

and *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006). See also Factor Valuation Memo.

In accordance with 19 CFR 351.301(c)(3)(ii), for the preliminary results of this administrative review, interested parties may submit publicly available information to value the factors of production until 20 days following the date of publication of these preliminary results.

#### Preliminary Results of Review

We preliminarily determine that the following antidumping duty margins exist:

Individually Reviewed Exporters	
Max Fortune Ltd. ....	0.15%
Samsam Productions Ltd. ....	115.24%
PRC-Wide Rate	
PRC-Wide Rate (including China National, Hong Ye, Chengxiang, Kepsco, and Giftworld) .....	112.64%

For details on the calculation of the antidumping duty weighted-average margin for each company, see the respective company's analysis memorandum for the preliminary results of the first administrative review of the antidumping duty order on tissue paper from the PRC, dated April 2, 2007. Public versions of these memoranda are on file in the CRU.

#### Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review. For assessment purposes, where possible, we calculated importer-specific assessment rates for tissue paper from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the

final results of these reviews and for future deposits of estimated duties, where applicable.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis*, i.e., less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 112.64 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing will normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an

identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited in accordance with 19 CFR 351.309(c)(2)(ii). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in accordance with 19 CFR 351.309(d). The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.213(h)(1).

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 2, 2007.

**Stephen J. Claeyss,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7-6635 Filed 4-6-07; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-907]

#### Coated Free Sheet Paper From the People's Republic of China: Amended Preliminary Affirmative Countervailing 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 coated free sheet paper from the

People's Republic of China. For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice. The version released on Friday, March 30, 2007, contained a "Benchmarks" section that was intended to be deleted from the final version because it was duplicative, so this amended preliminary determination corrects that error. This error was discovered prior to publication in the **Federal Register**, consequently, this amendment is being published in its place.

**EFFECTIVE DATE:** April 9, 2007.

**FOR FURTHER INFORMATION CONTACT:**

David Layton or David Neubacher, 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) 482-0371 or (202) 482-5823, respectively.

**SUPPLEMENTARY INFORMATION:**

**Case History**

The following events have occurred since the publication of the Department of Commerce's (the Department) notice of initiation in the **Federal Register**. See *Notice of Initiation of Countervailing Duty Investigations: Coated Free Sheet Paper From the People's Republic of China, Indonesia and the Republic of Korea*, 71 FR 68546 (November 27, 2006) (*Initiation Notice*).

On December 1, 2006, the Department selected the two largest Chinese producers/exporters of coated free sheet paper, Gold East Paper (Jiangsu) Co., Ltd. (Gold East) and Shandong Chenming Paper Holdings Ltd. (Chenming) as mandatory respondents. See Memorandum to Stephen J. Claey's, Deputy Assistant Secretary for Import Administration, "Respondent Selection" (December 1, 2006). This memorandum is on file in the Department's Central Records Unit in Room B-099 of the main Department building (CRU). On December 4, 2006, we issued the countervailing duty (CVD) questionnaire to the Government of the People's Republic of China (GOC), Gold East and Chenming.

On December 29, 2006, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of coated free sheet paper (CFS) from China, Indonesia, and Korea. See *Coated Free Sheet Paper China, Indonesia, and Korea*, Investigation Nos. 701-TA-444-446 (Preliminary) and 731-TA-1107-

1109 (Preliminary), 71 FR 78464 (December 29, 2006).

Also on December 29, 2006, we published a postponement of the preliminary determination of this investigation until March 30, 2007. See *Coated Free Sheet Paper From Indonesia, the People's Republic of China, and the Republic of Korea: Notice of Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 71 FR 78403 (December 29, 2006).

We received responses from the GOC on December 11, 2006 and January 31, 2007, Gold East on January 31, 2007, and Chenming on February 2, 2007. On February 9, 2007, the petitioner, New Page Corporation, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (USW), a domestic interested party, submitted comments regarding these questionnaire responses. We issued supplemental questionnaires to Gold East and Chenming on February 15, 2007, and to the GOC on February 21, 2007. We received responses to these supplemental questionnaires from the GOC on March 15, 2007, Chenming on March 12, 2007, and Gold East on March 9 and 13, 2007. We issued a second supplemental questionnaire to the GOC, Gold East and Chenming on February 22, 2007, and received responses to these questionnaires from Chenming on March 12, 2007, and the GOC and Gold East on March 15, 2007.

On February 20, 2007, the USW submitted two new subsidy allegations. These allegations were timely as they were filed 40 days prior to the scheduled date of the preliminary determination, in accordance with 19 CFR 351.301(d)(4)(i)(A). We decided to include both of these newly alleged programs in our investigation. See Memorandum to Susan Kubbach, Office Director, "New Subsidy Allegation" (March 5, 2007). On March 7, 2007, we issued a questionnaire to each of the respondents with respect to the new programs. We received responses to these questionnaires from Gold East on March 15, 2007, and from the GOC and Chenming on March 19, 2007.

On March 8, 2007, the petitioner submitted comments for consideration in the preliminary determination. The USW filed comments on March 14, 2007. We also received comments from Gold East on March 20, 2007, and March 22, 2007.

On March 26, 2007, petitioner requested that the final determination of this countervailing duty investigation be aligned with the final determinations in

the companion antidumping duty investigations in accordance with section 705(a)(1) of the Act. We will address this request in a separate **Federal Register** notice.

**Period of Investigation**

The period for which we are measuring subsidies, or the period of investigation (POI), is calendar year 2005.

**Scope of the Investigation**

The merchandise covered by this investigation includes coated free sheet paper and paperboard of a kind used for writing, printing or other graphic purposes. Coated free sheet paper is produced from not more than 10 percent by weight mechanical or combined chemical/mechanical fibers. Coated free sheet paper is coated with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating. Coated free sheet paper may be surface-colored, surface-decorated, printed (except as described below), embossed, or perforated. The subject merchandise includes single- and double-side-coated free sheet paper; coated free sheet paper in both sheet or roll form; and is inclusive of all weights, brightness levels, and finishes. The terms "wood free" or "art" paper may also be used to describe the imported product.

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

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

**Scope Comments**

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

1997) (*Preamble*) and *Initiation Notice*, 71 FR at 68546.

On December 18, 2006, respondents in the antidumping duty investigation of CFS from Indonesia submitted timely scope comments. On January 12, 2007, the Department requested that the respondents file these comments on the administrative record of the *CFS Investigations*. See Memorandum from Alice Gibbons to The File (January 12, 2007). On January 12, 2007, the respondents re-filed these comments on the administrative record of the *CFS Investigations*. On January 19, 2007, the petitioner filed a response to these comments.

The respondents requested that the Department exclude from its investigations cast-coated free sheet paper. The Department analyzed this request, together with the comments from the petitioner, and determined that it is not appropriate to exclude cast-coated free sheet paper from the scope of these investigations. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, "Request to Exclude Cast-Coated Free Sheet Paper from the Antidumping Duty and Countervailing Duty Investigations on Coated Free Sheet Paper," (March 22, 2007) (memorandum is on file in the Department's CRU).

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

On December 15, 2006, the Department requested public comment on the applicability of the countervailing duty law to imports from the People's Republic of China (PRC). See *Application of the Countervailing Duty Law to Imports from the People's Republic of China: Request for Comments*, 71 FR 75507 (December 15, 2006). The comments we received are on file in the Department's CRU, and can be accessed on the Web at <http://ia.ita.doc.gov/ia-highlights-and-news>.

Informed by those comments and based on our assessment of the differences between the PRC's economy today and the Soviet and Soviet-style economies that were the subject of *Georgetown Steel Corp. v. United States*, 801 F.2d 1308 (Fed. Cir. 1986), we preliminarily determine that the countervailing duty law can be applied to imports from the PRC. Our analysis is presented in a separate memorandum, Memorandum to David M. Spooner, Assistant Secretary for Import Administration, "Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China: Whether the analytical elements of the Georgetown Steel holding are applicable

to the PRC's present-day economy," (March 29, 2007) ("Georgetown Memo") (memorandum is on file in the Department's CRU).

#### **Subsidies Valuation Information**

##### *Allocation Period*

The average useful life ("AUL") period in this proceeding as described in 19 CFR 351.524(d)(2) is 13 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. 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) 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 section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.

*Chenming*: Chenming reported that it is the only producer of CFS among the companies affiliated with Shandong Chenming Paper Holdings, Ltd. Chenming further reported that its pulp supplier did not receive subsidies from the GOC. Therefore, we are attributing the subsidies received by Chenming to its sales of CFS or total sales, as appropriate.

*Gold East*: Gold East has responded to the Department's original and supplemental questionnaires on behalf of itself, its parent company and Gold Huasheng Paper Co., Ltd. (GHS). Gold East reported that GHS produces CFS, but that GHS did not produce CFS that is subject to investigation during the POI.

