

on certain orange juice from Brazil. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 20986 (Apr. 27, 2007). The period of review is August 24, 2005, through February 28, 2007, and the preliminary results are currently due no later than December 3, 2007. The review covers three producers/exporters of the subject merchandise to the United States.

#### Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping order within 245 days after the last day of the anniversary month of the date of publication of the order. Section 751(a)(3)(A) of the Act further provides, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. We determine that it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of the Act because of technical issues contained in supplemental questionnaire responses. Analysis of these issues requires additional time. Therefore, we have fully extended the deadline for completing the preliminary results until March 31, 2008, the next business day after 365 days from the last day of the anniversary month of the date of publication of the order. The deadline for the final results of the review continues to be 120 days after the publication of the preliminary results.

This extension notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: November 5, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7-22185 Filed 11-9-07; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent

scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before December 3, 2007. Address written comments to Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 2104.

Docket Number: 07-062. Applicant: Battelle Memorial Institute, Pacific Northwest Division, 902 Battelle Blvd., Richland, WA 99354. Instrument: Electron Microscope, Model FIB/SEM. Manufacturer: FEI Company, Netherlands. Intended Use: The instrument is intended to be used for all science disciplines from biological to material science samples. The Environmental Molecular Science Laboratory, where the instrument will be housed, is a National Scientific User Facility and any scientist may use the laboratory and this instrument for free as long as they agree to publish their findings. The instrument will be used to support the ongoing science of interfacial phenomena, nanotechnology and catalysts interaction, along with other studies. Application accepted by Commissioner of Customs: October 26, 2007.

Docket Number: 07-063. Applicant: University of California San Diego, National Center for Microscopy and Image Research, 9500 Gilman Drive, MC 0608, Basic Science Building, Room 1000, La Jolla, CA 92093-0608.

Instrument: Electron Microscope, Model Titan 80-300 C-Twin STEM. Manufacturer: FEI Company, Netherlands. Intended Use: The instrument is intended to be used to study biological specimens prepared for electron microscopic imaging and involves the elucidation of the 3D structural information of target materials. Project investigations span basic and translational science, including neuroscience, neurodegenerative diseases, heart disease, stroke, etc. Application accepted by Commissioner of Customs: November 2, 2007.

Docket Number: 07-066. Applicant: St. Jude Children's Research Hospital, 332 North Lauderdale, Memphis, TN 38105. Instrument: Electron Microscope, Model Tecnai G<sup>2</sup> F20 TWIN. Manufacturer: FEI Company, Netherlands. Intended Use: The instrument is intended to be used to study the intracellular components of biological samples obtained from mice, rats, cell cultures, viruses, bacteria and

particulate material. The study will perform experiments using genetically altered mice and rats to better understand the mechanism involved in cancer at the intracellular level.

Application accepted by Commissioner of Customs: October 29, 2007.

Docket Number: 07-067. Applicant:

National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, OH 45226.

Instrument: Electron Microscope, Model JEM-2100F. Manufacturer: Jeol Ltd., Japan. Intended Use: The instrument is intended to be used for multiple research projects throughout the Institute. Applications include analysis of asbestos and other fiber types, nanotechnology-related materials (e.g., carbon nanotubes and fibers, tungsten fibers, metal oxides), aerosol research, ultrafine particles emissions, general support for laboratory and field research, methods development, and evaluation of engineering controls and personal protective equipment. Application accepted by Commissioner of Customs: October 30, 2007.

Dated: November 6, 2007.

**Faye Robinson,**

*Director, Statutory Import Programs Staff.*

[FR Doc. E7-22151 Filed 11-9-07; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-911]

#### Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

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

**SUMMARY:** The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers and exporters of circular welded carbon quality steel pipe from the People's Republic of China. For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice. The Department further determines preliminarily that critical circumstances exist with respect to imports of the subject merchandise. This notice also serves to align the final countervailing duty determination in this investigation

with the final determination in the companion antidumping duty investigation of circular welded carbon quality steel pipe from the People's Republic of China.

**EFFECTIVE DATE:** November 13, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Salim Bhabhrawala, Damian Felton, or Shane Subler, 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) 482-1784, (202) 482-0133, or (202) 482-0189, 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 Investigation: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 72 FR 36668 (July 5, 2007) (*Initiation Notice*).

On July 26, 2007, the Department selected the three largest Chinese producers/exporters of circular welded carbon quality steel pipe (CWP), Tianjin Shuangjie Steel Pipe Group Co., Ltd. (Shuangjie), Weifang East Steel Pipe Co., Ltd. (East Pipe), and Zhejiang Kingland Pipeline and Technologies Co., Ltd. (Kingland), as mandatory respondents. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, "Respondent Selection" (July 26, 2007). This memorandum is on file in the Department's Central Records Unit in Room B-099 of the main Department building (CRU). On July 27, 2007, we issued the countervailing duty (CVD) questionnaire to the Government of the People's Republic of China (GOC), East Pipe, Kingland, and Shuangjie.

On July 31, 2007, 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 CWP from the People's Republic of China (PRC). See *Circular Welded Carbon-Quality Steel Pipe from the PRC*, Investigation Nos. 701-TA-447 and 731-TA-1116, 72 FR 43295 (Preliminary) (August 3, 2007).

On August 2, 2007, we published a postponement of the preliminary determination of this investigation until November 5, 2007. See *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Notice of Postponement of Preliminary*

*Determination in the Countervailing Duty Investigation*, 72 FR 42399 (August 2, 2007).

