 FR 43607 (August 6, 2007) (unchanged in final). No party in this proceeding has disputed this allocation period.

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.

TTCA

TTCA provided a questionnaire response on behalf of itself and one affiliate (''affiliate A''). *See* TQR. The names and details of TTCA's exact relationship with its affiliates are proprietary and, hence, addressed separately. *See* Preliminary Determination Calculation Memorandum for TTCA Co., Ltd., at page 2 (September 12, 2008) (''TTCA Preliminary Calc Memo''). TTCA reported that none of its affiliates produces subject merchandise, supplies any inputs to TTCA, or received and transferred subsidies to TTCA. *See* TQR, at page 4. Based on the questionnaire response for affiliate A, we preliminarily determine that this company has not received any subsidies. Thus, we are preliminarily excluding affiliate A from the subsidy calculation.

After reviewing TTCA's relationship with its reported affiliates (*i.e.*, comparing the list of common shareholders for the reported affiliates), we requested that TTCA provide a complete questionnaire response for an additional affiliate (''affiliate B''). We received affiliate B's questionnaire response shortly before the deadline for this preliminary determination, and have not been able to fully analyze the response or affiliate B's relationship with TTCA. *See* T2SR (8/27), at Exhibit 8. Consequently, for this preliminary determination, we are limiting our investigation to subsidies received by TTCA, but will continue to examine this issue for the final determination.

Yixing Union

Yixing Union responded to the Department's questionnaire by providing information on the subsidies it received. In its response, Yixing Union identified Yixing Union Cogeneration Co., Ltd. (''Cogeneration'') as its parent and a supplier of energy. Based on this information, we requested, and Yixing Union provided, a questionnaire response on behalf of Cogeneration.

We preliminarily determine that Yixing Union and Cogeneration are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). We further preliminarily determine that the energy supplied by Cogeneration to Yixing Union is not primarily dedicated to the downstream product and, consequently, that any subsidies received by Cogeneration should not be attributed to Yixing Union under 19 CFR 351.525(b)(6)(iv). Instead, because Cogeneration is the parent of Yixing Union, we are attributing the subsidies received by Cogeneration to Yixing Union pursuant to 19 CFR 351.525(b)(6)(iii).

To calculate the benefit to Yixing Union from subsidies given to Cogeneration, we would normally use the consolidated sales of Cogeneration and its subsidiaries, pursuant to 19 CFR 351.525(b)(6)(iii). However, we do not have consolidated sales information for Cogeneration on the record. Consequently, for the purposes of the preliminary determination, we generally used the total sales of Yixing Union and the total sales of Cogeneration less sales between the two companies. For 2005, we did not have the amount of sales between Yixing Union and Cogeneration. Therefore, we subtracted the 2006 amount for sales between these two companies to arrive at the 2005 ''consolidated'' sales. *See* Preliminary Determination Calculation Memorandum for Yixing Union Biochemical Co., Ltd. (September 12, 2008) (''Yixing Union Preliminary Calc Memo''). We intend to seek consolidated sales information for Cogeneration for the final determination.

Yixing Union also identified several other affiliated companies. However, Yixing Union reported that these affiliates do not produce the subject merchandise and do not provide inputs to Yixing Union. Therefore, because these companies do not produce subject merchandise or otherwise fall within the situations described in 19 CFR 351.525(b)(6)(iii)–(v), we do not reach the issue of whether these companies and Yixing Union are cross-owned within the meaning of 19 CFR 351.525(b)(6)(iii)–(vi), and we are not including these companies in our subsidy calculations.

Benchmarks and Discount Rates

Benchmarks for Short-Term RMB Denominated Loans

The Department is investigating loans received by respondents from policy banks and state-owned commercial banks (''SOCBs''), which are alleged to have been granted on a preferential, non-commercial basis. Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' Normally, the Department uses comparable commercial loans reported by the company for benchmarking

purposes. *See* 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we ''may use a national interest rate for comparable commercial loans.'' *See* 19 CFR 351.505(a)(3)(ii).

The Department has previously determined that loan benchmarks must be market-based and that Chinese interest rates are not reliable as benchmarks because of the pervasiveness of the GOC's intervention in the banking sector. Specifically, the Department found that the GOC's predominant role in the banking sector results in significant distortions that render lending rates in the PRC unsuitable as benchmarks. This determination led us to rely on an external benchmark. *See e.g., Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (''*Tires from the PRC*''), and the accompanying Issues and Decision Memorandum, at page 7 (''Tires Decision Memorandum'').

The GOC disputes the Department's prior findings and, in this investigation, has argued that the Department should rely on the Shanghai Inter-bank Offered Rate (''SHIBOR'') as its benchmark. This rate was officially introduced in January 2007. According to the GOC, it is an average of quotations submitted by 16 commercial banks and, according to the GOC, these rates reflect the demand for and supply of funds on the money market for maturities of up to one year. *See* GQR, at pages 23–27. The GOC contends that this rate is more suitable than the external benchmark the Department has relied upon to-date because: (i) It is an in-country benchmark; (ii) the rate is unrelated to the allocation of credit and preferential rates to specific borrowers; (iii) the rate is a truly market-determined rate for unsecured funds among banks operating in the Shanghai wholesale money market; and (iv) the rate is determined in part by foreign-owned banks.

We have not adopted the SHIBOR as the benchmark for this preliminary determination. We disagree that it is a market-determined rate because the banks whose rates form the SHIBOR are subject to a deposit rate cap and lending rate floor. These aspects of the banking system, *inter alia*, led us to conclude in *CFS from the PRC* that ''the way interest rate formation is regulated in China both distorts lending rates and provides explicit recognition that banks in China are not yet fully able to set interest rates on a market basis.'' *See* CFS Decision Memorandum, at Comment 10. We also found in *CFS from the PRC* that foreign banks account for a very small share of credit in the PRC, operating mainly in niche markets, and, therefore, did not offer a suitable benchmark. *See id*.

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

As explained in the CFS Decision Memorandum, at Comment 10, to derive this rate we determine which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries as of July 2007. *See* TTCA Preliminary Calc Memo, at page 3.

Many of these countries reported lending and inflation rates to the International Monetary Fund and they are included in that agency's International Financial Statistics (''IFS''). The GOC contends that although the Department has characterized them as such, many of the reported lending rates are not short-term rates. *See* GOC Pre-Prelim Comments, at pages 26–28. We have reviewed the information submitted by the GOC and agree that certain of the interest rates used in our regression analysis may reflect maturities of longer than one-year. Indeed, as the GOC points out, the head notes to the IFS state that these rates apply to loans that meet short- and medium-term financing needs. GOC's Pre-Preliminary Comments, at Exhibit B (International Monetary Fund, International Financial Statistics Yearbook 2007, at xix). Therefore, we believe that these rates should not be treated as exclusively short-term in nature. *See* 19 CFR 351.102 (where ''short-term loan'' is defined as having repayment terms of one-year or less).

To address this concern, we will continue to use the same interest rate data and regression-based benchmark rate (after deleting deposit rate data reported by Jordan and U.S. dollar-denominated interest rates reported by Timor L'este), but will apply it to loans with terms of two years or less. We invite interested parties to comment on what might be a more appropriate cut-off for short- and medium-term loans, in view of several factors. First, there are no data available on the term structure of the loans underlying the IMF interest rate data. Second, we could not find a definition of ''medium-term'' to which countries reporting interest rate data to the IMF must adhere. And third, from a review of the 2008 IFS country notes and EIU Country Finance country reports, it appears that a majority of the countries in the basket either report loans with terms of one year or less or have loan markets where short-term lending predominates. *See* GOC Pre-Prelim Comments, at Attachment B; *see also*, Memorandum to the File, ''Additional Lending Benchmark Memo'' (September 12, 2008) (''Additional Lending Benchmark Memo'').

With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as ''low middle income'' by the World Bank. *See* TTCA Preliminary Calc Memo, at page 3. We did not include those economies that the Department considered to be non-market economies for AD purposes for any part of the years in question: the PRC, Armenia, Azerbaijan, Belarus, Georgia, Moldova, Turkmenistan, and Ukraine (for Ukraine only, prior to 2007). The benchmark necessarily also excludes any country that did not report both lending and inflation rates to IFS for those years. Third, the rate reported to the IMF by Jordan is based on deposit borrowings, rather than lending rates and the rate reported by Timore L'este is based on the U.S. dollar. *See* GOC Pre-Prelim Comments, at Attachment B; *see also*, Additional Lending Benchmark Memo. Therefore, both countries' rates have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have excluded any aberrational country for the year in question. *See* TTCA Preliminary Calc Memo, at page 4; *see also*, Yixing Union Preliminary Calc Memo, at page 4.