Gold East has also acknowledged that it and GHS are affiliated with a domestic pulp supplier that provides inputs to both companies. Gold East asserts, however, that the pulp supplied by this company cannot be considered an "input product" within the meaning of 19 CFR 351.525(b)(6)(iv) because the pulp provided by this supplier is not suitable for use in the CFS paper that is exported to the United States. Instead, this pulp was used exclusively in the production of lower-end paper products that were sold in the PRC and would not meet the specifications of its U.S. customers. Furthermore, Gold East states that it and GHS strictly segregate the pulp provided by the domestic supplier and the pulp used in export sales. Gold East claims that its situation is analogous to that in *Cold-Rolled Steel Flat Products from Korea*,<sup>1</sup> where the Department did not find a subsidy because the input allegedly sold for less than adequate remuneration was not used to produce subject merchandise. Therefore, Gold East argues that the pulp provided by the domestic supplier is not an input product that is primarily dedicated to the production of the subject merchandise.

Based on information currently on the record, we preliminarily determine that because of common ownership, cross-ownership exists between Gold East, GHS, the parent company, the affiliated pulp supplier and other affiliated companies, in accordance with 19 CFR 351.525(b)(6)(vi).

We further preliminarily determine that Gold East and GHS are cross-owned producers of the subject merchandise, as addressed in 19 CFR 351.525(b)(6)(ii). Although Gold East has claimed that GHS did not produce subject merchandise during the POI, there is no evidence indicating that GHS could not produce subject merchandise. Therefore, the subsidies received by Gold East and GHS have preliminarily been attributed to the combined sales of the two companies. Although we have combined Gold East and GHS in this

<sup>1</sup> See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cold-Rolled Carbon Steel Flat products From the Republic of Korea, 67 FR 9685, 9683 (March 4, 2002) (*Cold-Rolled Steel Flat Products from Korea*).

manner, we have continued to refer the respondent as “Gold East” in this notice.

Additionally, we preliminarily determine that subsidies received by Gold East’s parent company should be attributed to the consolidated sales of the parent company and its subsidiaries. See 19 CFR 351.525(b)(6)(iii).

Finally, we preliminarily determine that subsidies received by Gold East’s cross-owned pulp supplier should be attributed to the combined sales of the input and the downstream products produced from those inputs. This is consistent with the Department’s prior determination that pulp is “primarily dedicated” to the production of paper, as required by 19 CFR 351.525(b)(6)(iv). See *Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances: Certain Lined Paper Products from Indonesia*, 71 FR 47174 (August 16, 2006), and accompanying Issues and Decision Memorandum at Comment 3. Moreover, absent a showing that the domestic pulp cannot be used to produce CFS sold to the United States, there is no basis to tie subsidies bestowed on these input products exclusively to sales in the domestic Chinese market.

Certain other of Gold East’s affiliated companies are discussed in a separate, proprietary memorandum, Memorandum to Susan Kuhbach, “Gold East: Cross-owned Companies” (March 29, 2007) (memorandum is on file in Department’s CRU).

#### Benchmarks

**Summary:** The Department is investigating loans received by respondents from Chinese banks, including 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)(2)(i). However, the Department does not treat loans from government banks as commercial if they were provided pursuant to a government program. See 19 CFR 351.505(a)(2)(ii). Because the loans provided to the respondents by SOCBs are under the “Government Policy Lending Program,” explained below, these loans are the very loans for

which we require a suitable benchmark. Additionally, if respondents received any loans from foreign banks, these would be unsuitable for use as benchmarks because, as explained in greater detail below, the GOC’s intervention in the banking sector creates significant distortions, even restricting and influencing foreign banks within the PRC.

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). However, the Chinese national interest rates are not reliable as benchmarks for these loans because of the pervasiveness of the GOC’s intervention in the banking sector. Loans provided by Chinese banks reflect significant government intervention and do not reflect the rates that would be found in a functioning market. The statute directs that the benefit is normally measured by comparison to a “loan that the recipient could actually obtain on the market.” Section 771(5)(E)(ii) of the Act. Thus, the benchmark should be a market-based benchmark, yet, there is not a functioning market for loans within the PRC. Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting a market-based benchmark that is a simple average of the national lending rates for countries with comparable gross national income (GNI), as explained below. The use of an external benchmark is consistent with the Department’s practice. For example, in *Softwood Lumber*, the Department used U.S. timber prices to measure the benefit for government provided timber in Canada. See *Final Results of the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002), and accompanying Issues and Decision Memorandum, at “Provincial Stumpage Programs” (“*Softwood Lumber*”). In the current proceeding, as described in detail, below, the GOC plays a predominant role in the banking sector resulting in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks. Therefore, as in lumber, where domestic prices are not reliable, we have resorted to prices outside the PRC.

**Discussion:** In its analysis of the PRC as a non-market economy in the recent lined paper investigation, the Department found that the PRC’s banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of

the government in the sector. See “the People’s Republic of China (PRC) Status as a Non-Market Economy,” May 15, 2006 (“May 15 Memorandum”); and “China’s Status as a Non-Market Economy,” August 30, 2006 (“August 30 Memorandum”) (collectively, the “memoranda”). The PRC’s stated goal for banking sector reforms since 1994 has been to develop banks that operate on a commercial basis. See May 15 Memorandum at 4; and August 30 Memorandum at 56–58. Despite ongoing efforts made by the GOC to move toward this goal, SOCBs in the PRC continue to be plagued by functional and operational problems that have necessitated repeated, large government capital injections and debt write-offs to stave off insolvency. In addition to a chronic problem of non-performing loans, the Department discussed in its memoranda the aspects of the PRC’s banking sector that led International Monetary Fund (IMF) economists to conclude in 2006 that, despite a decade of reform, “it is difficult to find solid empirical evidence of a strong shift to commercial orientation by the SOCBs.” See August 30 Memorandum at 58, citing “Progress in China’s Banking Sector Reforms: Has Bank Behaviour Changed?,” Washington, DC: International Monetary Fund Working Paper, at 4 (March 2006). For example, the Department found that funds continue to be allocated in a “manner consistent with the general policy to maintain the state-owned industrial sector” and loan pricing remains undifferentiated, despite liberalization of lending caps. See May 15 Memorandum at 5; and August 30 Memorandum at 58.

As one commentator notes, the PRC’s banking sector has “fallen short in its task of allocating credit to the most productive players in the economy,” which is the hallmark of a banking system operating on a commercial basis. See August 30 Memorandum at 54, citing “Putting China’s Capital to Work: The Value of Financial System Reform,” McKinsey & Company, at 25 (May 2006). The Department concluded that the PRC’s banks are “still in the process of developing the institutional underpinnings and human resources necessary to operate on a fully commercial basis.” See August 30 Memorandum at 52.

In addition, “the various levels of government in the PRC, collectively, have not withdrawn from the role of resource allocator in the financial sector, principally the banking sector.” See May 15 Memorandum at 3. The GOC’s continued ownership of virtually all of the banking sector assets is “the

fundamental gap in banking sector's reform" inhibiting the sector from operating on a commercial basis. *Id.* at 3–4. In fact, the PRC has the highest level of state ownership of banks of any major economy in the world. The four largest SOCBs, the Bank of China ("BOC"), the China Construction Bank ("CCB"), the Agricultural Bank of China ("ABC") and the Industrial and Commercial Bank of China ("ICBC"), (collectively, the "Big Four"), represent over 50 percent of the formal sector's assets and deposits. Small state-owned institutions, such as rural credit cooperatives, which are characterized by extremely poor performance, account for 9–10 percent of banking assets. Foreign banks account for approximately 2 percent of total assets. Although limited ownership diversification has been introduced through minority foreign shareholdings in the BOC, CCB and the joint-stock commercial banks (with the latter category of banks accounting for 13 percent of the sector's assets), the GOC continues to control the vast majority of financial intermediation in the banking sector. A further portion of the PRC's banking sector is accounted for by smaller entities, such as city banks and credit cooperatives, which are likewise government-owned, albeit on a sub-central level. *See* August 30 Memorandum at 54–55, citing "Economic Survey of China," Paris: Organization for Economic Cooperation and Development, at 139 (2005).