The Ad Hoc Coalition for Fair Pipe Imports from the PRC and the United States Steel Workers (collectively, petitioners) filed a new subsidy allegation on August 21, 2007. On September 7, 2007, the Department determined to investigate aspects of the newly alleged subsidy relating to currency retention. See Memorandum to Susan Kuhbach, Director, AD/CVD Operations, Office 1, "New Subsidy Allegation" (September 7, 2007). The GOC submitted comments responding to petitioners' new subsidy allegation on September 10, 2007. Questions regarding this newly alleged subsidy were sent to the GOC and the respondent companies on September 11, 2007.

The petitioners alleged that critical circumstances exist with respect to imports of CWP from the PRC on September 17, 2007. See 19 CFR 351.206. Shuangjie submitted comments responding to petitioners' allegations of critical circumstances on September 24, 2007. Petitioners responded to Shuangjie's comments on September 27, 2007. The Department issued questionnaires to the respondent companies regarding the critical circumstances allegation on October 24, 2007. Responses to these questionnaires were received from Kingland and East Pipe on October 31, 2007, and November 1, 2007, respectively. As explained further below, Shuangjie did not respond. We address the allegation of critical circumstances below.

On September 24, 2007, petitioners requested that the Department extend the deadline for the submission of new subsidy allegations beyond September 26, the normal deadline established in the Department's regulations. See 19 CFR 351.301(d)(4)(i)(A). The Department granted an extension of the deadline to October 5, and on that date received additional new subsidy allegations from the petitioners. The Department intends to address those allegations in the near future.

We received responses to our CVD questionnaires from the GOC and the respondent companies on September 17, 2007, September 24, 2007, September 25, 2007, and October 19, 2007. The petitioners filed comments on these responses as follows: GOC - September 24, 2007, October 1, 2007 and October 11, 2007; East Pipe - September 25, 2007, September 27, 2007, and October 1, 2007; Kingland - September 25, 2007, and October 1, 2007; and, Shuangjie - September 25, 2007, and October 1, 2007.

We issued supplemental questionnaires to: East Pipe, Kingland and Shuangjie on October 4, 2007; the GOC on October 9, 2007 and October 10, 2007; and Shuangjie on October 25, 2007. We received responses to these supplemental questionnaires from the GOC on October 23, 2007; East Pipe on October 18 and 19, 2007; and Kingland and Shuangjie on October 18, 2007. Petitioners filed comments on these supplemental responses as follows: Shuangjie on October 23, 2007, and East Pipe, Kingland and Shuangjie on October 25, 2007.

On October 26, 2007, the petitioners submitted comments for consideration in the preliminary determination.

On October 31, 2007, Shuangjie withdrew from the investigation and requested that the Department return all of its proprietary fillings.

On August 20, 2007, Jiangsu Yulong Steel Pipe Co., Ltd. ("Yulong"), requested that the Department reconsider its mandatory respondent selection in this investigation. In addition, Yulong requested that if the Department declined to revisit its mandatory respondent selection process, that Yulong be allowed to participate as a voluntary respondent. On August 23, 2007, the Department declined Yulong's request that the Department revisit its mandatory respondent selection process. However, the Department did state that it would consider accepting Yulong as a voluntary respondent at a later date. Yulong filed timely responses to the Department's CVD questionnaires on September 17, 2007, and September 24, 2007.

Even though Shuangjie has withdrawn from the investigation, we were unable to analyze Yulong's voluntary responses for consideration in this preliminary determination. Shuangjie's October 31, 2007 withdrawal came five days before the preliminary determination and, thus, the Department was unable to complete the necessary analyses of Yulong's submissions and issue the necessary supplemental questionnaires in sufficient time for the preliminary determination. Furthermore, the Department will not have sufficient time or resources to analyze Yulong's responses during the remainder of this investigation. Based on our experiences with the mandatory respondents in this investigation, it is likely that detailed supplemental questionnaires will be required in order to gather the information necessary to calculate an CVD rate for Yulong. At this point in the proceeding, analyzing Yulong's responses and issuing detailed

supplemental questionnaires prior to the final determination would be extremely burdensome and would likely inhibit the timely completion of the investigation. Consequently, the Department is not accepting Yulong as a voluntary respondent and will not calculate an individual countervailing duty rate for Yulong.

On November 2, 2007, petitioners requested that the final determination of this countervailing duty investigation be aligned with the final determination in the companion antidumping duty investigation in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act). We address this request below.

### Scope Comments

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323, (May 19, 1997) and *Initiation Notice*, 72 FR at 36669.

On July 19, 2007, the petitioners submitted comments concerning the scope of the CWP antidumping and countervailing duty investigations. MAN FERROSTAAL INC., MACSTEEL SERVICE CENTERS USA, and SUNBELT GROUP L.P. (collectively, FERROSTAAL) also submitted comments concerning the scope of these investigations on July 19, 2007. The petitioners and FERROSTAAL both submitted rebuttal comments on July 26, 2007.

We have analyzed the comments of the interested parties regarding the scope of this investigation. See Memorandum to Stephen J. Claey, Deputy Assistant Secretary for Import Administration, Re: Scope of the Antidumping and Countervailing Duty Investigations of Circular Welded Carbon Quality Steel Pipe from the People's Republic of China, "Analysis of Comments and Recommendation for Scope of Investigations" (November 5, 2007). Our position on these comments is reflected below.