The resulting inflation-adjusted benchmark lending rates are provided in Yixing Union's and TTCA's preliminary calculation memoranda. *See* TTCA Preliminary Calc Memo, at 4; *see also*, Yixing Union Preliminary Calc Memo, at page 5. Because these are inflation-adjusted benchmarks, it is necessary to adjust respondents' interest payments and discount rates for inflation. This was done using the PRC inflation figure as reported in IFS. *See* TTCA Preliminary Calc Memo, at 4; *see also*,

Yixing Union Preliminary Calc Memo, at page 4.

In the GOC Pre-Preliminary Comments, the GOC argues that the regression used by the Department to compute this benchmark is flawed because there is no correlation between governance indicators and interest rates. We addressed these concerns in the LWRP Decision Memorandum, at Comment 12, which we hereby incorporate by reference. *See Light-walled Rectangular Tube and Pipe from the PRC: Final Affirmative Countervailing Duty Determination*, 73 FR 35642 (June 24, 2008) (''*LWRP from the PRC*''), and the accompanying Issues and Decision Memorandum (''LWRP Decision Memorandum'').

Benchmarks for Long-Term Loans

The lending rates reported in IFS represent short- and medium-term lending, and there are no sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. *See e.g.*, LWRP Decision Memorandum, at page 8.

In its pre-preliminary comments, the GOC argues that the Department should not base its adjustment on BB-grade bonds because doing so is inconsistent with the Department's own regulations, which identify creditworthy companies as those having ratings of Aaa to Baa. If the Department were to use data on U.S. borrowers rated Aaa to Baa, the adjustment to convert to long-term rates would be downward, according to the GOC.

We have not adopted the GOC's position with respect to this issue. The regulations at 19 CFR 351.505(a)(3)(iii) specify a formula for the interest rate benchmark, i_b, for uncreditworthy companies. The regulations essentially direct the Department to derive i_b by equating returns on loans to companies in the Aaa to Baa and Caa to C ranges on a risk-adjusted basis. The fact that 19 CFR 351.505(a)(3)(iii) relies on interest rates and default rates for companies in the Aaa to Baa range to calculate i_b does not in any way imply that the long-term interest rate benchmark under 351.505(a)(3)(i) or (ii) must be based on interest rates charged to companies in the Aaa to Baa range. In fact, in cases where the Department must rely on a national average long-term interest rate for benchmarking purposes, there is no statutory or regulatory requirement that the rate reflect only lending to companies in the Aaa to Baa range. In addition, such a rate would likely reflect lending to companies in a ratings range broader than Aaa to Baa.

In the instant investigation, given that the Department has decided to reject all internal PRC interest rates for benchmarking purposes, the question before the Department is what long-term mark-up to use to construct the long-term RMB interest rate benchmark. In view of the transitional nature of financial accounting and reporting standards and practices in the PRC, as well as the PRC's underdeveloped credit rating capacity, the Department has determined that company-specific mark-ups (to account for investment risk) should not be the general rule. Instead, the Department will rely on a single mark-up for all companies not found to be uncreditworthy. That mark-up should therefore reflect the average investment risk associated with companies in the PRC not found uncreditworthy by the Department. Since the Department has (1) no objective basis to determine this average investment risk and (2) no basis to presume it is for companies with an investment-grade rating only, we have preliminarily used rates for BB-rated bonds, the highest non-investment grade, to calculate the mark-up. Alternatively, the Department may consider using a mark-up derived from the average of bonds rated from AAA to B minus and invite parties to comment for our final determination.

In the GOC Pre-Prelim Comments, the GOC further argues that the adjustment factor should be added to the short-term interest rate rather than multiplied. We addressed these concerns in the LWRP Decision Memorandum, at Comment 12, which we hereby incorporate by reference.

However, we have made one change to the long-term adjustment to correspond to the change described above regarding our regression-based benchmark. Specifically, because the benchmark now covers loans up to two years, we have calculated the long-term adjustment based on the difference in the BB rates for bonds that match the maturity of the loan in question and two-year bonds.

Discount Rates

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

Creditworthiness

In their petition, Petitioners alleged that Anhui BBCA was uncreditworthy for the years 2005 to 2006. On July 25, 2008, we determined that Petitioners did not provide a reasonable basis to believe or suspect that Anhui BBCA was uncreditworthy. *See* Memorandum to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, ''Uncreditworthy Allegation for Anhui BBCA Biochemical Co., Ltd.'' (July 25, 2008).

On September 5, 2008, Petitioners submitted additional information to support their allegation. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate. Because the Department did not receive Petitioners' allegation until September 5, 2008, one week prior to our preliminary determination, we are still reviewing the allegation and will decide whether to investigate Anhui BBCA's creditworthiness after this preliminary determination.

Analysis of Programs

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

I. Programs Preliminarily Determined To Be Countervailable

A. Government Policy Lending

The Department is examining whether preferential loans were provided to citric acid producers based on government plans promoting modernization loans for encouraged projects. The GOC has asserted that there must be evidence that the policy caused the loan to be provided in order for the Department to find such a program countervailable. The GOC has further claimed that: (1) None of the cooperating respondents' loans or supporting documentation mentions any government policy or plan; (2) no plan or policy for the chemical industry on the record mentions targeted loans, or directs SOCBs to provide targeted project loans; and (3) none of these plans mentions the citric acid industry or citric acid producers, much less encourages modernization loans for the chemical industry.

Based on our review of the information and responses provided by the GOC, we preliminary determine that certain of the loans received by TTCA from SOCBs were made pursuant to government policy directives.

National-Government Policy Lending Program

Record evidence demonstrates that certain GOC policy documents outline

the government's goals regarding energy saving and pollution reduction, and the manner in which these goals would be implemented. For example, the PRC's *Eleventh Five-Year Plan* sets out as one of its policy goals to ''{o}ptimally develop of fundamental chemical raw material, actively develop fine chemical and eliminate high polluting chemical enterprise.'' *See* GQR, at page 31. The GOC has stated that this is a ''non-binding'' goal and that the only binding goal in regard to environment or pollution reduction is that ''energy consumption of unit GDP would be lowered down about 20% and emission volume of main pollutants would be decreased by 10% * * *'' *See* G2SR (9/2), at page 10. Further, according to the *State Council Circular on Realizing the Major Targets in the ''Outline of the Eleventh Five-Year Plan for National Economic and Social Development of the People's Republic of China and Division of Tasks*'', the reduction of energy consumption was to be the responsibility of the National Development and Reform Commission (''NDRC'') while the State Environmental Protection Administration (''SEPA'') was tasked with reducing major pollution discharges.

Also in connection with these energy saving and pollution goals, the NDRC formulated and the State Council approved the *Notice of State Council on Circulation of Comprehensive Work Plan on Energy Saving and Emission Reduction (Guo Fa 2007) No. 15) (''State Council Circular*''). The GOC has described the purpose of this document as ''enabling government departments at each level to understand the concrete tasks of energy saving and emission reduction, and proposing detailed work plans.'' *See* GQR, at page 41. In this document, there are a number of recommendations that specifically address the government's energy savings and emission goals, in particular with respect to financing:

> Consummate financial policies promoting energy-saving and emission reduction. The people's government at each level shall allocate certain funds within the financial budget, by way of subsidy and reward, to support major projects of energy-saving and emission-reduction, promotion of high effective energy-saving and new mechanism for energy-saving, construction of management ability of energy-saving as well as construction of supervision system for emission-reduction. We shall further promote financial basic construction investment to incline to energy-saving and environment-protection projects.

See GQR at Exhibit I–A–36, page 16. The State Council also recommends:

> Enhance financial service for energy-saving and environment-protection. We shall encourage and guide financial institutions to enhance credit support to circular economy, environment-protection, and reform projects for energy-saving and emission-reduction technologies, first provide direct financing service for qualified energy-saving and emission-reduction projects and circular economy projects.