While foreign banks have recently been permitted to purchase minority stakes in a number of state-owned domestic Chinese banks, such investment does not signal a decisive shift towards putting the banks on a fully commercial footing. This is because foreign investment in PRC banks is tightly constrained, and the GOC has signaled its intentions to preserve its control over the banking sector indefinitely. *See* August 30 Memorandum at 61, citing "Go Away, Crocodiles?," the Economist Intelligence Unit, Business China (March 27, 2006). Continued GOC control of the Chinese banking sector is possible because, while foreign banks have recently been allowed to purchase minority stakes in certain banks in the PRC, total foreign purchases of shares in existing SOCBs have been limited to 25 percent. *See* August 30 Memo at 60, citing "It's so Far, so Good for China's Banking Sector," the Economist Intelligence Unit, Business China (March 27, 2006). Similarly, some domestic banks in the PRC are now listed on foreign stock exchanges, but majority control remains

with the GOC. Foreign interests have acquired approximately 10 percent of the CCB, ICBC and BOC, and are afforded just one place on the board at each bank. *See* August 30 Memo at 61, citing "What are the Prospects for Foreign Banks in China," the Economist Intelligence Unit, Viewswire, China Finance (March 15, 2006). These investments bring market expertise to the management and board of the state-owned banks, but the foreign-owned shares remain small, thereby limiting the degree of influence over bank operations. *See* August 30 Memo at 61, citing Overmyer, Michael, "WTO: Year Five," the US-China Business Council, The China Business Review, at 2 (January–February 2006). Therefore, the constrained degree of foreign investment that the GOC has permitted in the domestic Chinese banking sector does not alter the Department's preliminary conclusion that the domestic PRC banking sector does not operate on a commercial basis.

Because the GOC still dominates the domestic Chinese banking sector and prevents banks from operating on a fully commercial basis, the Department preliminarily determines that the interest rates of the domestic Chinese banking sector do not provide a suitable basis for benchmarking the loans provided to respondents in this proceeding. Moreover, while foreign-owned banks do operate in the PRC, they are subject to the same restrictions as the SOCBs, including a government-imposed cap on deposit rates, which puts downward pressure on lending rates. In addition, foreign banks' share of assets and lending is negligible compared with the SOCBs. SOCBs issue most of the credit in the PRC and lend at rates close to the Central Bank's announced base lending rate. *See* "Economic Survey of China," Paris: Organization for Economic Cooperation and Development, at 153 (2005) ("Economic Survey of China"). Accordingly, foreign banks participating in this system are inevitably influenced by this broader environment in the rates at which they issue loans. Additionally, while foreign banks are slowly increasing their participation in the domestic PRC banking sector, the OECD has observed that foreign banks, in addition to providing only a tiny share of credit in the PRC, still operate mostly in niche markets, rather than compete directly with the state-owned commercial banks. *See* August 30 Memorandum at 60, citing "Economic Survey of China," at 150–151. Therefore, foreign bank lending does not provide a suitable benchmark.

The Department's conclusion that the lending rates offered by foreign banks do not offer a suitable benchmark because of the market-distorting behavior of the GOC is consistent with the Department's determination in the countervailing duty investigation in *Softwood Lumber*. That case dealt with the provision of goods for less than adequate remuneration. The Department explained that, "if there is no market benchmark price available in the country of provision, it is obviously impossible to determine adequacy of remuneration except by reference to sources outside the country." *See Softwood Lumber* at "Provincial Stumpage Programs." Further, "a valid benchmark must be independent of the government price being tested; otherwise the benchmark may reflect the very market distortion the comparison is intended to detect." *Id.* In that proceeding, the Department determined that the small private market for timber in Canada was not a suitable basis for comparison because of the dominant position of the government in the marketplace. *Id.* This is quite similar to the fact pattern in the current proceeding, where a small private (foreign) sector exists alongside a vastly larger state-owned sector where a considerable portion of lending is not conducted on terms and conditions consistent with commercial considerations. Just as the prices in the private market for timber were found to be distorted by the presence of a largely state-controlled sector, lending rates by foreign banks in the PRC would be affected by the non-commercial lending rates of the much larger and dominant state-owned banks.

On March 22, 2007, Gold East cited to the PRC's Accession Protocol and argued that before rejecting benchmarks within the PRC, the Department should "adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China." However, it is not practical to adjust internal PRC lending rates for benchmarking the loans made by respondents. The distortions in the Chinese banking sector cannot be attributed to a single factor or set of factors that the Department could account for by adjusting an internal lending figure. Rather, this distorted sector is due to the PRC's history of government domination of the banking system and continuing ownership of the sector. Under these circumstances, for the purposes of this preliminary determination, it is necessary for the Department to disregard all internal benchmark data for loans.

We now turn to the issue of choosing an external benchmark. Selecting an appropriate external interest rate benchmark is particularly important in this case because, unlike prices for certain commodities and traded goods, lending rates vary significantly across the world. Nevertheless, there is a broad inverse relationship between income levels and lending rates. In other words, countries with lower per capita gross national income (GNI) tend to have higher interest rates than countries with higher per capita GNI, a fact demonstrated by the lending rates across countries reported in *International Financial Statistics*. There are several possible explanations for this phenomenon. High-income countries generally have stronger market-supporting institutions, which reduce the risk and transaction costs associated with lending. High income countries may also be more stable, further reducing perceived risk, and have high levels of credit in the economy, which helps to achieve economies of scale. For these reasons, the Department has determined that it is appropriate to use income level as a criterion for choosing the external lending rate to use as a benchmark.

Nevertheless, relying on a single country's figure could introduce distortions in the benchmark calculation if, for example, the country's central bank temporarily tightened monetary policy to reduce inflationary pressures. Because such factors, and their effect on interest rates vary across countries, the Department has preliminarily determined that a cross-country average lending rate is the most appropriate benchmark rate in this proceeding. A lending rate averaged across countries with similar income levels to the PRC captures the broad relationship between income and interest rates, as well as the institutional and macroeconomic factors that affect interest rates. Moreover, a large number of the world's countries report comparable lending rates to *International Financial Statistics*, providing a suitable basis for calculating a cross-country average.

The Department has used the country classifications of the World Bank to determine which countries to include in the benchmark average. The World Bank divides the world's economies into four categories, based on per capita GNI: Low income, lower-middle income, upper-middle income, and high income. The PRC, with its 2005 per capita GNI of \$1740, falls into the lower-middle income category, a group that includes 58 countries as of July 2006. The Department then calculated an average of the lending rates that these countries

reported to *International Financial Statistics* in 2005. This calculation excludes those economies that the Department considered to be non-market economies for antidumping purposes in 2005: the PRC, Armenia, Azerbaijan, Belarus, Georgia, Moldova, Turkmenistan, and Ukraine. The average necessarily also excludes any economy that did not report lending data to *International Financial Statistics* in 2005. The Department also excluded two aberrational countries, Angola, with a rate of 67.72 percent, and Brazil, with a rate of 55.38 percent. The Department then computed a simple average of 13.147 percent of the remaining 37 lending rates and used this average to determine whether a benefit existed for the loans received by Chenming and Gold East on their short-term loans in 2005. The resulting average provides an appropriate benchmark because the loan figures reported to *International Financial Statistics* represent base short-term lending rates in each reporting country.

The lending rates reported in *International Financial Statistics* represent short-term lending, and there is no publicly available long-term interest rate data. To identify and measure any benefit from long-term loans, the Department developed a ratio of short-term and long-term lending for 2005. The Department then applied this ratio to the benchmark short-term lending figure (using the methodology explained above) to impute a long-term lending rate. For example, for loans issued in 2000, the Department calculated an average of the 37 lower-middle income countries' short-term lending rates in 2000. To convert the resulting short-term interest rate into a long-term rate, the Department calculated a ratio between short-term lending drawn from London Interbank Offered Rate (LIBOR) data and long-term interest rates from in the interest rate swap market. The ratio of the two figures provides an indication of the varying cost of money over different time periods. In this case, the Department computed a ratio of the average short-term LIBOR rate in 2005 and the prevailing interest rates on long-term (five-year) interest rate swaps reported by the Federal Reserve for the year in question. That is, if the long-term swap rate were 25 percent higher than the short-term LIBOR rate, the Department would inflate the average short-term lending rate by 25 percent to arrive at a long-term interest rate benchmark. This methodology is appropriate because the interest rate swap rates are based on short-term

LIBOR rates, and the ratio between them offers an estimate of the market consensus premium that borrowers would pay on a long-term loan over a short-term loan.

### Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. See 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i)(A)–(D), the Department normally examines the following four types of information: (1) Receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm's financial health; (3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position. If a firm has taken out long-term loans from commercial sources, this will normally be dispositive of the firm's creditworthiness. However, if the firm is government-owned, the existence of commercial borrowings is not dispositive of the firm's creditworthiness. This is because, in the Department's view, in the case of a government-owned firm, a bank is likely to consider that the government will repay the loan in the event of a default. See *Countervailing Duties; Final Rule*, 63 FR 65348, 65367 (November 28, 1998). For government-owned firms, we will make our creditworthiness determination by examining this factor and the other factors listed in 19 CFR 351.505 (a)(4)(i).