### Scope of the Investigation

The scope of this investigation covers certain welded carbon quality steel pipes and tubes, of circular cross-section, and with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), whether or not stenciled, regardless of wall thickness, surface finish (e.g.,

black, galvanized, or painted), end finish (e.g., plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (e.g., ASTM, proprietary, or other), generally known as standard pipe and structural pipe (they may also be referred to as circular, structural, or mechanical tubing).

Specifically, the term "carbon quality" includes products in which (a) iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

- (i) 1.80 percent of manganese;
- (ii) 2.25 percent of silicon;
- (iii) 1.00 percent of copper;
- (iv) 0.50 percent of aluminum;
- (v) 1.25 percent of chromium;
- (vi) 0.30 percent of cobalt;
- (vii) 0.40 percent of lead;
- (viii) 1.25 percent of nickel;
- (ix) 0.30 percent of tungsten;
- (x) 0.15 percent of molybdenum;
- (xi) 0.10 percent of niobium;
- (xii) 0.41 percent of titanium;
- (xiii) 0.15 percent of vanadium; or
- (xiv) 0.15 percent of zirconium.

Standard pipe is made primarily to American Society for Testing and Materials ("ASTM") specifications, but can be made to other specifications. Standard pipe is made primarily to ASTM specifications A-53, A-135, and A-795. Structural pipe is made primarily to ASTM specifications A-252 and A-500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. This is often the case, for example, with fence tubing. Pipe multiple-stenciled to a standard and/or structural specification and to any other specification, such as the American Petroleum Institute ("API") API-5L or 5L X-42 specifications, is also covered by the scope of this investigation when it meets the physical description set forth above and also satisfies one or more of the following characteristics: is a single random length; less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish.

The scope of this investigation does not include: (a) pipe suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) mechanical tubing, whether or not cold-drawn; (c) finished electrical conduit; (d) finished scaffolding; (e) tube and pipe hollows for redrawing; (f) oil country tubular goods produced to API specifications;

and (g) line pipe produced to only API specifications.

The pipe products that are the subject of this investigation are currently classifiable in HTSUS statistical reporting numbers 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90, 7306.50.10.00, 7306.50.50.50, 7306.50.50.70, 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. However, the product description, and not the HTSUS classification, is dispositive of whether merchandise imported into the United States falls within the scope of the investigation.

### Use of Facts Otherwise Available

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

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

In this case, Shuangjie did not provide information we requested that is necessary to determine a

countervailing duty rate for this preliminary determination. Specifically, Shuangjie did not respond to the Department's October 24, 2007, request for shipment data relating to the allegation of critical circumstances, did not respond to the Department's October 25, 2007, supplemental questionnaire and, finally, on October 31, 2007, withdrew all of its proprietary information from the record. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2)(A), and (C) of the Act, we have based Shuangjie's countervailing duty rate on facts otherwise available.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See *Statement of Administrative Action* (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session (1994) at 870. Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. See SAA at 869.

In selecting from among the facts available, the Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act because, in addition to not responding to all of our requests for information, Shuangjie has withdrawn

all of its proprietary information and has withdrawn from all participation in the investigation thereby precluding verification of the public information remaining on the record. Thus, Shuangjie failed to cooperate by not acting to the best of its ability, and our preliminary determination is based on AFA.

#### **Selection of the Adverse Facts Available Rate**

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding. See, e.g., *Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 71 FR 66165 (November 13, 2006), and accompanying Issues and Decision Memorandum at "Analysis of Programs."

The Department's practice when selecting an adverse margin from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*; 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." See *Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990).

Because Shuangjie failed to act to the best of its ability, as discussed above, for each program examined, we made the adverse inference that Shuangjie benefitted from the program unless the

record evidence made it clear that Shuangjie could not have received benefits from the program because, for example, we have preliminarily found the program not countervailable. See, e.g., *Certain Cold-Rolled Carbon Steel Flat Products From Korea: Final Affirmative CVD Determination*, 67 FR 62102 (October 3, 2002) and accompanying Issues and Decision Memorandum at "Methodology and Background Information." To calculate the program rates, we have generally relied upon the highest program rate calculated for any responding company in this investigation as adverse facts available. See *Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 71 FR 66165 (November 13, 2006) and accompanying Issues and Decision Memorandum at "Analysis of Programs."

Thus, for programs based on the provision of goods at less than adequate remuneration, we have used the Kingland rate for the provision of hot-rolled steel for less than adequate remuneration. For value added tax ("VAT") programs, we are unable to utilize company-specific rates from this proceeding because neither respondent received any countervailable subsidies from these subsidy programs. Therefore, for VAT programs we are applying the highest subsidy rate for any program otherwise listed, which in this instance is Kingland's rate for the provision of hot-rolled steel for less than adequate remuneration.

Similarly, for the grant programs, we are not relying on the highest calculated preliminary subsidy rate because it is *de minimis*. Instead, we are applying the highest calculated preliminary subsidy rate, which in this instance is Kingland's rate for the provision of hot-rolled steel for less than adequate remuneration.

Finally, for the seven alleged income tax programs pertaining to either the reduction of the income tax rates or the payment of no income tax, we have applied an adverse inference that Shuangjie paid no income tax during the period of investigation (*i.e.*, calendar year 2006). The standard income tax rate for corporations in the PRC is 30 percent, plus a 3 percent provincial income tax rate. Therefore, the highest possible benefit for these seven income tax programs is 33 percent. We are applying the 33 percent AFA rate on a combined basis (*i.e.*, the seven programs combined provided a 33 percent benefit). This 33 percent AFA rate does not apply to income tax deduction or credit programs. For income tax

deduction or credit programs we are applying the highest subsidy rate for any program otherwise listed, which in this instance is Kingland's rate for provisions of hot-rolled-steel at less than adequate remuneration. See Memorandum to the File, entitled "Selection of the Adverse Facts Available Rate for Tianjin Shuangjie Steel Pipe Co., Ltd." (November 5, 2007) (this memorandum is on file in the Department's CRU).