See id. at page 17. The GOC has explained in its responses that the purpose of the cited passages was ''to enlarge the funding source for energy-saving and environment-protection projects, to assist and support the construction and promotion of energy-saving and emission reduction projects.'' *See* G2SR (9/2), at page 12. In terms of specific actions taken, the GOC explained that the first statement referred to a special fund established by the Ministry of Finance for basic infrastructure energy-saving and environmental-protection projects, while the second statement involved the Ministry of Environmental Protection (''MPE'') and the establishment of an information sharing system which would provide technical advice to enable banks to better assess the feasibility of and returns on pollution control projects. *See id.* Although the GOC has related these particular actions to the statements in the *State Council Circular*, it is unclear whether other actions or policies may also be included. For example, the relationship between the MPE sharing system and the provision of ''direct financing service for qualified energy-saving and emission-reduction projects'' is unclear, and we intend to seek clarification of these statements during the course of this investigation. For purposes of our preliminary determination, however, we conclude that the record evidence indicates that the purpose of the *State Council Circular* was to provide details on achieving the energy-saving and pollution-reducing goals and the means by which the goals would be fulfilled.

Additional record evidence indicates that specific guidance has been issued to PRC banks regarding the government's energy-saving and pollution-reduction goals. In particular, following the approval of the *State Council Circular*, the People's Bank of China (''PBOC'') issued the *Guidelines on Improvement and Strengthening of Financial Services in Energy Saving and Environmental Protection Areas* (Yin Fa 2007 No. 215) (''*PBOC Guidelines*''). In its response, the GOC stated that the document contains guidelines to banks and does not set concrete goals and objectives. The *PBOC Guidelines* were created in accordance with the *State Council Circular* and ''opinions in video conferences call regarding national wide work on emission reduction, in order to further improve industrial restructuring, evolution of economic growth mode as well as enhancement of good and fast economic development.'' The key sections of *PBOC Guidelines* state:

> {a}ll banking institutions and branches of the People's Bank of China shall fully recognize the importance of financial services in energy saving and emission reduction, enhance the sense of responsibility and mission, improve and strengthen the financial services in energy saving and emission reduction areas, reasonably control the increase of lending, pay attention to improvement of credit structure, strengthen the credit risk management, and enhance the coordinated and sustainable development of the economy and finance.

See Petitioner's April 24, 2008, response (''PSR'') at Exhibit 111. In regard to projects and lending, the *PBOC Guidelines* state:

> {a}ll banking financial institutions shall follow the national industry structure adjustment policy, and follow differentiation principles in allocating the loan resources. For investment projects encouraged by the government, a banking institution shall simplify the lending procedures and proactively provide lending supports; as to investment subject to restrictions * * * For any other projects, the banking financial institutions shall take into consideration of resource saving and environmental protection factors and shall follow general credit principles when providing lending supports.

See id.

Finally, the GOC has placed on the record several industrial catalogues which list industries and/or activities considered encouraged by the GOC. These catalogues include the *Catalogue for the Guidance of Industrial Structure Adjustment (2005 version), Catalogue for the Guidance of Foreign-Invested Industries (amended in 2007), Catalogue for the Guidance of Foreign-Invested Industries (amended in 2004)*, and *Catalogue for Industries, Products, and Technologies Currently Particularly Encouraged by the State for Development*. The GOC claims that citric producers are not identified in any of the catalogues as an encouraged industry. *See* GQR at I–10—I–15 and G2SR (9/2) at S2A2–S2A4.

TTCA reported a loan used to construct the *Project on Electricity Generator with Recycling Methane*. *See* T2SR (8/27) at 18. TTCA and the GOC provided supporting documentation regarding this loan. *See* T2SR, at Exhibit S37; *see also*, G1SR (9/2), at Exhibit S1–7–a–2 and Exhibit S1–8–b. This documentation is business proprietary

and, therefore, is discussed separately. *See* Memorandum to the File regarding, ''BPI Memo for Government Policy Lending'' (''BPI Lending Memo''). However, the documentation in relation to this loan received by TTCA demonstrates that the TTCA project that is funded by the loan was encouraged by the state and that, as shown above, there is a clear link between the TTCA project and the binding goals contained in the *Eleventh Five-Year Plan* and the subsequent documents issued by the State Council and the PBOC. In the BPI Lending Memo, we explain the relationship between the *Eleventh Five-Year Plan* and its implementing documents and the TTCA loan documents in further detail.

Based on this information, we preliminarily determine that the GOC has a policy in place to encourage and support preferential lending to certain encouraged projects, as expressly reflected in the documents described above. Consistent with our prior determinations, we also find that the loan received by TTCA from a SOCB constitutes a direct financial contribution from the government, pursuant to sections 771(5)(B) and 771(5)(D)(i) of the Act. *See CFS from the PRC*, at Comment 8. Furthermore, the loan provides a benefit equal to the difference between what TTCA paid on its loan and the amount it would have paid on comparable commercials loans. As the basis for specificity relies on information designated business proprietary, we are unable to disclose our analysis in the **Federal Register** Notice and, therefore, it is discussed in the BPI Lending Memo.

To calculate the benefit under the national-government policy lending program, we used the benchmarks described in the Benchmarks and Discount Rates section above and the methodology described in 19 CFR 351.505(c)(1) and (2). On this basis, we preliminarily determine that TTCA received a countervailable subsidy of 0.01 *ad valorem* under this program.

Shandong Province Policy Loans Program

Policy lending by Shandong Province was not separately alleged by the petitioners in the original petition. Record evidence, however, indicates that the Shandong Province's industrial policy promoted: (1) Financing and guarantees for key construction projects; (2) the development of more key projects and programs to include in the nation's plans; and (3) the active use of discount government loans to support policy financing. *See The Shandong Province Outline of the Tenth Five-Year Plan for National Economic and Social Development* (''*Shandong Province Tenth Five-Year Plan*'') provided at G1SR (9/2), at Exhibit S1–2–d. The GOC has stated in a supplemental questionnaire response that the Shandong Provincial government will, ''under the premise of considering the state industrial policies, * * * guide the activity of local enterprises and promote the industrial upgrade.'' *See* G2SR, at page 13. Thus, through the *Shandong Province Tenth Five-Year Plan*, the Shandong Provincial government has developed a policy to support the development of key projects to be included in national industrial policy, and this policy is effectuated by promoting financing and guarantees for these key construction projects.

The GOC has repeatedly stated that citric acid is not an industry encouraged by the state. However, the GOC also concedes that there is no uniform product classification used by all government agencies in the PRC. Instead, different government agencies may classify citric acid differently. *See* G2SR (9/2), at page 2.

Further, the *Law of the People's Republic of China on Commercial Banks* (December 27, 2003) (''*Commercial Banking Law*''), at Article 34, states that banks shall ''carry out their loan business upon the needs of the national economy and the social development and under the guidance of the state industrial policies.'' *See* Petition, at Exhibit IV–32. We note that the *Commercial Banking Law* prescribes that lending practices shall be based, at least in some measure, on the guidance of government industrial policy. Further, as noted above, the *Shandong Province Tenth Five-Year Plan* specifically directs bank financing to key construction projects. Consequently, for purposes of this preliminary determination, we conclude that record evidence demonstrates that there is a link between national-government industrial policies and the Shandong Province directives regarding banking lending.

TTCA reported that a loan was used to construct a citric acid and sodium citrate project. *See* T2SR, at page 18. The GOC and TTCA provided supporting documentation for this loan, which was used to construct the aforementioned project. *See* T2SR, at Exhibit S38; *see also*, G1SR (9/2), at Exhibit S1–7–b and Exhibit S1–8–d. As the information contained in the loan and project documentation is business proprietary, see BPI Lending Memo for additional details. However, this document demonstrates the link between the Shandong Provincial government's policy to support the development of key projects through financing and the company's loan documents.

On the basis of the above-cited record evidence, we preliminarily determine that the GOC has a policy in place to encourage and support preferential lending to key projects, as expressly reflected in the *Shandong Province Tenth Five-Year Plan*. The Department further finds that Shandong Province has a policy in place to provide lending in accordance with the GOC's policies. We find that a loan from a SOCB constitutes a direct financial contribution from the government, pursuant to sections 771(5)(B) and 771(5)(D)(i) of the Act. Furthermore, the loan provides a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans. As our basis for specificity relies on information designated business proprietary, we are unable to disclose our analysis in the **Federal Register** Notice and, therefore, it is discussed in the BPI Lending Memo.