*Chenming*: The Shouguang State-Owned Asset Administration owned 31.24 percent of Chenming during the POI. Therefore, for purposes of the creditworthiness determination, we are preliminarily treating Chenming as government-owned and are not considering the existence of commercial borrowing to be dispositive of the company's creditworthiness.

Chenming's consolidated financial statements show that the Group had negative working capital in 2003 through 2005, and its cash flow was negative in 2005. In addition, the current and quick ratios were less than 1 during the same time period and have

consistently declined since 2001.<sup>2</sup> Chenming's 2005 financial statements indicate that the Group has a large amount of short-term debt, and that working capital was applied in the expansion and construction of production facilities in the Group. Indeed, its annual reports show that the Group completed several large projects in 2004 and 2005 (fixed assets increased by 83% from the end of 2003 to the end of 2005), including new facilities. While the net profit margin, times interest earned, return on assets, and return on equity have decreased since 2003, they are comparable to or greater than the Group's 2001 ratios. The "times interest earned" ratio calculates the extent to which pre-tax income covers interest expense and creditors monitor it to gauge the risk of default. Cash flow to liabilities, which indicates bankruptcy risk, has been very variable since 2001. Debt-to-equity and debt-to-assets, two solvency ratios, have increased since 2001, and demonstrate that the Group has become more leveraged. Turnover, however, has increased by at least 20 percent each year since 2001. In addition, despite the negative working capital and negative net cash flow, the company continued to pay dividends in 2004 and 2005.

In Chenming's consolidated 2005 financial statements, the auditors explained that the Group is exposed to liquidity risk because a significant percentage of the Group's capital funding requirements are financed through short-term bank borrowing. The company acknowledged this risk and intended to convert a significant portion of such short-term debt to long-term debt in the near future. A December 2, 2005 article in *Euroweek*, indicated that Sumitomo Mitsui Banking Corporation (a foreign bank) was arranging an \$80 million three-year term-loan for Chenming. The article explains that the deal is the company's debut international loan, although the company was in the market in 2005 as a sponsor of an affiliated company project.<sup>3</sup> The group also had a five-year convertible bond issue in September 2004.

We note that the financial statements, upon which the above ratios have been calculated, are for the consolidated Chenming Group. In its response,

Chenming submitted financial ratios based on the unconsolidated parent company, which is the responding company and, according to its response, the sole producer within the consolidated group of the merchandise under investigation. These ratios show that the parent company's current ratios for 2004 and 2005 are more than 1 and its quick ratios are nearly 1, which indicate that the parent company is in a more liquid position. In addition, the time interest earned ratios for these years are stronger for the parent than for the Group. While Chenming has not submitted the unconsolidated financial statements upon which these ratios are based, the Department has found publicly available financial statements for Chenming for the first half 2005, which show the financial information for the parent and the Group. These statements confirm that the current ratio for the parent company is greater than 1 and the quick ratio is substantially better for the parent than the Group. In addition, the parent had positive working capital, although its cash flow in the first half 2005 was negative.

We find the ratios for the Chenming Group provide varying indications of the firm's financial creditworthiness. While working capital is negative, working capital is only a rough indication of changes in liquidity and supplemental analysis with other ratios is required. Working capital in this case is negative due in large part to the large amount of short-term liabilities. The liabilities in this case were used to finance Group expansion, which should provide for future sales increases. While a company with excellent long-term prospects could fail to realize them if forced into bankruptcy because it could not pay its short-term liabilities, there is no indication that this is the case for the Chenming Group.

Indeed, Chenming acknowledges this risk and states its intention to mitigate it through the acquisition of long-term debt. The December 2005 article cited above demonstrates that the company was likely to be successful in carrying out this intention. Moreover, there is no information on the record that Chenming has defaulted on any of its debt or failed to meet any of its financial obligations. To the contrary, it has even continued to pay dividends. Also, the record shows that Chenming has continued to borrow from private parties, as evidenced by the 2004 convertible bond issue. We note that while we have performed this analysis for the Chenming Group, the unconsolidated financial situation for

the parent company, the respondent in this case, appears to be even better.<sup>4</sup>

In summary, while certain financial ratios indicate some degree of financial distress, there are several factors that weigh against finding Chenming uncreditworthy, such as: Continuing annual sales growth, its positive net income in 2005, and its ability to meet its interest expenses and issue convertible bonds. Therefore, we preliminarily determine Chenming to be creditworthy in 2004 and 2005.

*Gold East:* On March 8, 2007, the petitioner alleged that the APP companies, including Gold East, should be considered uncreditworthy beginning in 2001.

On March 20, 2007, Gold East objected to petitioner's allegation on the grounds that it was untimely filed. Specifically, Gold East argues that any new subsidy allegation, including an allegation of uncreditworthiness, is due no later than 40 days before the scheduled date of the preliminary determination, citing 19 CFR 351.301(d)(4)(i)(A).

We disagree with Gold East that uncreditworthiness allegations must be filed within the same timeframe established for new subsidy allegations in 19 CFR 351.301(d)(4)(i)(A). Uncreditworthiness in and of itself is not a countervailable subsidy. Instead, it is a valuation issue that is properly addressed in the course of an investigation as long as parties have ample time to submit information and argument on the point. In this case, adequate time exists. Therefore, we have analyzed petitioner's allegation.

According to 19 CFR 351.505(a)(6), the Department "will not consider the uncreditworthiness of a firm absent a specific allegation by petitioner that is supported by information establishing a reasonable basis to believe or suspect that the firm is uncreditworthy." The petitioner has submitted financial ratios for the companies and has pointed to other evidence on the record. (Because this allegation is based almost exclusively on proprietary information, it is described in a separate memorandum, Memorandum to Susan Kuhbach, "Uncreditworthiness Allegation for APP Companies" (March 29, 2007) ("APP Creditworthiness Allegation Memo")) (memorandum is on file in the Department's CRU).

Based on our review of the allegation, we find that the petitioner has provided a reasonable basis to believe or suspect that the APP companies were uncreditworthy in 2001–2005. See APP Creditworthiness Allegation Memo.

<sup>2</sup> See Memorandum to File, "Creditworthiness Determination for Chenming," (March 29, 2007) ("Chenming Creditworthy Memo") (providing the calculation of the financial ratios for 2001 through 2005). It is the Department's standard practice to examine ratios for the years in which a creditworthiness determination is to be made and the three preceding years.

<sup>3</sup> See Chenming Creditworthy Memo.

<sup>4</sup> See Chenming Creditworthiness Memo.



Therefore, we intend to investigate the creditworthiness of the APP companies for those years between 2001 and 2005 in which the companies received subsidies under investigation in this case. We intend to make a preliminary finding on the companies' creditworthiness prior to our final determination and will provide the parties with an opportunity to comment on that finding.

#### Denominator

In its March 20, 2007 filing, Gold East asks the Department to adjust its subsidy rate to reflect the fact that the company's exports to the United States are invoiced by an affiliate. Gold East claims that the Department previously made such an adjustment in *Ball Bearings and Parts Thereof from Thailand; Final Results of Countervailing Duty Administrative Review*, 57 FR 26646 (June 15, 1992) ("*Ball Bearings from Thailand*").

Based upon our review of *Ball Bearings from Thailand* and the information submitted by Gold East in support of its claim, it appears that the pattern of transactions differ in the two situations, and it is not clear that the adjustment is appropriate for Gold East's situation. However, we intend to seek further information and analyze this claim further for our final 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. Grant Programs

The petitioner alleged that the GOC, including local and provincial authorities, provide grants to CFS producers and their cross-owned companies, pursuant to five-year plans for the pulp and paper industry.

The GOC has identified two grant programs that relate to this allegation: The State Key Technology Renovation Fund, and the Clean Production Technology Fund. The former is discussed below, and the latter is addressed under "Programs Preliminarily Determined to be Not Used."

The State Key Technology Renovation Project Fund

The State Key Technology Renovation Project Fund program ("Key Technology Program") was created pursuant to state circular GUOJINGMAOTOUZI (1999) No. 886 (Circular No. 886), and operates

under the regulatory guidelines provided in Circular No. 886, including "Measures for the Administration of National Debt Special Fund for National Key Technological Renovation Project" ("Special Fund Measures"), GUOJINGMAOTOUZI (1999) No. 122, GUOJINGMAOTOUZI (1999) No. 1038 and state circular GUOJINGMAOTOUZI (2000) No. 822. The purpose of this program is to promote: (1) Technological renovation in key industries, key enterprises, and key products; (2) facilitation of technology upgrade; (3) improvement of product structure; (4) improvement of quality; (5) increase of supply; (6) expansion of domestic demand; and (7) continuous and healthy development of the state economy.