We do not need to corroborate the calculated subsidy rates we are using as AFA because they are not considered secondary information as they are based on information obtained in the course of this investigation. See section 776(c) of the Act; see also the SAA at 870.

We have also identified certain instances in which the GOC has failed to cooperate to the best of its ability in providing requested information. First, in our questionnaire, we asked the GOC to provide information about the hot-rolled steel industry in the PRC (including a description of the industry, users of hot rolled steel in the PRC, and whether hot-rolled steel producers are state-owned enterprises). The GOC limited its response to the "hot-rolled steel narrow strip" industry, arguing that this narrow strip industry was separate from the hot-rolled steel industry. In our supplemental questionnaire, we asked the GOC to provide the requested information for the hot-rolled steel industry as a whole. While some limited information was provided in the GOC's supplemental questionnaire response (October 23, 2007), the GOC stated, "We hope to prove (*sic*) the Department a broader analysis of hot-rolled steel producers at a later date." Similarly, in response to our supplemental questionnaire seeking additional information on rates charged for water in Tianjin (where Shuangjie is located), the GOC responded that it had contacted the local agencies and was awaiting their reply (this rate information had also been requested in our initial questionnaire).

The failure to provide this information within the established deadlines has impeded our investigation. Moreover, the GOC has not provided us with any plausible explanation as to why it cannot provide us with the information within the established deadlines. Therefore, we preliminarily determine that the GOC has failed to act to the best of its ability and we are applying facts available with an adverse inference to address these omissions. With respect to hot-rolled steel, the Department is preliminarily rejecting prices in the PRC as possible benchmarks for determining whether

hot-rolled steel is being provided for less than adequate remuneration. With respect to water, we are preliminarily finding that this input is being provided for less than adequate remuneration for Shuangjie, as AFA.

#### Critical Circumstances

On September 17, 2007, petitioners requested that the Department make an expedited finding that critical circumstances exist with respect to imports of CWP from the PRC. Section 703(e)(1) of the Act states that if the petitioner alleges critical circumstances, the Department will determine, on the basis of information available to it at the time, if there is a reason to believe or suspect the alleged countervailable subsidy is inconsistent with the WTO Agreement on Subsidies and Countervailing Measures (the SCM Agreement) and whether there have been massive imports of the subject merchandise over a relatively short period.

In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted a critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination. See, e.g., *Policy Bulletin 98/4 regarding Timing of Issuance of Critical Circumstances Determinations*, 63 FR 55364 (October 15, 1998). Due to resource constraints, we were unable to accommodate petitioners' request that the Department make an expedited determination with respect to critical circumstances. Specifically, given the complex issues inherent to this investigation, *i.e.*, the second countervailing duty investigation of imports from the PRC, as well as the multiple other ongoing antidumping and countervailing duty investigations, the Department was unable to make a critical circumstances determination prior to the preliminary results of this investigation.

We preliminarily find that East Pipe received no countervailable subsidies inconsistent with the SCM Agreement. Therefore, in accordance with section 703(e)(1) of the Act, we preliminarily determine that critical circumstances do not exist with respect to imports of CWP from East Pipe.

As discussed in the *Analysis of Programs* section below, the Department has preliminarily determined that Kingland received countervailable export subsidies during the POI. These export subsidies are inconsistent with the SCM Agreement. Although the

countervailable subsidy rate for these export subsidies is *de minimis*, use of an export subsidy program is sufficient to make an affirmative preliminary determination of critical circumstances under section 703(e)(1)(A) of the Act. See *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada*, 66 FR 43186, 43189–90 (August 17, 2001); and *Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order: Certain Softwood Lumber Products From Canada*, 67 FR 36070 (May 22, 2002) (the unchanged final determination).

Regarding Shuangjie, we have made an adverse inference that Shuangjie benefitted from countervailable export and import substitution subsidy programs pursuant to our determination to apply AFA to this company.

For "all other" exporters, we are basing our finding on the experience of Kingland and, therefore, find that "all others" benefitted from export subsidies.

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 703(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for three months immediately preceding the filing of the petition (*i.e.*, the base period) with the three months following the filing of the petition (*i.e.*, the comparison period). Section 351.206(h)(1) of our regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Finally, 19 CFR 351.206(i) defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.

On October 31, 2007, Kingland filed its monthly shipment data for subject merchandise exported to the United States for calendar years 2005 and 2006, and for January through September 2007. Based upon these data, we preliminarily find that Kingland's CWP

imports increased more than 15 percent during the “relatively short period.” See Memorandum to the File Re “Critical Circumstances Analysis for Zhejiang Kingland Pipeline and Technologies Co., Ltd. Import Shipment Analysis for Zhejiang Kingland Pipeline and Technologies Co., Ltd. and “All Others” (November 5, 2007) (Import Analysis Memorandum) (this memorandum is on file in the Department’s CRU). Therefore, we preliminarily determine that the requirements of section 703(e)(1)(B) of the Act have been satisfied, and that critical circumstances exist for Kingland.