To calculate the benefit under the provincial policy lending program, we used the benchmarks described in the Benchmarks and Discount Rates section above, as well as the methodology described in 19 CFR 351.505(c)(1) and (2). On this basis, we preliminarily determine that TTCA received a countervailable subsidy of 0.41 *ad valorem* under this program.

Other Policy Bank Loans

Certain loans reported by TTCA were received from a Chinese policy bank, and the evidence indicates these loans were made under a particular lending program operated by that bank. The information regarding these loans is business proprietary and, therefore, is discussed separately in the BPI Lending Memo.

The Department typically treats policy banks, *i.e.*, special purpose, government-owned banks, as ''authorities'' within the meaning of section 771(5)(B) of the Act. *See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and the accompanying Issues and Decision Memorandum, at page16. Thus, we preliminarily determine that these loans were provided by the GOC and that they constitute financial contributions under section 771(5)(D)(i) of the Act. We further determine preliminarily that these loans confer a benefit because the

recipient is paying less than it would for a comparable commercial loan. *See* section 771(5)(E)(ii) of the Act. As our basis for specificity relies on information designated business proprietary, we are unable to disclose our analysis in the **Federal Register** Notice and, therefore, it is discussed in the BPI Lending Memo.

To calculate the benefit conferred by these loans, we used the benchmarks described in the Benchmarks and Discount Rates section above and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit by certain sales reported by TTCA during the POI. On this basis, we preliminarily determine that TTCA received a countervailable subsidy of 0.48 percent *ad valorem* under this program.

B. ''Famous Brands'' Program—Yixing City

According to the *Implementing Opinions of City Government on Further Advancing the Brand Construction of Enterprise*, the Government of Yixing City provides a lump sum award to enterprises that receive a ''famous brands'' certificate from either the Famous Brand Promotion Committee of China or the Famous Brand Promotion Committee of Jiangsu. To receive an award, the enterprise must present its ''famous brands'' certificate from either promotion committee to the Quality and Technology Supervision Bureau of Yixing and the Finance Bureau of Yixing. The Bureaus will then review the submitted certificate and approve the award.

Yixing Union received a ''famous brands'' certificate from the Jiangsu Famous Brand Promotion Committee and was granted the lump sum award from the Government of Yixing City during the POI. *See* G1SR (9/2), at page 8; *see also*, YQR, at pages 14–15.

We preliminarily determine that the grant under this program constitutes a financial contribution under section 771(5)(D)(i) of the Act and also provides a benefit in the amount of the grant (*see* 19 CFR 351.504(a)).

Regarding specificity, information submitted by the GOC shows that grants provided under the program are available to any enterprise that it certified as a certificate of Famous Product of China or a Famous Product of Jiangsu Province. *See* G1SR (9/2), at Exhibit S1B–8. Further, the GOC reported that eligibility is not limited by law to any enterprise or group of enterprises, or to any industry or group of industries. Therefore, we preliminarily determine that there is no basis to find this program *de jure* specific under section 771(5A)(D)(i) of the Act.

In determining whether this program is *de facto* specific, we must examine the factors identified in section 771(5A)(D)(iii) of the Act. The GOC provided program usage data for 2005 through 2007 showing the industries that received the award and the number of companies per industry that received the award. *See* G1SR (9/2), at Exhibit S1B–11–12. Although the grants have been provided to a variety of industries, we preliminarily determine that the number is limited in accordance with section 771(5A)(D)(iii)(I) of the Act because only 34 companies received this award from 2005 through 2007. Therefore, we find the program to be *de facto* specific because the number of companies which received the award is limited, within the meaning of section 771(5A)(D)(iii)(I) of the Act. We preliminarily find the ''Famous Brands'' program provides a countervailable benefit to Yixing Union.

To calculate the benefit, we divided the amount of the grant by Yixing Union's total sales in the year the benefit was approved and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt. On this basis, we preliminarily determine that a countervailable subsidy of 0.03 percent *ad valorem* exists for Yixing Union.

C. Reduced Income Tax Rates to FIEs Based on Location

To promote economic development and attract foreign investment, ''productive'' FIEs located in coastal economic zones, special economic zones or economic and technical development zones in the PRC receive preferential tax rates of 15 percent or 24 percent, depending on the zone, under Article 7 of the *FIE Tax Law.* See GQR, at Exhibit I–A–39. This program was created June 15, 1988, pursuant to the *Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Development Zone* issued by the Ministry of Finance. The March 18, 1988, *Circular of State Council on Enlargement of Economic Areas* enlarged the scope of the coastal economic areas and the July 1, 1991, *FIE Tax Law* continued this policy. The Department has previously found this program to be countervailable. *See CFS from the PRC, LWRP from the PRC,* and *Tires from the PRC.*

Yixing Union is located in a coastal economic development zone and was subject to the reduced income tax rate of 24 percent during the POI.

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

To calculate the benefit, we treated the income tax savings enjoyed by Yixing Union 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 company's total sales during that period. To compute the amount of the tax savings, we compared the income tax rate Yixing Union would have paid in the absence of the program (30 percent) with the rate it paid (24 percent).

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.17 percent *ad valorem* under this program.

TTCA is also a productive FIE and is located in a coastal economic development zone where the income tax rate is 24 percent. Based on TTCA's response, we preliminary determine that TTCA did not use this program during the POI. *See* TTCA Preliminary Calc Memo, at page 7.

D. ''Two Free, Three Half'' Program

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

The GOC reported that Yixing Union was in the last year of the ''three half'' period under this program during the POI. TTCA did not use this program during the POI.

We preliminarily determine that the exemption or reduction of the income tax paid by productive FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption/reduction

afforded by this program is limited as a matter of law to certain enterprises, ''productive'' FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act. *See* CFS Decision Memorandum, at Comment 14.

To calculate the benefit, we treated the income tax savings enjoyed by Yixing Union 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 company's total sales during that period. To compute the amount of the tax savings, we compared the income tax rate Yixing Union would have paid in the absence of the program (24 percent, as described above under ''Reduced Income Tax Rates for FIEs Based on Location'') with the income tax rate the company actually paid (12 percent). On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.35 percent *ad valorem* under this program.

E. Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs

Article 73 of the *Implementing Rules of the Foreign Investment Enterprise and Foreign Enterprise Income Tax Law* authorizes a reduced income tax rate of 15 percent for ''productive'' FIEs located in coastal economic zones, special economic zones, or economic and technical development zones if they undertake: (1) Technology-intensive or knowledge-intensive projects; (2) projects with foreign investment of $30 million or more and a long payback period; or (3) energy, transportation and port construction projects. Additionally, FIEs that have been established in other zones specified by the State Council and are engaged in projects encouraged by the State may qualify for the reduced income tax rate of 15 percent upon approval by the State Taxation Bureau.

Cogeneration paid the reduced income tax rate of 15 percent under this program during the POI. TTCA did not use this program during the POI.

We preliminarily determine that the reduction in the income tax paid by ''productive'' FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the government and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the reduction afforded by this program is limited as a matter of law to certain enterprises, ''productive'' FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit for Yixing Union, we treated the income tax savings enjoyed by Cogeneration as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by the combined total sales of Yixing Union and Cogeneration (less any sales between the two companies) during that period. To compute the amount of the tax savings, we compared the rate Cogeneration would have paid in the absence of the program (30 percent) with the rate the company paid (15 percent). On this basis, we preliminarily determine the countervailable subsidy attributable to Yixing Union to be 2.07 percent *ad valorem* under this program.

F. Income Tax Credits on Purchases of Domestically Produced Equipment

The *Circular of the Ministry of Finance and the State Administration of Taxation of the People's Republic of China on Distribution of Interim Measures Concerning the Reduction and Exemption of Enterprise Income Tax for Investment in Chinese-made Equipment for Technological Renovation,* and *CAISHUI (2000) No. 49, Circular of the Ministry of Finance and the State Administration of Taxation on Enterprise Income Tax Credits for Purchase of Domestic Equipment by Foreign Invested Enterprises and Foreign Enterprises,* permits FIEs to obtain tax credits of up to 40 percent of the purchase value of domestically produced equipment. Specifically, the tax credit is available to FIEs and foreign-owned enterprises whose projects are classified in either the Encouraged or Restricted B categories of the *Catalog of Industrial Guidance for Foreign Investment.* The credit can be taken for domestically produced equipment so long as the equipment is not listed in the Catalog of Non-Duty-Exemptible Articles of Importation. *See* GQR, at page 70.