Under the Key Technology Program, companies can apply for funds to cover the cost of financing specific technological renovation projects. Under Article 9 of the Special Fund Measures, Key Technology Program grants are disbursed in the form of "project investment facility" grants covering two years' worth of interest payable on loans to fund the project, or up to three years for enterprises located in certain regions. Under Article 11 of the Special Fund Measures, Key Technology Program funds may also be disbursed as "loan interest grants," which are calculated with reference to the amount of the project loans and prevailing interest rates during a period of one to two years.

Pursuant to Article 4 of Circular No. 886, the recipients of these funds will mainly be selected from large-sized state-owned enterprises and large-sized state holding enterprises among the 512 key enterprises, 120 pilot enterprise groups and the leading enterprises in industries. To be considered for funding, the enterprise files an application that is reviewed at various levels of government, with final approval given by the State Council. Once approved, the local finance bureaus appropriate the funds into the enterprise's account.

The GOC has reported that Chenming was among the 512 key enterprises or 120 pilot enterprise groups, and that Gold East was not included in these groups. Also, the GOC reported approving funding for Chenming under the Key Technology Program in 2000, and that the funds were disbursed in 2001.

The GOC has further reported that the Key Technology Program has not operated since 2003, although the implementing regulations remain in effect. This is due to institutional reform in the government—the implementing

agency, the State Economic and Trade Commission, was dissolved and the program was not taken over by another agency.

We preliminarily determine that the Key Technology Program provides countervailable subsidies to Chenming within the meaning of section 771(5) of the Act. We find that these grants are 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). We further preliminarily determine that the grants provided under this program are limited as a matter of law to certain enterprises, *i.e.*, large-sized state-owned enterprises and large-sized state holding enterprises among the 512 key enterprises, 120 pilot enterprise groups and the leading enterprises in industries, and, hence, are specific under section 771(5A)(D)(i) of the Act.

According to the GOC, the program is intended to provide one-time assistance and each project funded by the grant requires a separate application and approval. Therefore, consistent with 19 CFR 351.524(c)(1), we are treating the grant received under this program as "non-recurring." We do not have the information needed to perform the "expensing" test described in 19 CFR 351.524(b)(2), and for purposes of this preliminary determination have allocated the benefit over the AUL.

To calculate the countervailable subsidy, we used our standard grant methodology. Because the approved project was for CFS, we divided the benefits attributable to the POI by the total value of Chenming's sales of CFS during that period. On this basis, we preliminarily determine the countervailable subsidy to be 1.28 percent *ad valorem* for Chenming.

As noted above, the grants provided under this program are to cover interest owed on loans. Our regulations provide differing allocation methodologies for interest assumptions, depending on whether the recipient knew of the assumption before taking out the loan. See 19 CFR 351.508(c)(2). We intend to seek further information on this issue for our final determination.

##### B. Government Policy Lending Program

Petitioner has alleged a GOC lending program to provide loans at a discount to the forestry and paper industry in accordance with the GOC's industrial policy, as set out, *inter alia*, in "The PRC Civilian Economy and Social Development 10th Five-Year Plan Outline" and "The Tenth Five-Year and 2010 Special Plan for the Construction of National Forestry and Papermaking Integration Project." Petitioner further



alleges that discounted loans, interest subsidies, and debt forgiveness are provided through policy banks and state-owned banks providing policy loans.

Chenming and Gold East have stated that they did not receive any preferential policy loans. In its response, the GOC states that the Five-Year plans are a "projection of the {state-council's} economic work in the forthcoming years" and are "not necessarily translated into any specific action." As such, the GOC asserts that it does not normally provide loans to industries; rather, banks provide loans and operate as independent commercial entities, typically basing their decision to provide a loan on commercial and risk assessment factors.

To determine whether the program alleged by petitioner confers countervailable subsidies on the producers and exporters of the subject merchandise, the Department must first ascertain whether the GOC has a program in place to support the development of the paper industry. Specifically, the Department must determine whether record evidence supports the conclusion that the GOC carries out industrial policies that encourage and support the growth of the paper sector through the provision of preferential loans.

Petitioner has claimed that the GOC has an explicit policy of supporting the paper industry with preferential loans. To support this assertion, petitioner cites to the "The PRC Civilian Economy and Social Development 10th Five-Year Plan Outline" (10th Five-Year Plan) and "The Tenth Five-Year and 2010 Special Plan for the Construction of National Forestry and Papermaking Integration Project" (10th Five-Year Plan for the Forestry and Paper Industry), among other administrative measures.

One of the goals of the 10th Five-Year Plan is to "accelerate reform and renovation" of certain industries, including the "wood pulp, high quality paper and paperboard" industry. Subsequent Five-Year Plans have reaffirmed this goal. Taking into consideration the broad goals set out in the 10th Five-Year Plan, in March 2001 the GOC released the 10th Five-Year Plan for the Forestry and Paper Industry. This plan was developed "in order to ensure the smooth construction of our national forestry and papermaking integration project, to make comprehensive plans, to take actions according to local circumstances, to make decisions on scientific bases, and for the government to play the role of macroeconomic readjustment and control" (emphasis

added). In addition, the government has established specific production capacity targets in this Plan, stating that "{w}e plan to construct pulp producing capacity of 1.13 million ton" and after 2010 "we can build a pulp producing capacity of more than 2.15 million ton \* \* \* and a matching paper making capacity of about 2.3 million ton." Further, the GOC estimates that the amount of investment required during the period of the 10th and 11th Five-Year Plans will be RMB 244.3 billion, stating that, "{t}herefore, investment has to be strengthened vigorously and financing channels are to be widened \* \* \*" As such, this Plan specifically contemplates policy measures that are necessary to achieve these goals, including the provision of "appropriate financial support to the construction of forestry and papermaking integration in its early phase by way of infusing capital in cash or loans with discount."

In addition to the 10th Five-Year Plan and the 10th Five-Year Plan for the Forestry and Paper Industry, in August 2001, the State Economic and Trade Commission released the "10th Five-Year Plan in the Paper Production Industry." The purpose of this Plan is to outline goals of the paper production industry over the next 5 years. A key policy recommendation addressed in the plan is increased access to financial resources, including: (1) Opening essential financing channels for adjustment and development of the industry; (2) encouraging the opening of multilateral investment and financing channels to increase technological restructuring and rapid growth; and (3) providing discounted loans with special terms for environmental conservation projects.

Beyond the various Five-Year Plans mentioned above, several additional administrative measures released by the GOC demonstrate a clear governmental policy or program of support to the forestry and paper industry. For example, in June 2000, The PRC's National Key Economy and Trade Committee released the National Key Technology Renovation "Shuang Gao Yi You" Project. The purpose of this measure was to outline key areas of economic structural adjustment needed by enterprises to increase technology renovation, technical and industrial advancement. One of the stated goals was to "emphatically select key paper enterprises which produce high quality newspaper, high class culture paper product (LWC), high class packaging paperboard (carton paperboard), and enterprises that produce paper making machine and other supporting networks; eliminate backward equipment and

products which are not market suitable."

On the basis of the record information cited above, we preliminarily determine that the GOC has a specific and detailed policy to encourage and support the development of the domestic forestry and paper industry. The GOC itself has stated that Five-Year Plans are a "projection of the [state-council's] economic work in the forthcoming years." In order to implement the policies enumerated in the Five-Year Plan, the GOC's policy specifically calls for the provision of discounted loans and other financing in order to support the growth and development of this industry.

The GOC has further stated in its March 15 questionnaire response that "the administrative system ensures that provincial and local policy goals and objectives are in conformity with the central policy goals and objectives." According to the 1979 Law of Local People's Congresses at Various Levels and Local People's Government at Various Levels of the PRC, as amended, local governments must follow the laws and regulations made by the central government. *See Chinese Law and Legal Research*, Wei Luo, at 31 (2005). Further,

the State Council guides the local administration in terms of policies and assigns tasks to local governments in terms of plans. In doing so, the central government confers on the local governments the necessary authorities to carry out the policies of the central government. The central government also evaluates the local governments' application of policies, laws and plans made by the central government. *See id.* (emphasis added.)

In other words, local governments must align their industrial policies with stated central government policies and carry out those policies to the extent that such measures affect their locality. As such, based on record statements, Five-Year Plans should be considered a central government policy or program that local governments adopt and implement through SOCBs.

Having determined that the record evidence establishes a government policy or program to support the forestry and paper industry, the Department next turns to whether these policies were carried out by the central and local governments through the provision of loans extended by GOC policy banks and SOCBs. Under the Department's practice, loans provided by government policy banks, such as the China Development Bank, are considered government loans and, thus, constitute direct financial contributions under the Act. *See, e.g., Dynamic*

*Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 72 FR 7015, February 14, 2007, and accompanying Issues and Decision Memorandum, at 6. Loans by SOCBs, however, are not necessarily treated as government loans because these banks often operate on a commercial basis in many countries. See *Preamble*, 63 FR at 65363. However, as discussed below, the PRC's banking system presents a significantly different fact pattern than those in market economy countries that the Department has previously encountered and that were contemplated in the *Preamble*. Information on the record indicates that the PRC's banking system suffers from a legacy of complete state control, the vestiges of which allow for continued government control, especially at the local level, resulting in the allocation of credit in accordance with government policies.