Regarding Shuangjie, as part of our adverse facts available determination we have made an adverse inference that there were massive imports from Shuangjie over a relatively short period. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan*, 68 FR 71072, 71076–77 (December 22, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons from Japan*, 69 FR 11834 (March 12, 2004) (the unchanged final determination). Therefore, we preliminarily determine that the requirements of section 703(e)(1)(B) of the Act have been satisfied, and that critical circumstances exist for Shuangjie.

For “all others,” we preliminarily determine that there were massive imports over a relatively short period based on import statistics from the ITC’s Dataweb (adjusted to remove East Pipe’s and Kingland’s shipments). See Import Analysis Memorandum. Therefore, we preliminarily determine that the requirements of section 703(e)(1)(B) of the Act have been satisfied, and that critical circumstances exist for “all others.”

#### **Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination**

On July 5, 2007, the Department initiated the countervailing duty and antidumping duty investigations on CWP from the PRC. See *Initiation Notice and Initiation of Antidumping Duty Investigation: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China*, 72 FR 36663 (July 5, 2007). The countervailing duty investigation and the antidumping duty investigation have the same scope with regard to the merchandise covered.

On November 2, 2007, petitioners submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final countervailing duty determination with the final determination in the companion antidumping duty investigation of CWP from the PRC. Therefore, in accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4), we are aligning the final countervailing duty determination with the final determination in the companion antidumping duty investigation of CWP from the PRC. The final countervailing duty determination will be issued on the same date as the final antidumping duty determination, which is currently scheduled to be issued on or about March 18, 2008. See *Postponement of Preliminary Determination of Antidumping Duty Investigation: Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China* (signed, November 1, 2007) (this memorandum is on file in the Department’s CRU).

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

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*). In that determination, the Department found, “. . . given the substantial differences between the Soviet-style economies and the PRC’s economy in recent years, the Department’s previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.” *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 6; see also Memorandum to David M. Spooner, Countervailing Duty Investigation of Coated Free Sheet Paper from the People’s Republic of China - Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China’s Present-day Economy at 2 (March 29, 2007) (Georgetown Steel Memo).

The GOC, in an October 11, 2007 submission in this proceeding, argues that the Department should not investigate certain newly alleged subsidies that occurred before 2005, the period of investigation in the *CFS from the PRC* proceeding. Citing the Georgetown Steel Memo, the GOC claims that the Department found that “it is possible to determine whether the PRC Government has bestowed a benefit upon a Chinese producer (*i.e.*, the subsidy can be identified and measured) and whether any such benefit is

specific,” as of 2005. See Georgetown Steel Memo at 2. The GOC additionally points to *Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary*, 67 FR 60223 and accompanying Issues and Decision Memorandum at Comment 1 (September 25, 2003) (*Sulfanilic Acid from Hungary*), in which the Department declined to countervail capital infusions received by the respondent in the year prior to Hungary’s transition to a market economy, when Hungary also became subject to the countervailing duty law. Finally, the GOC notes that in the preamble to the Department’s countervailing duty regulations, the Department states that it intends to continue its practice of only countervailing subsidies bestowed after a country’s status is changed to market economy. See *Countervailing Duties; Final Rule*, 63 FR 65348, 65360 (November 25, 1998) (CVD Preamble).

We have carefully reviewed *CFS from the PRC*, the Georgetown Steel Memo, and the CVD Preamble, and do not agree with the GOC that we are precluded from investigating subsidies bestowed prior to 2005. In particular, although 2005 served as the period of investigation in *CFS from the PRC*, we found loans given prior to 2005 under the Policy Lending Program to be countervailable. See *CFS from the PRC* and accompanying Issues and Decision Memorandum at Comment 12. More importantly, although we found that we could apply the CVD law to imports from the PRC, we did not squarely address the issue of how far back in time we should find countervailable subsidies. Now that this issue has been clearly presented in this investigation, we preliminarily determine that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law.

We preliminarily determine that date to be December 11, 2001, the date on which the PRC became a member of the WTO. Prior to this date, many changes were occurring in the PRC’s economy. Many of the obligations undertaken by the PRC pursuant to its accession to the WTO were in line with the PRC’s objective of economic reform. See Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001), for example, at paragraph 4. Taken together, these changes would permit the Department to determine whether the GOC has bestowed a countervailable subsidy on Chinese producers. See *Georgetown Steel Memo; CFS from the PRC* at



Comments 1 and 6. Finally, the GOC acknowledged the changing nature of its economy in so far as its Accession Protocol contemplates the application of the CVD law to the PRC, even while it remains a non-market economy (NME). See Protocol of Accession of the People's Republic of China, WT/L/432 (November 23, 2001) at Section 15(b); see also, CFS at Comment 1. Therefore, for this preliminary determination, we have selected the date of December 11, 2001, as the date from which we will measure countervailable subsidies in the PRC.

#### Period of Investigation

The period for which we are measuring subsidies, or the period of investigation (POI), is calendar year 2006.

#### Subsidies Valuation Information

##### Allocation Period

The average useful life ("AUL") period in this proceeding as described in 19 CFR 351.524(d)(2) is 15 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture primary steel mill products. No party in this proceeding has disputed this allocation period.

##### Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company. The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 604 (CIT 2001).

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This

regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.

*East Pipe:* In its response, East Pipe reported that it is affiliated with East Pipe Transportation Facility Co., Ltd. (East Highway). East Pipe states that East Highway's primary business is to install highway guardrails in the PRC and that East Highway did not produce subject merchandise during the POI. East Pipe further contends that East Highway cannot be considered the holding company of East Pipe because its ownership interest in East Pipe is nominal (the details of the relationship between these two companies are proprietary).