Cogeneration claimed credits under this program on the tax return filed in 2007. *See* Memorandum to the File, ''Correction to Appendix 1 of the Second Supplemental Questionnaire for Yixing Union Cogeneration, Co., Ltd.'' (September 4, 2008). TTCA and Yixing did not use this program during the POI.

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

To calculate the benefit, we treated the income tax savings enjoyed by Cogeneration as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings by the combined total sales of Yixing Union and Cogeneration (less any sales between the two companies) during that period. On this basis, we preliminarily determine that a countervailable subsidy of 0.11 percent *ad valorem* exists for Yixing Union under this program.

G. VAT Rebate on Purchases by FIEs of Domestically Produced Equipment

As outlined in *GUOSHUIFA (1999) No. 171, Notice of the State Administration of Taxation Concerning the Trial Administrative Measures on Purchase of Domestically Produced Equipment by FIEs,* the GOC refunds FIEs with the VAT on purchases of certain domestic equipment produced if the purchases are within the enterprise's investment amount and if the equipment falls under a tax-free category. Article 3 specifies that this program is limited to FIEs with completed tax registrations and with foreign investment in excess of 25 percent of the total investment in the enterprise. Article 4 defines the type of equipment eligible for the VAT exemption, which includes equipment falling under the Encouraged and Restricted B categories listed in the *Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment* (No. 37 (1997)) and equipment for projects listed in the *Catalogue of Key Industries, Products and Technologies Encouraged for Development by the State.* To receive the rebate, an FIE must meet the requirements above and, prior to the equipment purchase, bring its ''Registration Handbook for Purchase of Domestically Produced Equipment by FIEs'' as well as additional registration documents to the taxation administration for registration. After purchasing the equipment, FIEs must complete a Declaration Form for Tax Refund (or Exemption) of Exported Goods, and submit it with the registration documents to the tax administration. The Department has previously found this program to be countervailable. *See CFS from the PRC.*

TTCA reported receiving VAT rebates on its purchases of domestically produced equipment under this program. Yixing Union and

Cogeneration did not use this program during the POI.

We preliminarily determine that the rebate of the VAT paid on purchases of domestically produced equipment by FIEs confers a countervailable subsidy. The rebates are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further preliminarily determine that the VAT rebates are contingent upon the use of domestic over imported goods and, hence, specific under section 771(5A)(C) of the Act.

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

We requested that TTCA identify the category/kind of equipment for which it received VAT rebates from 2001 through the end of the POI. For one year, the total amount of the VAT rebates approved was less than 0.5 percent of TTCA's total sales for that year. For that year, therefore, we do not reach the issue of whether the VAT rebates were tied to the capital structure or capital assets of the firm. Instead, we expense the benefit to the year in which it is received, consistent with 19 CFR 351.524(a).

In another year, however, the total amount of VAT rebates exceeded 0.5 percent of TTCA's total sales for that year. Based on TTCA's reported information, the VAT rebates were for capital equipment. *See* TQR, at Exhibit 39. Accordingly, the Department is treating the VAT rebates for this year as a non-recurring benefit consistent with 19 CFR 351.524(c)(2)(iii).

To calculate the countervailable subsidy for TTCA, we used our standard methodology for non-recurring benefits. *See* 19 CFR 351.524(b) and the Allocation Period section of this notice. Specifically, we used the discount rate described above in the Benchmarks and Discount Rates section to calculate the amount of the benefit for the POI. On this basis, we preliminarily determine that a countervailable subsidy of 0.23 percent *ad valorem* exists for TTCA.

H. VAT and Duty Exemptions on Imported Equipment

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

TTCA, Yixing Union and Cogeneration reported receiving VAT and duty exemptions under this program.

We preliminarily determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the VAT and tariff savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further determine the VAT and tariff exemptions under this program are specific under section 771(5A)(D)(iii)(I) because the program is limited to certain enterprises. *See* CFS Decision Memorandum, at Comment 16.

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

For TTCA, the total amount of the VAT and tariff exemptions for each year approved was less than 0.5 percent of TTCA's total sales for the respective year. Therefore, we do not reach the issue of whether TTCA's VAT and tariff exemptions were tied to the capital structure or capital assets of the firm. Instead, we expense the benefit to the year in which the benefit is received, consistent with 19 CFR 351.524(a). On this basis, we preliminarily determine that a countervailable subsidy of 0.08 percent *ad valorem* exists for TTCA.

For Yixing Union, the total amount of the VAT and tariff exemptions approved for some years was less than 0.5 percent of Yixing Union's total sales. Therefore, we have expensed those amounts in the year in which they were received, consistent with 19 CFR 351.524(a). For those years in which the approved VAT and tariff exemptions were greater than 0.5 percent of Yixing Union's total sales for that year, we are treating the exemptions as non-recurring benefits, consistent with 19 CFR 351.524(c)(2)(iii), and allocating the benefits over the AUL.

For Cogeneration, the total amount of the VAT and tariff exemptions approved for some years was less than 0.5 percent of the combined total sales of Yixing Union and Cogeneration (less any sales between the two companies) in those years. Therefore, we have expensed those amounts in the year in which they are received, consistent with 19 CFR 351.524(a). In other years, the VAT and tariff exemptions approved for Cogeneration were greater than 0.5 percent of the combined sales of Yixing Union and Cogeneration (less any sales between the two companies) sales for that year. Accordingly, we are treating the exemptions as non-recurring benefits, consistent with 19 CFR 351.524(c)(2)(iii), and allocating the benefit(s) over the AUL.

To calculate the benefit for Yixing Union, we used our standard methodology for non-recurring benefits. *See* 19 CFR 351.524(b). Specifically, we used the discount rate described above in the ''Benchmarks and Discount Rates'' section to calculate the amount of the benefit for the POI. First, we divided Yixing Union's VAT and tariff exemptions by Yixing Union's total sales during that period. Next, we divided Cogeneration's VAT and tariff exemptions by the combined total sales of Yixing Union and Cogeneration (less any sales between the two companies) during that period. Finally, we summed these two rates. On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.69 percent *ad valorem* under this program.

I. Local Income Tax Exemption and Reduction Program for ''Productive'' FIEs

Under Article 9 of the *FIE Tax Law,* the provincial governments have the authority to exempt the local income tax of three percent to FIEs. According to

the *Regulations on Exemption and Reduction of Local Income Tax of FIEs in Jiangsu Province,* (*see* GOC CVD Questionnaire Response at Exhibit I–V–3) a ''productive'' FIE may be exempted from the 3 percent local income tax during the ''Two Free, Three Half'' period. Additionally, according to Article 6, FIEs eligible for the reduced income tax rate of 15 percent can also be exempted from paying local income tax. The Department has previously found this program to be countervailable. *See CFS from the PRC* and *Tires from the PRC.*

Yixing Union and Cogeneration reported receiving an exemption from local income tax during the POI. TTCA, however, did not use this program during the POI.

We preliminarily determine that the exemption from the local income tax received by ''productive'' FIEs under this program confers a countervailable subsidy. The exemption is a financial contribution in the form of revenue forgone by the government and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption afforded by this program is limited as a matter of law to certain enterprises, ''productive'' FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit for Yixing Union, we treated the income tax savings enjoyed by Yixing Union and Cogeneration as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the local income tax rate Yixing Union and Cogeneration would have paid in the absence of the program (*i.e.*, three percent) with the income tax rate the companies actually paid. First, we divided Yixing Union's tax savings received during the POI by Yixing Union's total sales during that period. Second, we divided Cogeneration's tax savings received during the POI by the combined total sales of Yixing Union and Cogeneration (less any sales between the two companies) during that period. Finally, we summed these two rates. On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.50 percent *ad valorem* under this program.