As discussed in the *Georgetown Memo* and the Department's memoranda from the investigation on *Certain Lined Paper Products from the PRC* regarding the PRC's status as a non-market economy, the PRC's banking system is more flexible than the Soviet-style banking sectors, where central banks directly allocated all credit in accordance with the wishes of the party and the central planners. The GOC abolished the mandatory credit plan in 1997, under which the People's Bank of China (PBOC) directly allocated credit to specific sectors, often supporting the operations of loss-making state-owned enterprises (SOEs). The credit plan was replaced with non-binding targets, which were to serve as guidance for credit allocation. See August 30 Memorandum, at 51. SOCBs were afforded legal autonomy from the state in most matters, which allowed them to lend, at least in theory, on terms and conditions consistent with commercial considerations. Current law, however, remains contradictory with regard to the SOCB's independence from the state. Under the 1995 Commercial Banking Law of the People's Republic of China, commercial banks are responsible for their own profits and losses, must protect the interests of their depositors, and are protected from government influence. However, Article 34 of the Commercial Bank Law paradoxically states that banks are required to adhere to the PRC's "national industrial policies." See August 30 Memorandum, at 53.

Notwithstanding certain dictates that the SOCBs act independently of the government, as discussed in the

"Benchmark" section of this notice, the near-complete state ownership over these banks enables the GOC to utilize SOCBs as policy instruments and, thus, to allocate credit in accordance with its policies, as enumerated in the Five-Year Plans. Specifically, the Department found that "{w}hile the Big Four (along with smaller regional banks and cooperatives) now have greater autonomy than in the past, government interests at both the central and local levels still exercise a great deal of control over banking operations and lending decisions." See May 15 Memorandum, at 5. As noted by the IMF, "{r}ooting out the legacy of government directed lending, and training banks to make lending decisions based on purely commercial considerations, with adequate regard to viability and riskiness of projects remains a major reform challenge." See August 30 Memorandum, at 52, n. 248, citing Finance and Development, Next Steps for China, Washington, DC: International Monetary Fund, (September 2005).

State-direction of credit as well as protracted lending on a non-commercial basis has been evidenced by repeated cycles of the accumulation of a large number of non-performing loans and government bailouts of the banking sector. See "Benchmark" section above. For example, wholly- and partially-owned SOEs continue to receive a disproportionate share of credit, in line with industrial policy objectives to maintain a central role for the state-owned sector of the economy. See May 15 Memorandum, at 5; and August 30 Memorandum, at 59.

Some of the misallocation of resources may be attributed to lack of experience or inertia. However, as discussed above in the "Benchmarks" section, the continued government intervention in bank operations, especially by local governments, acts as a significant impediment to true commercialization of the banks. Prior to reforms, local governments utilized SOCB branch offices as the main source of capital to fund policy-driven investment projects and support local SOEs, which in turn provided local employment and government revenue. Although SOCBs are no longer the sole instrument by which to allocate funds, local governments continue to guide and direct the allocation of credit through their local bank branches. See August 30 Memorandum, at 60.

Third-party commentators have arrived at similar conclusions regarding the state's continued influence, especially at the local level, on SOCB operations. For example, a 2005

Organization for Economic Cooperation and Development (OECD) report found that,

The chief executives of the head offices of the SOCBs are government appointed and the party retains significant influence in their choice. Moreover, the traditionally close ties between government and bank officials at the local level have created a culture that has given local government officials substantial influence over bank lending decisions. See August 30 Memorandum, at 60, n. 294 and 301, citing to Economic Survey of China, Paris: Organization for Economic Cooperation and Development, at 140–141 (2005).

A 2005 IMF Staff Report concurred, stating that, "{t}he staff acknowledged the progress made in reducing government involvement in management and business operations of banks. However, more needs to be done, particularly with regard to local governments, to remove this serious impediment to fully commercializing banks." See the August 30 Memorandum at 60, citing People's Republic of China: 2005 Article IV Consultation—Staff Report; Staff Supplement; and Public Information Notice on the Executive Board Discussion, Washington, DC, International Monetary Fund, at November 2005), p. 19.

As the Department found in its May 15 Memorandum, "the continued significant government involvement in the PRC's banking sector reflects an assumption that the state, not markets, should determine the growth sectors or individual companies that deserve access to credit." See May 15 Memorandum, at 8. On the basis of the evidence cited above, the Department determines for the purposes of this preliminary determination that the GOC continues to use its ownership of and influence over SOCBs to guide and direct the allocation of credit in accordance with its stated policy objectives, including those contained in the 10th Five-Year Plan for the Forestry and Paper Industry. In addition, evidence on the record also indicates that the above-mentioned Five-Year Plans are in fact implemented by paper companies. For example, Chenming's 2005 Annual Report states that, "{a}ll of the projects the Company had launched were those which satisfying the national industrial policy and to be replacing the imported products and high in value adding." In addition, this report states that, "the Company will keep studying and following with the national policies to grasp the trend of overall planning, to make sure the Company's development is complying with the national policy on the industry." As such, the

Department preliminarily finds that the PRC's SOCBs should be considered extensions of the government and are the instruments by which the government implemented the preferential lending component of the program described above.

For the reasons stated above, the Department preliminarily determines that loans provided by Policy Banks and SOCBs in the PRC constitute government-provided loans pursuant to section 771(5)(D)(i) of the Act. We further preliminarily determine that this loan program is specific in law because the GOC has a policy in place to encourage and support the growth and development of the forestry and paper industry. *See* section 771(5A)(D)(i) of the Act. Finally, this program provides a benefit to the recipients, equal to the difference between what the recipient paid on the loan and the amount the recipient would have paid on a comparable commercial loan. *See* section 771(5)(E)(ii) of the Act.

Chenming, Gold East, and certain of Gold East's cross-owned companies had outstanding loans under this program during the POI.

To calculate the benefit, we used the interest rates described in the "Benchmark" section above and the methodology described in 19 CFR 351.505(c)(1) and (2). On this basis, we preliminarily determine that a countervailable benefit of 3.15 percent *ad valorem* exists for Chenming and a countervailable benefit of 14.02 percent *ad valorem* exists for Gold East for this program.

### C. Income Tax Programs

#### The "Two Free, Three Half" Program

The Foreign Invested Enterprise and Foreign Enterprise Income Tax Law (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for FIEs in the PRC. The intent of this law is to attract foreign businesses to the PRC.

According to Article 8 of the FIE Tax Law, FIEs that are "productive" and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed "productive" if they qualify under Article 72 of the Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises. This provision specifies a list of industries in which FIEs must operate in order to qualify for benefits under this program. The activities listed in the law are: (1)

Machine manufacturing and electronics industries; (2) energy resource industries (not including exploitation of oil and natural gas); (3) metallurgical, chemical and building material industries; (4) light industries, and textiles and packaging industries; (5) medical equipment and pharmaceutical industries; (6) agriculture, forestry, animal husbandry, fisheries and water conservation; (7) construction industries; (8) communications and transportation industries (not including passenger transport); (9) development of science and technology, geological survey and industrial information consultancy directly for services in respect of production and services in respect of repair and maintenance of production equipment and precision instruments; (10) other industries as specified by the tax authorities under the State Council. The GOC, in its response, has stated that if a FIE meets the above conditions, eligibility is automatic and the amount exempted appears on the enterprise's tax return.

Gold East reported that, during the POI, Gold East and certain of its cross-owned companies filed tax statements for a "free" year under this program. Chenming reported that its eligibility for participation in this program ended in 2001 and that the company did not receive any benefits under this program during the POI.

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

The GOC claims that FIEs are a separate type of business operation under Chinese law, similar to partnerships, proprietorships, domestic corporations, for example, and that differences in tax liabilities for these different types of businesses do not make the income tax rate applicable to FIEs specific. The GOC further claims that the large number of FIEs and the vast number of industries they participate in further indicate that this program is not specific. However, we have preliminarily determined that limiting a program to "productive" FIEs is a sufficient basis to find specificity

and, having found specificity as a matter of law, it is not necessary to reach the issue of whether the subsidy is specific in fact. *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, at 930 (1994) ("SAA").

To calculate the benefit from this program, we treated the income tax exemption enjoyed by Gold East its cross-owned companies as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the rate paid by the Gold East companies (zero percent) to the rate that would be paid by a domestic corporation in the PRC (30 percent). We attributed the tax savings received by Gold East and GHS to the combined sales of the two companies. Additional information on this calculation is provided in the Calculation Analysis memorandum for Gold East. On this basis, we preliminarily determine that a countervailable benefit of 2.88 percent *ad valorem* exists for Gold East for this program.