Given the unusual nature of the ownership relation between these companies, we preliminarily agree that any subsidies to East Highway should not be attributed to East Pipe under 19 CFR 351.525(b)(6)(iii). Moreover, because East Highway does not produce subject merchandise, we preliminarily determine that any subsidies it receives should not be attributed to East Pipe under 19 CFR 351.525(b)(6)(ii). See Memorandum from Salim Bhabhrawala to Susan Kuhbach Re: Preliminary Negative Countervailing Duty Determination: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China; Calculations for the Preliminary Determination for Weifang East Steel Pipe Co., Ltd. (November 5, 2007).

East Pipe acknowledges a second company with which it is legally affiliated by virtue of a long-term investment, but which East Pipe views as commercially independent (the details of the relationship between these two companies are also proprietary). According to East Pipe, the company does not produce the subject merchandise and does not provide inputs to East Pipe. Because the company does not produce subject merchandise or otherwise fall within the situations described in 19 CFR 351.525(b)(6)(iii)-(v), we do not need to reach the issue of whether this company and East Pipe are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi), and we are not attributing any subsidies received by this company to East Pipe. Consequently, we are limiting our investigation to subsidies received by East Pipe.

*Kingland:* Kingland has responded to the Department's original and supplemental questionnaires on behalf of itself; its parent company, Kingland Group Co., Ltd. (Kingland Group);

Beijing Kingland Century Technologies Co. (Kingland Century); Zhejiang Kingland Pipeline Industry Co., Ltd. (Kingland Industry); and Shanxi Kingland Pipeline Co., Ltd. (Shanxi Kingland). According to Kingland, Kingland Group and Kingland Century do not produce the subject merchandise. However, because Kingland Group is the parent company of Kingland, we are preliminarily attributing subsidies received by Kingland Group to Kingland, in accordance with 19 CFR 351.525(b)(6)(iii).

With respect to Kingland Century, this company is a domestic trading company and does not produce any merchandise. Instead, it purchased and provided inputs to Kingland during the POI. Because it is not an input producer, we are not treating Kingland Century as an input supplier as described in 19 CFR 351.525(b)(6)(iv) (which refers to subsidies received by the input producer). Instead, for the preliminary determination, we are treating these inputs as being provided directly to Kingland. See Memorandum from Shane Subler to Susan Kuhbach Re: Preliminary Affirmative Countervailing Duty Determination: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China; Calculations for the Preliminary Determination for Zhejiang Kingland Pipeline and Technologies Co., Ltd.; Kingland Group Co., Ltd., and Beijing Kingland Century Technologies Co. (November 5, 2007) (*Kingland Calculation Memorandum*).

Kingland Industry and Shanxi Kingland produced and sold subject merchandise domestically during the POI. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we are preliminarily including Kingland Industry and Shanxi Kingland in the subsidy calculation.

Kingland also identified other affiliated companies whose names indicated that they might be involved in the production or sales of CWP. In response to our supplemental questionnaire, Kingland reported that these companies do not produce or sell the subject merchandise. See Kingland's supplemental questionnaire response (October 19, 2007) at pages 1-6. For one of these companies, CNOOC Kingland Pipeline Co., Ltd. (CNOOC Kingland), Kingland stated it produces certain casings tube and steel pipes that are outside the scope of the investigation. Furthermore, Kingland provided evidence on CNOOC Kingland's shareholder voting rights, board of directors, and management to demonstrate that cross-ownership did not exist between Kingland and CNOOC Kingland during the POI. After

reviewing the current record, we preliminarily determine that cross-ownership did not exist between Kingland and CNOOC Kingland during the POI. Moreover, we have preliminarily accepted Kingland's claims that CNOOC Kingland Pipeline does not produce subject merchandise.

Finally, Kingland's organization chart shows several additional companies that appear to be service companies with no relationship to the subject merchandise or companies in which the responding companies held a very limited share of ownership during the POI. We have discussed these companies in a separate, proprietary memorandum, entitled "Zhejiang Kingland Pipeline Co., Ltd.: Cross-owned Companies" (November 5, 2007) (this memorandum is on file in the Department's CRU). We have preliminarily excluded these companies from the subsidy calculation.

Therefore, based on information currently on the record, we preliminarily determine that cross-ownership within the meaning of 19 CFR 351.525(b)(6)(vi) exists between Kingland, Kingland Group, Kingland Century, Kingland Industry, and Shanxi Kingland. Because we preliminarily determine that Kingland, Kingland Industry, and Shanxi Kingland are cross-owned producers of the subject merchandise, as addressed in 19 CFR 351.525(b)(6)(ii), we are attributing the subsidies received by the three companies to their combined sales. We also preliminarily determine that subsidies received by Kingland Group should be attributed to the consolidated sales of the parent company and its subsidiaries. *See* 19 CFR 351.525(b)(6)(iii).

#### Benchmark

Petitioners alleged that Baosteel received countervailable loans and that it was uncreditworthy (*see, Initiation Notice*, 72 FR at 36671). Because we did not select Baosteel as a mandatory respondent in this investigation, we are making no finding regarding that company's creditworthiness.