J. Anqiu Finance Bureau Grant

TTCA reported receiving three grants in 2007 related to technology achievements and energy saving projects. *See* TQR, at page 49. Two of the grants are discussed in the ''Programs Preliminarily Determined To Be Not Countervailable'' section below. Current information on the record does not indicate that these grants are tied to any of the other programs discussed in this notice. Further, it does not appear that the Department has previously investigated any of the programs.

TTCA reported receiving a non-recurring grant in 2007 from the Anqiu Finance Bureau. *See* TQR, at page 49. The GOC reported that to receive this grant an enterprise submits a project feasibility study to the municipal government who then, in turn, recommends the project to the Administration of Finance of Shandong Province and the Economic and Trade Commission of Shandong Province for approval. *See* G1SR (8/27), at Exhibit S1–18–3. We find that this grant is a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a).

Regarding specificity, information submitted by the GOC shows that grants provided under the program are available to enterprises whose projects meet certain energy and water saving criteria and are deemed to have economic and social benefit. *See* G1SR (8/27), at pages 27 and 29. The GOC reported that eligibility is not limited by law or in fact, to any enterprise or group of enterprises, or to any industry or group of industries. *See* G1SR (8/2), at page 28. Therefore, we preliminarily determine that there is no basis to find this program *de jure* specific under section 771(5A)(D)(i) of the Act.

In determining whether this program is *de facto* specific, we examine the four *de facto* specificity factors under section 771(5A)(D)(iii) of the Act. Section 771(5A)(D)(iii) of the Act also provides that we take into account the length of time during which a subsidy program has been in operation when evaluating the four *de facto* specificity factors. In the case of a new subsidy program, the first three *de facto* specificity factors (*i.e.*, limited number of users, dominant users, or disproportionately large user) may provide little or misleading indications regarding whether a program is *de facto* specific. *See Countervailing Duties; Final Rule*, 63 FR 65348, 65356 (November 25, 1998) (''CVD Preamble''); SAA, at page 931. The GOC provided partial program usage data for 2006 and 2007 (the GOC stated that it had information on the number of grants but not the amount of grants) because the program only began in 2006. See G1SR (9/2), at page 14. Consequently, in accordance with the CVD Preamble, we next consider the fourth *de facto* specificity factor (*i.e.*, discretion) because the manner in which the GOC has exercised its discretion in the early stages of this program (*e.g.*, by excluding certain applicants and limiting the benefit to a particular industry) might impact our analysis of the first three *de facto* specificity factors. *See* CVD Preamble, 63 FR at 65356; SAA, at page 931.

As noted above, in addition to meeting specified energy and water saving criteria, projects submitted by enterprises must be recommended by municipal levels of government and deemed to provide economic and social benefit to receive the grant. *See* G1SR (8/27), at page 29. It appears that the GOC has the ability to exercise discretion in the decision to provide grants under this program. Consequently, in contrast to the ''Investment Development Award'' program noted below, at the early stage of this program, we are able to rely on the first three *de facto* specify factors provided under 771(5A)(D)(iii) of the Act to preliminarily determine whether this program is specific as a matter of fact.

The GOC usage data indicates six enterprises comprising two industries received grants in 2007. *See* G1SR (9/2), at page 14. Consequently, we find that the actual recipients of the subsidy are limited in number on both an enterprise and industry basis within the meaning of section 771(5A)(D)(iii)(I) of the Act. Further, in accordance with the Department's regulations, our *de facto* specificity analysis is sequential and we will find a domestic subsidy to be specific based on the presence of a single factor. *See* 19 CFR 351.502(a). Therefore, we are not performing an analysis to determine whether the enterprise or industry is a dominant or disproportionately large user. In addition, as noted above, the GOC did not provide the amounts of benefits received by industry, which is required to determine dominant or disproportionately large usage.

To calculate the benefit, we divided the amount received from the non-recurring grant by TTCA's total sales in 2007. On this basis, we preliminarily determine the countervailable subsidy to be 0.20 percent *ad valorem* for this program.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Excessive VAT Rebates on Export

The GOC began refunding the VAT for exported products in 1984. *See*, GQR, at page 83. The current rules governing the program, *Provisional VAT Rules of China* (Decree 134 of the State Council) (''*Provisional VAT Rules*''), were

promulgated in 1993. *See id.,* at Exhibit I–T–3. Article 25 of the *Provisional VAT Rules* permits VAT rebates for exports.

The GOC argues that an excessive rebate of VAT upon exports is not possible given the manner in which the system is structured.

The Department has consistently found that the GOC's program to rebate VAT on exports does not result in an excessive VAT remission. *See* CWP Decision Memorandum, at page 16; LWRP Decision Memorandum at page 11; and Tires Decision Memorandum, at page 24. In those cases, we found no subsidy because VAT was assessed on home market sales at a rate of 17 percent, while the rebate was set at 13 percent. The same is true with respect to citric acid. *See* GQR, at page 80. Therefore, consistent with 19 CFR 351.517(a) and the above-cited determinations, we preliminarily find the VAT remission upon export is not excessive and does not confer a countervailable subsidy on the subject merchandise.

In their allegation, petitioners additionally noted that citric acid producers may not pay VAT on their agricultural inputs. The GOC and the responding companies have reported that the VAT rate on corn (the agricultural input used to produce citric acid) is 13 percent and that this amount is paid by the citric acid producers on their purchases. *See id.,* at page 80; TQR, at page 30; and YQR, at page 21. The GOC has further responded that: (i) Sellers of goods are responsible for paying the VAT to the government (Article 1 of the *Provisional VAT Rules*) and (ii) agricultural products sold by the agricultural producers that produce them are exempt from VAT (Article 16 of the *Provisional VAT Rules*). *See* G1SR (8/27), at page 13. Thus, citric acid producers pay a VAT on their corn purchases in the sense that the VAT appears on the purchase invoices for corn and they deduct this VAT in preparing their VAT reconciliations (to calculate the amount of VAT they must remit on their sales of citric acid), but no VAT is remitted to the government by the agricultural producers selling the corn.

Because citric acid producers pay the VAT on their corn purchases and it is the agricultural producers who are exempted from paying the VAT on their sales, we preliminarily determine that any potential subsidy arising from this exemption is conferred on the agricultural producers and not on the purchasers (*i.e.*, citric acid producers). Therefore, we preliminarily determine that the VAT exemption on agricultural products does not provide a countervailable subsidy on the subject merchandise.

As noted above, the VAT rate set for corn is 13 percent. TTCA reported that it was exempted from paying that VAT on its sales of corn scrap during the POI. *See* TQR, at page 49. Because any potential subsidy from such an exemption would be tied to sales of corn scrap, in accordance with 19 CFR 351.525(b)(5)(i), we preliminarily determine that there is no countervailable subsidy conferred on subject merchandise from the VAT exemption on corn scrap sales.

B. Science and Technology Reward—Anqiu City

TTCA reported receiving a grant in 2007 as the result of a science and technology award. *See* TQR, at page 49. To calculate the potential benefit, we divided the amount received by TTCA's total sales in 2007. On this basis, we preliminarily determine that a potential countervailable subsidy of less than .005 percent *ad valorem* exists for TTCA. *See* TTCA Preliminary Calc Memo, at page 9. Where the countervailable subsidy rate for a program is less than .005 percent, the program is not included in the total CVD rate. *See, e.g., Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France,* 70 FR 39998 (July 12, 2005), and the accompanying Issues and Decision Memorandum at ''Purchases at Prices that Constitute 'More than Adequate Remuneration''' (citing *Final Results of Administrative Review: Certain Softwood Lumber Products from Canada,* 69 FR 75917 (December 20, 2004)). Consequently, we are exercising our discretion to not investigate the benefit provided by this non-recurring subsidy.

C. Investment Development Award—Government of Anqiu

TTCA was awarded the first grant under the ''Investment Development Award'' program by the People's Government of Anqiu for TTCA's investment in a technology project. *See* G1SR (8/27), at Exhibit S1–18–1, page 3. We find that this grant is a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a).

Regarding specificity, information submitted by the GOC shows that grants provided under the program are available to any enterprise that has productive fixed asset investment for a single project of more than RMB 10 million. *See* G1SR (8/27), at Exhibit S1–18–1. If the aforementioned criterion is met, any enterprise will receive a benefit and there is no discretion to approve or disapprove. *See id.* Further, the GOC reported that eligibility is not limited by law or in fact, to any enterprise or group of enterprises, or to any industry or group of industries. *See* G1SR (8/27), at page 17. Therefore, we preliminarily determine that there is no basis to find this program *de jure* specific under section 771(5A)(D)(i) of the Act.