#### Reduced Income Tax Rates for FIEs Based on Location

FIEs are encouraged to locate in designated coastal economic development zones, special economic zones, and economic and technical development zones in the PRC through preferential income tax rates. This program was originally created in 1988 under the Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIE in Coastal Economic Zone of the Ministry of Finance and is currently administered under the FIE Tax Law, and Decree 85 of the State Council of 1991 (Decree 85). Under Article 7 of the FIE Tax Law and Article 71 of Decree 85, "productive" FIEs located in the designated economic zones pay corporate income tax at a reduced rate of either 15 or 24 percent, depending on the zone.

For the income tax return filed during the POI, Chenming paid income tax at a reduced rate of 24 percent, based on its location in a Economic and Technical Development Zone. Because Gold East and GHS did not pay income taxes during the POI (due to their participation in the Two Free, Three Half program), we are treating this program as not used by Gold East during the POI.

We preliminarily determine that the reduced income tax rate paid by "productive" FIEs located in certain zones 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 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 the exemption/reduction afforded by this program is limited to enterprises located in designated geographical 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 Chenming as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by Chenming's total sales during that period. To compute the amount of tax savings, we compared the rate paid by Chenming (24 percent) to the rate that would be paid by a domestic corporation in the PRC (30 percent). On this basis, we preliminarily determine that a countervailable benefit of 0.34 percent *ad valorem* exists for Chenming for this program.

#### Local Income Tax Exemption and Reduction Program for "Productive" FIEs

Under Article 9 of the FIE Tax Law, the governments of the provinces, the autonomous regions, and the centrally governed municipalities have been delegated the authority to provide exemptions and reductions of local income tax for industries and projects for which foreign investment is encouraged. As such, the local governments establish the eligibility criteria and administer the application process for any local tax reductions or exemptions. Therefore, the requirements and application procedures for this program may vary between jurisdictions.

Chenming, Gold East, and GHS reported receiving local income tax exemptions under this program. Chenming's local tax authority granted the company an exemption because Chenming was an FIE located in a coastal economic zone, specifically, in an Economic and Technical Development Zone.

Gold East references Article 3 of the Regulations for the Local Income Tax Exemption and Reduction of Jiangsu Province for Enterprises with Foreign Investment as the basis for its local tax exemption. Under these provincial regulations, productive FIEs in the Jiangsu Province are exempt from local income taxes during the period in which they use the "Two Free, Three Half" program. Because Gold East and GHS participated in the "Two Free, Three Half" program during the POI,

they were exempt from the local income tax.

We preliminarily determine that the local tax exemption and reduction program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the local governments and it provides a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that the exemption afforded to Chenming by this program is limited to enterprises located in designated geographical regions and, hence, is specific under section 771(5A)(D)(iv) of the Act. In the case of Gold East, we preliminarily determine that the program is limited as a matter of law to certain enterprises, *i.e.*, productive FIEs, and is specific under section 771(5A)(D)(i) of the Act for the reasons explained above.

To calculate the benefit, we treated the income tax savings enjoyed by the companies as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the zero percent rate paid by Chenming, Gold East and GHS to the rate that would otherwise be paid by a domestic corporation in the PRC (3 percent). For Chenming, we divided the income tax savings during the POI by Chenming's total sales. For Gold East, we attributed the tax savings received by Gold East and GHS to the combined sales of the two companies. On this basis, we preliminarily determine that a countervailable benefit of 0.17 percent *ad valorem* exists for Chenming and a countervailable benefit of 0.31 percent *ad valorem* exists for Gold East.

#### Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs

Provisions in GUOSHUIFA (2000) No. 90, Administrative Measures on Enterprise Income Tax Credits for Purchase of Domestic Equipment by FIEs and Foreign Enterprises, 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, permit 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 applies

to any domestically produced equipment so long as the equipment is not listed in the Catalog of Non-Duty-Exemptible Articles of Importation. The program has been in effect since 1999 and its purpose, according to the GOC, is to attract foreign investment.

To receive a tax credit under this program, requesting enterprises must submit an application to the local tax authority within two months of purchasing the equipment. Once approved, the credit can be claimed on the enterprise's income tax return. The amount of the credit is limited to the lesser of 40 percent of the purchase price of the domestically produced equipment or the incremental increase in income taxes owed over the previous year.

Chenming reported receiving tax credits under this program during the POI; Gold East did not.

We preliminarily determine that income tax credits on the purchase of domestically produced equipment by FIEs are countervailable subsidies. The tax credits are a financial contribution in the form of revenue forgone by the local governments 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 351.509(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 Chenming as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the benefit received during the POI by Chenming's sales of CFS during that period. On this basis, we preliminarily determine that a countervailable benefit of 2.98 percent *ad valorem* exists for Chenming for this program.

#### D. VAT and Duty Exemptions

##### VAT Rebates on Purchases of Domestically Produced Equipment

As outlined in GUOSHUIFA (1999) No. 171, Trial Administrative Measures on Purchase of Domestic Equipment by Projects with Foreign Investment (1999 VAT Measures), the GOC refunds the VAT on purchases by FIEs of certain domestically produced equipment. Article 3 of the 1999 VAT Measures specifies that this program is limited to FIEs including exclusively foreign-owned enterprises. Article 4 of the 1999 VAT Measures 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. Based on the GOC's and companies' responses, the receipt of the VAT rebates on domestically produced equipment is granted to FIEs upon presentation of documents showing their FIE status.

Chenming, Gold East, and certain of Gold East's cross-owned companies reported receiving VAT rebates on their purchases of domestically produced equipment 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.

To calculate the benefit, we treated the VAT rebates as a recurring benefit, consistent with 19 CFR 351.524(c)(1). For Chenming, we divided the VAT rebates received during the POI by Chenming's sales of CFS in that period. For Gold East, we calculated the benefit in accordance with the attribution rules described in 19 CFR 351.525(b)(6). On this basis, we preliminarily determine that a countervailable benefit of 1.45 percent *ad valorem* exists for Chenming and a countervailable benefit of 0.35 percent *ad valorem* exists for Gold East for this program.

The GOC has claimed that the goal of this program is to equalize the tax burden on the purchase of domestically produced and imported equipment by FIEs. (As explained below, FIEs are also exempt from paying the value added tax on imported equipment.) Thus, the GOC argues, the Department should not find the VAT rebates on domestically produced equipment to be an import substitution subsidy.

Although the VAT rebates are available to FIEs on both domestically produced and imported equipment, the GOC has not demonstrated that both rebates are integrally linked. In accordance with 19 CFR 351.502(c), the Department will consider whether two programs are integrally linked for purposes of making its specificity determination, but the burden lies with

the GOC to claim that the VAT exemptions/rebates are linked and to provide evidence in support of the claim. That burden has not been met. Moreover, as explained above, we are preliminarily determining that FIEs constitute a specific group of enterprises. Consequently, even if we were to treat the VAT rebate and exemption programs as integrally linked, we would still find the benefits to be specific.

#### VAT and Tariff 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. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.

Chenming, Gold East and certain of Gold East's cross-owned companies received VAT and duty exemptions under this program due to their status as FIEs. Specifically, the companies are authorized to receive the exemptions based on their FIE status and the list of assets approved by the GOC at the time their FIE status was approved. Domestic enterprises eligible for the VAT and duty exemptions must have government-approved projects that are in line with the current "Catalog of Key Industries, Products, and Technologies the Development of Which is Encouraged by the State." Whether an FIE or domestic enterprise, only equipment that is not listed in the Catalog on Non-Duty Exemptible Article for Importation is eligible for the VAT and duty exemptions. (Different Catalogs are prepared for FIEs and domestic enterprises.) To receive the exemptions, a qualified enterprise only has to show a certificate provided by the National Development and Reform Commission ("NDRC"), or its provincial branch, to the customs officials upon importation of the equipment.

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).

With regard to specificity, certain domestic enterprises are eligible to receive VAT and tariff exemptions

under this program as well as FIEs. Based on the information provided by the GOC, it does not appear that the addition of these domestic enterprises broadens the reach or variety of users sufficiently to render the program non-specific. For example, to be eligible, the domestic enterprise must have been involved in an investment project that was "in line with" the Current Catalog of Key Industries, Products and Technologies the Development of Which is Encouraged by the State. While this Catalog was reportedly revoked in 2005, the projects still must apparently be approved by the State Council, the NDRC, or an agency to which authority has been delegated (*see* Certificates for State-Encouraged Foreign-or Domestically-Invested Projects for Domestically-Invested Enterprises FAGAIGUIHUA (2003) 900). Therefore, we preliminarily find the VAT and tariff exemptions to be specific under section 771(5A)(D)(iii)(I). To calculate the benefit, we treated the VAT and tariff exemptions as a recurring benefit, consistent with 19 CFR 351.524(c)(1). For Chenming, we divided the amount of the VAT and tariff exemptions enjoyed by Chenming during the POI by the company's sales in that period. For Gold East, we calculated the benefit in accordance with the attribution rules described in 19 CFR 351.525(b)(6). On this basis, we preliminarily determine that a countervailable benefit of 0.10 percent *ad valorem* exists for Chenming and a countervailable benefit of 2.60 percent *ad valorem* exists for Gold East for this program.