#### 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. Provision of Inputs for Less than Adequate Remuneration

##### Hot-rolled Steel

The Department initiated an investigation into whether state-owned steel producers in the PRC provide hot-

rolled steel to CWP producers for less than adequate remuneration. In response to the Department's questions on the PRC's hot-rolled steel industry in the original questionnaire, the GOC provided information on the hot-rolled steel narrow strip industry, as discussed in the *Selection of the Adverse Facts Available Rate* section, above. Citing information from market observer MYSTEEL and industry journal articles, the GOC claims that the hot-rolled steel narrow strip industry does not compete with other hot-rolled steel products because narrow strip has a lower market price, is used primarily to produce CWP and light section steel, and has a production process that is different from hot-rolled steel sheet. The GOC argues further that pipe producers incur additional cost in slitting hot-rolled steel sheet into a narrow strip product.

In their pre-preliminary comments, the petitioners reject the GOC's argument that hot-rolled steel narrow strip production is a separate industry. Referring to price information provided by the GOC, the petitioners contend that prices for hot-rolled steel narrow strip and hot-rolled wide coil move in tandem. Moreover, citing the respondents' reported purchase information, petitioners argue that the respondents use both products in their production of subject merchandise. Therefore, the petitioners argue that the Department should analyze the hot-rolled steel industry as a whole, not only the production of hot-rolled steel narrow strip.

We preliminarily agree with petitioners and do not find the producers of hot-rolled steel narrow strip to be an industry separate from the wider hot-rolled steel industry because there is no clear distinction between hot-rolled steel narrow strip and other hot-rolled steel. The GOC relies on price information provided by MYSTEEL to define hot-rolled steel narrow strip as having a width of less than 1000 millimeters and hot-rolled steel sheet as having a width of no less than 1250 millimeters. However, these definitions leave out a classification for products between 1000 millimeters and 1250 millimeters wide. Therefore, there is no specific width that distinguishes hot-rolled steel narrow strip from other hot-rolled steel sheet. Moreover, all of the products are hot-rolled steel, which is the input product on which the Department initiated an investigation. Therefore, we are basing our preliminary analysis on the hot-rolled steel industry as a whole.

Kingland reported that it purchased hot-rolled steel for its CWP from GOC-owned hot-rolled steel producers and

suppliers. East Pipe reported that it purchased its steel input for CWP entirely from privately owned suppliers. Therefore, we preliminarily determine that the GOC did not provide East Pipe with hot-rolled steel for CWP during the POI and our analysis is limited to Kingland.

In its response, the GOC listed the industries that use hot-rolled steel: "construction, automobile, electronic appliance, machineries, chemical industries, and long transmission pipelines, etc." *See* GOC questionnaire response at 56 (September 17, 2007). We preliminarily find that these industries are "limited in number" and, hence, that the provision of hot-rolled steel is *de facto* specific under section 771(5A)(D)(i) of the Act. *See also Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Flat Steel Products from the Republic of Korea*, 67 FR 62102 (October 3, 2002) and accompanying Issues and Decision Memorandum at Comment 1 and Comment 2, where the Department found that Posco's provision of hot-rolled coil was countervailable.

We further determine preliminarily that the GOC's provision of hot-rolled steel through its state-owned producers is a financial contribution within the meaning of section 771(5)(D)(iii) and that it confers a benefit on CWP producers because the good is being sold for less than adequate remuneration as described in section 771(5)(E)(iv). In determining what constitutes adequate remuneration, the Department is not relying on prices in the PRC, as explained in the *Selection of the Adverse Facts Available Rate* section, above. Instead, in accordance with 19 CFR 351.511(a)(2), we have used a world market price as a benchmark to compare to the respondents' reported purchase prices from state-owned steel suppliers. Specifically, we used the "World Export Price" from *Steel Benchmark*, as provided in Exhibit 38 of the petitioners' pre-preliminary comments (October 26, 2007).

To calculate the benefit, we compared the monthly weighted-average price paid by Kingland for hot-rolled steel purchased from state-owned enterprises (SOEs) to the average monthly prices reported in *Steel Benchmark*. *Steel Benchmark* does not include prices for January - March 2006; therefore, we have used the April 2006 price as a surrogate. On this basis, we preliminarily determine that Kingland received a countervailable benefit of 16.57 percent *ad valorem*.

For certain of Kingland's suppliers, we did not have information about their



ownership and did not have time to request it for this preliminary determination, therefore, it is unclear what portion of this steel is provided by SOEs. We intend to seek this supplier information for our final determination. For the preliminary determination, we have relied on neutral facts available and treated this pool of steel as having been provided by suppliers in the same proportion as reported for known SOE and non-SOE suppliers. *See* Kingland Calculation Memorandum.

#### B. Other Subsidies (Kingland)

Kingland, Kingland Group, and Kingland Industry reported that they received different city, district, and provincial grants related to export assistance, research and development, and other business activities in 2004, 2005, and 2006. Kingland only identified two of these programs, the "Electromechanical Products Technologies Renovation Project Fund" and "Superstar Enterprise" award, as public information. Kingland designated information about the other programs as business proprietary. Therefore, we have addressed these programs in more detail in the *Kingland Calculation Memorandum*. Current information on the record does not indicate that these grants are tied to any of the programs discussed in this notice.

We preliminarily determine that all the grants received in 2004 and 2005 should be expensed in those years, *i.e.*, prior to the POI because even if they were treated as non-recurring, the total amount received was less than 0.5 percent of the relevant sales in those years (*see* 19 CFR 351.524(b)(2)). Hence, they would confer no benefit in the POI.