In determining whether this program is *de facto* specific, we must examine the four *de facto* specificity factors under section 771(5A)(D)(iii) of the Act. Section 771(5A)(D)(iii) of the Act also provides that we take into account the length of time during which a subsidy program has been in operation when evaluating the four *de facto* specificity factors. In the case of a new subsidy program, the first three *de facto* specificity factors (*i.e.*, limited number of users, dominant users, or disproportionately large user) may provide little or misleading indications regarding whether a program is *de facto* specific. *See* CVD Preamble at 65356; SAA, at page 931.

The GOC provided program usage data for 2007 only because the ''Investment Development Award'' program was created in 2006, with no awards bestowed until 2007. *See* G1SR (8/27), at pages 14 and 18. Although the number of users were not large during the period, in accordance with the CVD Preamble, we also consider the fourth *de facto* specificity factor (*i.e.*, discretion) because the manner in which the GOC has exercised its discretion in the early stages of this program (*e.g.*, by excluding certain applicants and limiting the benefit to a particular industry) might impact our analysis of the first three *de facto* specificity factors. *See* CVD Preamble, 63 FR at 65356; SAA, at page 931.

As noted above, any enterprise will receive grants provided under the ''Investment Development Award'' program if the enterprise meets a specified project investment threshold. It appears that the GOC does not have the ability to exercise discretion in the decision to provide grants under this program. Therefore, due to the GOC's apparent lack of discretion, at the early stage of this program, we preliminarily determine that it is not appropriate to rely on an analysis of the first three *de facto* specify factors provided under 771(5A)(D)(iii) of the Act to determine whether this program is specific as a matter of fact. Consequently, we do not find any basis to determine that the program is specific.

III. Programs Preliminarily Determined To Be Not Used By TTCA and Yixing Union

A. Discounted Loans for Export-Oriented Industries
B. Funds Provided for the Rationalization of the Citric Acid Industry
C. Loans Provided to the Northeast Revitalization Program
D. State Key Technology Renovation Project Fund
E. National Level Grants to Loss-making SOEs
F. Reduced Income Tax Rate for High or New Technology Enterprises
G. Income Tax Exemption Program for Export-Oriented FIEs
H. Tax Benefits to FIEs for Certain Reinvestment of Profits
I. Preferential Income Tax Rate for Research and Development at FIEs
J. Preferential Tax Programs for Encouraged Industries
K. Preferential Tax Policies for Township Enterprises
L. Provincial Level Grants to Loss-making SOEs
M. Reduced Income Tax Rates for Encouraged Industries in Anhui Province
N. Provision of Land for Less Than Adequate Remuneration in Anhui Province
O. Funds for Outward Expansion of Industries in Guangdong Province
P. Income Tax Exemption for FIEs Located in Jiangsu Province

In our initiation, we included the program ''Income Tax Exemption for FIEs located in Jiangsu Province.'' According to the GOC, the *Regulations on Exemption and Reduction of Local Income Tax of FIEs in Jiangsu Province* (Order of the People's Government of Jiangsu Province, June 17, 1992) includes a ''basket'' of benefits which can be enjoyed by FIEs located in Jiangsu province. *See* GQR, at Exhibit I–V–3.

Certain benefits under this program are already addressed under the ''Two Free, Three Half'' program and the ''Local Income Tax Exemption and Reduction Program for 'Productive' FIEs.'' Therefore, we are treating the ''Income Tax Exemption for FIEs located in Jiangsu Province'' as not used during the POI to avoid the double-counting of subsidies.

Q. Preferential Tax Programs for Enterprises Located in the Su Qian Economic Development Zone
R. Provision of Land for LTAR in the Su Qian Economic Development Zone
S. Provision of Electricity for LTAR in the Su Qian Economic Development Zone
T. Loans and Interest Subsidies Pursuant to the Liaoning Province's Five-Year Framework
U. Local Income Tax Exemptions and Reductions for Firms Located in Qilu Chemicals Industry Park
V. Preferential Tax Program for Enterprises Located in Shanxi Province
W. Funding for Enterprises under the Shanxi Province 10th Five-Year Plan
X. Export Interest Subsidy Funds for Enterprises Located in Shenzhen City
Y. Export Interest Subsidy Funds for Enterprises Located in Zhejiang Province
Z. Exemptions and Reductions in Taxes and Fees for Chemical Research and Development Institutions Located in Zhejiang Province
AA. Provision of Land for LTAR for Enterprises Located in Hangzhou Bay Chemical Park
BB. Provision of Electricity for LTAR for Enterprises Located in Hangzhou Bay Chemical Park

VI. Programs for Which More Information Is Required

As mentioned under the Case History section of this notice, the Department recently determined to investigate several additional alleged subsides including: The Provision of TTCA's Plant and Equipment for LTAR; Provision of Land to SOEs for LTAR; Provision of Land in the YEDZ for LTAR; Provision of Land-use Fees in Jiangsu Province for LTAR; Provision of Land in the Anqiu City Economic Development Zone for LTAR; Administration Fee Exemption in Anqiu City; Exemption of Water and Sewage Fees in Anqiu City; Tax Grants, Rebates and Credits in the Yixing Economic Development Zone (''YEDZ''); Provision of Water in the YEDZ for LTAR; Provision of Electricity in the YEDZ for LTAR; Provision of Construction Services in the YEDZ for LTAR; Administration Fee Exemption in the YEDZ; and Grants to FIEs for Projects in the YEDZ. We intend to seek information on these programs from the GOC and the respondents, and issue an interim analysis describing our preliminary findings with respect to these programs before the final determination so that parties will have the opportunity to comment on our findings.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Exporter/manufacturer	Net subsidy rate
TTCA Co., Ltd.	1.41
Yixing Union Biochemical Co., Ltd.; and Yixing Union Co-generation Co., Ltd.	3.92
Anhui BBCA Biochemical Co., Ltd.	97.72
All-Others	2.67

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for the companies under investigation, Anhui BBCA, TTCA and Yixing Union. Sections 703(d) and 705(c)(5)(A)(i) of the Act states that for companies not 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.

Petitioners contend that because Anhui BBCA is owned by the government, the Department cannot treat the GOC as cooperative and Anhui BBCA as non-cooperative. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate, at page 4. Consequently, Petitioners argue that because the GOC is a fully cooperating respondent, Anhui BBCA's rate cannot be excluded from the all-others rate. *See* Petitioners' Comments on Anhui BBCA and the all-others Rate, at page 3. Finally, Petitioners believe that Anhui BBCA is not participating in this investigation in an attempt to avoid its inclusion in the calculation of the all-others rate. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate, at page 4. Petitions cite to *Live Cattle From Canada*, where the Department included a non-cooperating respondent in the calculation of the all-others rate to mitigate potential selective participation by respondents. *See* Petitioners' Comments on Anhui BBCA and the All-Others Rate, at pages 5 and 6, citing *Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle From Canada*, 64 FR 56768, 56743 (October 21, 1999) (''*Live Cattle From Canada*'').

The GOC notes that section 705(c)(5)(A)(i) of the Act explains that the all-others rate must exclude any rates determined entirely under section 776 of the Act (*i.e.*, a rate determined using facts otherwise available) and the statute affords the Department no discretion to do otherwise. *See* GOC's Response to Petitioners' Comments on Anhui BBCA and the All-Others Rate, at page 2. Also, the GOC believes that Petitioners' reliance upon *Live Cattle*

From Canada is misplaced. *See* GOC's Response to Petitioners' Comments on Anhui BBCA and the All-Others Rate, at pages 3–5. Finally, the GOC argues that the Department has always treated the GOC and SOEs as distinct entities. Otherwise, it would be difficult to understand how the Department could evaluate a single entity providing a financial contribution or benefit to itself. *See* GOC's Response to Petitioners' Comments on Anhui BBCA and the All-Others Rate, at page 9.

As noted in the Use of Facts Otherwise Available section above, because Anhui BBCA did not respond to the Department's questionnaire, pursuant to section 776(a)(2)(A) and (C) of the Act, we have based the CVD rate of Anhui BBCA entirely on facts otherwise available. The fact that Anhui BBCA is an SOE does not mean that the GOC's participation makes Anhui BBCA a cooperative respondent. Nor does it lead us to conclude that the rate we have calculated for Anhui BBCA is based on anything other than facts available.