#### *E. Domestic VAT Refunds for Companies Located in the Hainan Economic Development Zone*

According to Yangpu local tax regulations, enterprises located in the Economic Development Zone of Hainan may enjoy several tax preferences. These preferences are described in Preferential Policies of Taxation, which includes the eligibility criteria needed to qualify for the preferences. Under "Preferential Policies Regarding Investment by Manufacturer," high-tech or labor intensive enterprises with investment over RMB 3 billion and more than 1000 local employees may be refunded 25 percent of the VAT paid on domestic sales (the percentage of the tax received by the local government) starting in the first year the company has production and sales. The VAT refund can continue for five years.

One of Gold East's cross-owned companies was a qualifying manufacturing enterprise in the Economic Development Zone of Hainan

and reported that it received the VAT refund in the POI. The cross-owned company further added that because the capital and number of employees are registered with the local government, the tax refund is automatically granted.

We preliminarily determine that the domestic VAT refunds confer a countervailable subsidy. The refund is a financial contribution in the form of revenue forgone by the local government and it provides a benefit to the recipient in the amount of the refunded taxes. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a). In addition to the investment and employee eligibility criteria described above, it appears that recipients must be located in the Economic Development Zone because these enterprises also pay income tax at a regionally-reduced rate. *See* “Reduced Income Tax Rates for FIEs Based on Location,” above. Therefore, we preliminarily determine that the program is limited to enterprises located in a designated geographical region and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the VAT refund received by the cross-owned company as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We then attributed the benefit to sales of the input and the downstream products. On this basis, we preliminarily determine that a countervailable benefit of 0.19 percent *ad valorem* exists for Gold East.

#### F. Other Subsidies (Chenming)

Chenming reported four additional programs in which it participated. These programs may be connected to programs discussed above, but the information on the current record does not allow us to decide that. Chenming cited municipal government circulars relevant to these programs, but neither Chenming nor the GOC provided copies of these documents. However, based on the information submitted by Chenming, we preliminarily determine that these programs constitute countervailable subsidies within the meaning of section 771(5) of the Act.

Due to Chenming's request that the Department treat information about these four programs as business proprietary, we discuss these additional programs in more detail in the Proprietary Analysis Memorandum, at xx. As calculated in the Proprietary Analysis Memorandum, we determine the combined countervailable subsidy for these programs to be 1.45 percent *ad valorem* for Chenming.

## II. Programs Preliminarily Determined To Be Not Countervailable

### A. Debt-to-Equity Swap for APP China

In 2001, Asia Pulp & Paper (APP) defaulted on nearly \$14 billion of debt. A portion of the debt was owed by one of APP's subsidiaries, APP China. According to petitioner, in 2003, APP China agreed to a debt-to-equity swap in which the Chinese creditors participated. The petitioner alleges that APP China was unequityworthy at the time of the equity infusion and that the transaction was at the discretion of the GOC state-owned banks, as well as being inconsistent with the usual investment practice of private investments.

In response to our original and supplemental questionnaires, the GOC and Gold East have asserted that no GOC banks were involved in a debt-to-equity swap with APP or any of its Chinese subsidiaries, including Gold East. Furthermore, Gold East has provided additional proprietary information regarding the above allegation.

Based on record information, we preliminarily determine that GOC state-owned banks were not involved in a debt-to-equity swap with APP China or any of its subsidiaries. Therefore, we do not find this program countervailable. Our analysis is presented in a separate memorandum because of the proprietary nature of the issue. *See* Memorandum to Susan Kuhbach, “APP Debt-to-Equity Analysis” (March 29, 2007) (memorandum is on file in Department's CRU).

## III. Programs Preliminarily Determined To Be Not Used

### Clean Production Technology Fund

The purpose of this program is to provide incentives and rewards (monetary or non-monetary) to encourage enterprises to conduct clean production inspections, with the goal of protecting the environment. The program entered into force in October 2004, and was authorized by Decree No. 16 of the NDRC and the National Administration of Environmental Protection entitled Provisional Measures on Clean Production Inspection (Decree No. 16).

Any payments under this program are made at the local level. Shouguang City, the relevant authority for Chenming, reported that it made no grants under this program during 2004 and 2005. Gold East reported that it received a grant under this program.

Based on our analysis, any potential benefit to Gold East under this program

is less than 0.005 percent. Where the countervailable subsidy rate for a program is less than 0.005 percent, the program is not included in the total countervailing duty 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), and the accompanying Issues and Decision Memorandum, at “Other Programs Determined to Confer Subsidies”). Therefore, we do not plan to pursue this alleged subsidy further in this investigation.

We preliminarily determine that the producers/exporters of CFS did not apply for or receive benefits during the POI under the programs listed below.

#### A. Direction Adjustment Tax on Fixed Assets

#### B. Income Tax Exemption Program for Export-oriented FIEs

#### C. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-oriented Enterprises

#### D. Discounted Loans for Export-Oriented Enterprises

#### E. Exemption from Payment of Staff and Worker Benefits for Export-oriented Enterprises

#### F. Subsidies to Input Suppliers<sup>5</sup>

1. Preferential tax policies for FIEs engaged in forestry and established in remote underdeveloped areas.

2. Preferential tax policies for enterprises engaged in forestry

3. Special fund for projects for the protection of natural forestry

4. Compensation fund for forestry ecological benefits

For purposes of this preliminary determination, we have relied on the GOC's and respondent companies' responses to preliminarily determine non-use of the programs listed above. During the course of verification, the Department will examine whether these programs were used by respondent companies during the POI.

#### 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

<sup>5</sup> For a discussion of these programs, please see the “Input Products” section above.

an individual rate for each exporter/manufacturer of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Exporter/manufacturer	Net subsidy rate (percent)
Gold East Paper (Jiangsu) Co., Ltd. ....	20.35
Shandong Chenming Paper Holdings Ltd. ....	10.90
All Others .....	18.16

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not investigated, we have determined an "all others" rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States, if available, or CFS exports to the United States. The all others rate does not include zero and *de minimis* rates or any rates based solely on the facts available.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of CFS 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.

#### 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.

#### Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. 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, NW., 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: April 2, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7-6498 Filed 4-6-07; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**C-560-821**

#### **Coated Free Sheet Paper from Indonesia: Notice of Preliminary Affirmative Countervailing Duty Determination**

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

**SUMMARY:** The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to

producers and exporters of coated free sheet paper (CFS) in Indonesia. For information on the subsidy rates, see the "Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** April 9, 2007.

#### **FOR FURTHER INFORMATION CONTACT:**

Sean Carey, Jacqueline Arrowsmith, or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3964, (202) 482-5255, or (202) 482-3586, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On November 20, 2006, the Department initiated a countervailing duty (CVD) investigation of CFS from Indonesia. *See Notice of Initiation of Countervailing Duty Investigations: Coated Free Sheet Paper from the People's Republic of China, Indonesia, and the Republic of Korea*, 71 FR 68546 (November 27, 2006) (*Initiation Notice*) (*CFS Investigations*). In the *Initiation Notice*, the Department set aside a period for all interested parties to raise issues regarding product coverage. The comments we received are discussed in the "Scope Comments" section below. On November 30, 2006, the Department issued a CVD questionnaire to the Government of Indonesia (GOI). The questionnaire informed the GOI that it was responsible for forwarding the questionnaire to producers/exporters of CFS. The Department also provided courtesy copies of the questionnaire to PT. Pabrik Kertas Tjiwi Kimia Tbk. (TK) and to PT. Pindo Deli Pulp and Paper Mills (PD), who the GOI identified as the sole producers/exporters of CFS from Indonesia.

On December 29, 2006, the Department postponed the preliminary determination until March 30, 2007. *See Coated Free Sheet Paper from Indonesia, the People's Republic of China and the Republic of Korea: Notice of Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 71 FR 78403 (December 29, 2006). On January 25, 2007, TK and PD (collectively, respondents), and the GOI submitted their questionnaire responses. On February 2 and February 12, 2007, the Department received comments from the petitioner regarding these questionnaire responses. On February 16, 2007, the Department issued supplemental questionnaires to the GOI and to the respondents. The GOI and the respondents submitted their