With respect to *Live Cattle From Canada,* the Department is clearly concerned when a company withdraws its response in order to manipulate an all-others rate. However, those are not the facts we have here. Anhui BBCA elected not to respond to the questionnaire. This occurs frequently in our investigations (and administrative reviews). Section 776(b) establishes the means for addressing this, *i.e.*, the application of AFA, which is what we have done in this case. Therefore, because Anhui BBCA's rate is based entirely on facts available, we are not including it in the all-others rate, pursuant to section 705(c)(5)(A)(i) of the Act.

To calculate the all-others rate, we have taken a simple average of the two responding firms' rates. We have not weight averaged the rates of TTCA and Yixing Union because doing so risks disclosure of proprietary information. Finally, because TTCA's rate includes export subsidies, the all-others rate also includes export subsidies.

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

Program-Wide Change

In the GOC Pre-Prelim Comments, the GOC argues that if the Department preliminarily finds countervailable certain programs related to the *FIE Tax Law* (*e.g.*, ''Two Free, Three Half,'' ''Local Income Tax Exemption and Reduction Program for 'Productive' FIEs,'' and ''Income Tax Exemption for FIEs Located in Jiangsu Province''), it should exclude these rates from the companies' cash deposit rate pursuant to 19 CFR 351.526, due to a program-wide change. Specifically, the law that established these programs, the *FIE Tax Law,* was repealed effective January 1, 2008. Thus, according to the GOC, the programs terminated before the preliminary determination. The GOC further contends that no respondent can receive residual benefits under the ''Two Free, Three Half'' program and that no companies can receive residual benefits under the ''Local Income Tax Exemption and Reduction Program for 'Productive' FIEs'' or the ''Income Tax Exemption for FIEs Located in Jiangsu Province.''

Under 19 CFR 351.526(b), a program-wide change: ''(1) Is not limited to an individual firm or firms; and (2) is effectuated by an official act * * * '' Moreover, 19 CFR 351.526(a) states that the Department may take a program-wide change into account when establishing the estimated CVD cash deposit rate if (1) the program-wide change occurred subsequent to the POI, but prior to the preliminary determination; and (2) the change in the amount of countervailable subsidies provided under the program is able to be measured. However, the Department will not adjust the cash deposit rate for a terminated program if we determine that residual benefits may continue to be bestowed pursuant to 19 CFR 351.526(d)(1).

For the ''Two Free, Three Half'' program, we agree with the GOC that the *FIE Tax Law* was repealed prior to the date of the preliminary determination and may meet the criteria under 19 CFR 351.526(b)(2). However, in its responses to the Department's questions on the ''Two Free, Three Half'' program, the GOC stated that once the *FIE Tax Law* was repealed, the *Corporate Income Tax Law* became effective. *See* GQR at I–64. According to Article 57 of the *Corporate Income Tax Law*, and provisions of the State Council, enterprises established prior to the promulgation of the *Corporate Income Tax Law* may enjoy reduced tax rates and continue to enjoy preferential treatments within five years after the law is promulgated. Additionally, companies that have not been able to enjoy the preferential treatments of the *FIE Tax Law*, before the termination of the law because the enterprise was unprofitable, can still claim benefits under the new *Corporate Income Tax Law*.

Although the GOC may be correct in its statement that no respondent will enjoy residual benefits from this program, the *Corporate Income Tax Law* allows FIEs within the PRC to continue to receive benefits from this program beyond the termination date. The GOC makes note of this fact in its response. *See* G1SR (8/27), at page 10. Thus, while benefits to the two cooperating respondents in this investigation would be terminated under the programs examined, the program's overall residual benefits have not been terminated. Therefore, we preliminarily determine that the criteria under 19 CFR 351.526(a) have not been met and we decline to adjust Yixing Union's rate to reflect termination of the program. *See* 19 CFR 351.526(d)(1).

For the ''Local Income Tax Exemption and Reduction Programs for 'Productive' FIEs,'' the GOC has stated in its response that there are no provisions continuing this program in the *Corporate Income Tax Law*. *See* GQR, at page 93. Based on our review of the *Corporate Income Tax Law*, we are not able to confirm the GOC's claim. Moreover, *the Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax* (No. 39 of the State Council) states that enterprises that previously benefited from the ''Two Free, Three Half'' program and other preferential treatment in the form of tax deductions and exemptions may continue to enjoy those benefits. Therefore, it is unclear whether local income tax reductions and exemptions will continue for some transition period. Thus, we preliminarily determine that the criteria under 19 CFR 351.526(a) have not been met and decline to set Yixing Union's rate to reflect termination of the program.

For the ''Income Tax Exemption for FIEs Located in Jiangsu Province,'' the benefits received under this program have already been captured under the ''Local Income Tax Exemption and Reduction Program for 'Productive' FIEs'' program, and ''Two Free, Three Half'' program. Therefore, no rate has been set for this program.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are

making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

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

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

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

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

Dated: September 12, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–21949 Filed 9–18–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AV00

Atlantic Highly Migratory Species; Essential Fish Habitat

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

ACTION: Notice of availability of a draft integrated environmental impact statement and a fishery management plan amendment; request for written comments; notice of public hearings.

SUMMARY: NMFS announces the availability of an draft integrated environmental impact statement and fishery management plan amendment pursuant to the National Environmental Policy Act (NEPA) that examines alternatives to revise existing Highly Migratory Species (HMS) Essential Fish Habitat (EFH); considers additional Habitat Areas of Particular Concern (HAPCs); and analyzes fishing and non–fishing impacts on EFH consistent with the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act) and other relevant Federal laws.

DATES: Public hearings for the draft integrated document will be held from September through December, 2008. See **SUPPLEMENTARY INFORMATION** for hearing dates, times, and locations. Written comments on this action must be received no later than 5 p.m., local time, on November 18, 2008.

ADDRESSES: Public hearings will be held in Massachusetts, Delaware, Maryland, North Carolina, Florida, and Alabama. Written comments on this action must be sent to Chris Rilling, Highly Migratory Species Management Division by any of the following methods:

- E-mail: *HMSEFH@noaa.gov*.
- Mail: 1315 East–West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on EFH Amendment to HMS FMP.''
- Fax: 301–713–1917.

Copies of the draft Amendment 1 to the Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) are available from the HMS website under Breaking News at *http://www.nmfs.noaa.gov/sfa/hms/* or by contacting Chris Rilling (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Chris Rilling or Sari Kiraly by phone at (301) 713–2347 or by fax at (301) 713–1917.

SUPPLEMENTARY INFORMATION: The Magnuson–Stevens Act (16 U.S.C. 1801 *et seq.*) as amended by the Sustainable Fisheries Act (Public Law 104–297) requires the identification and description of EFH in FMPs and the consideration of actions to ensure the conservation and enhancement of such habitat. The EFH regulatory guidelines (50 CFR 600.815) state that NMFS should periodically review and revise EFH, as warranted, based on available information.

EFH, including HAPCs, for HMS was identified and described in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, and in the 1999 Amendment 1 to the Atlantic Billfish FMP. EFH for five shark species was updated in the 2003 Amendment 1 to that FMP. Later, NMFS reviewed all new and existing EFH data in the 2006 Consolidated HMS FMP and determined that revisions to existing EFH for some Atlantic HMS may be warranted. The draft integrated environmental impact statement and amendment to the Consolidated HMS FMP (hereafter Draft Amendment 1) proposes alternatives to amend the existing EFH identifications and descriptions.

Habitat Areas of Particular Concern (HAPCs)

To further the conservation and enhancement of EFH, the EFH guidelines encourage FMPs to identify HAPCs. HAPCs are areas within EFH that should be identified based on one or more of the following considerations: 1) the importance of the ecological function provided by the habitat; 2) the extent to which the habitat is sensitive to human–induced environmental degradation; 3) whether, and to what extent, development activities are, or will be stressing the habitat type; and 4) the rarity of the habitat type. HAPCs can be used to focus conservation efforts on specific habitat types or areas that are especially important ecologically or particularly vulnerable to degradation. HAPCs are not required to have any specific management measures and an HAPC designation does not