For the export assistance grants received in 2006, certain of them pertained to markets other than the United States. We have not included these in our analysis pursuant to 19 CFR 351.525(b)(4). For the remaining export assistance grant, we preliminarily determine the grant is a countervailable subsidy within the meaning of section 771(5) of the Act. It is a financial contribution under section 771(5)(D)(i), and it provides a benefit in the amount of the grant (*see* 19 CFR 351.504(a)). Finally, because it is contingent upon export performance, it is specific under section 771(5A)(B).

To calculate the benefit, we divided the amount received by Kingland's export sales in 2006. On this basis, we preliminarily determine that a countervailable subsidy of less than .005 percent *ad valorem* exists for Kingland. Where the countervailable subsidy rate for a program is less than .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)).

Kingland Group reported that it received a Super Star Enterprise award from Huzhou City. Kingland Group explained that Huzhou City granted this award based on the total value of a company's sales. The company met the relevant sales threshold for 2005 and received this award in 2006.

We preliminarily determine that Kingland received a countervailable subsidy under the Huzhou City Super Star Enterprises award program. We find that this grant is a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a). We further preliminarily determine that the grant provided under this program is limited as a matter of law to certain enterprises, *i.e.*, enterprises that exceed certain sales values during a year. Hence, we preliminarily find that the subsidy is specific under section 771(5A)(D)(i) of the Act.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. *See* 19 CFR 351.524(b). Because the award was not tied to any specific product, we attributed the subsidy to the consolidated sales of the Kingland Group. Also, because the benefit was less than 0.5 percent, the entire amount was attributed to the POI. On this basis, we preliminarily determine the countervailable subsidy to be 0.02 percent *ad valorem* for Kingland.

For the remaining grants, we intend to seek further information for our final determination.

#### II. Programs Preliminarily Determined to Be Not Countervailable

##### A. Government Policy Lending Program

In *CFS from the PRC*, the Department found Government Policy Lending to provide a countervailable subsidy because record evidence indicated that: (i) the GOC had a policy in place to encourage and support the growth and development of the forestry and paper industry through preferential financing initiatives as illustrated in the GOC's five-year plans and industrial policies; and (ii) the GOC's policy toward the paper industry was carried out by the central and local governments through

the provision of loans extended by GOC Policy Banks and state-owned commercial banks. *See CFS from the PRC* and accompanying Issues and Decision Memorandum at Comment 8.

In this investigation, the evidence submitted to date does not support a finding that the CWP industry in the PRC received preferential financing pursuant to the GOC's Iron and Steel Policy. Therefore, we preliminarily determine that producers and exporters of CWP in the PRC did not receive government policy loans. We will, however, continue to investigate whether the GOC's Iron and Steel Policy or other plans apply to the CWP industry, and, if so, the purpose of those policies and whether preferential lending was provided to the CWP industry pursuant to those policies.

**B. Provision of Inputs for Less than Adequate Remuneration**  
*Electricity:* According to the GOC, electricity in the PRC is produced by numerous power plants and it is transmitted for local distribution by two state-owned transmission companies, State Grid and China South Power Grid. Generally, prices for uploading electricity to the grid and transmitting it are regulated by the GOC, as are the final sales prices. *See, e.g., Circular on Implementation Measures Regarding Reform of Electricity Prices*, (FAGAI/JAGE {2005} No. 514, National Development and Reform Commission) at Appendix 3 of the *Provisional Measures on Prices for Sales of Electricity* at Article 29 ("Government departments in charge of pricing at various levels shall be responsible for the administration and supervision of electricity sales prices."), provided within the GOC response at Exhibit 114 (September 17, 2007).

Electricity consumers are divided into broad categories such as residential, commercial, large-scale industry and agriculture. The rates charged vary across customer categories and within customer categories based on the amount of electricity consumed. Moreover, among industrial users, certain industries are specifically broken out and these industries receive special, discounted rates. Based on our review of the rate schedules submitted for two of the three provinces in which the respondents are located, discounted rates are established for producers of calcium carbide, electrolyte caustic alkali, synthetic ammonia, yellow phosphorus with electric furnace, and chemical fertilizer producers. For the third province, discounted rates are established for the production of chlor alkali, electrolyte aluminum, and chemical fertilizer. Thus, there is not a

discounted rate for CWP producers and, according to the GOC, the number of customers in the large-scale enterprise category (which includes the CWP producers) ranges from over 400 to more than 2200, across these three localities.

Based on the record evidence, we preliminarily determine that the provision of electricity to large-scale enterprises in the PRC is neither *de jure* nor *de facto* specific. Although producers in a few particular industries are eligible for discounts under the law, all other large-scale enterprises within a locality pay the same rate for their electricity. Moreover, the absence of price discrimination among most users may also support a preliminary finding that electricity is not being provided to CWP producers for less than adequate remuneration. See *Countervailing Duties; Final Rule*, 63 FR 65348, 65378 (November 25, 1998) (discussing that, where the government is the sole provider of a good or service, especially in the case of electricity, land or water, the Department may assess whether the government price was set in accordance with market principles, which may include an analysis of whether there is price discrimination among the users of the good or service that is provided and that “{w}e would only rely on a price discrimination analysis if the government good or service is provided to more than a specific enterprise or industry, or group thereof.”).

On this basis, we preliminarily determine that the GOC’s provision of electricity does not confer a countervailable subsidy.

**Water:** According to the GOC, water suppliers in the PRC are highly localized. Many suppliers are SOEs, particularly in cities, but there is also private ownership. Water prices generally are regulated by the local governments. See, e.g., *the Regulation on Administration of City Water Supply* (Decree 158 of the State Council, 1994), provided within the GOC response at Exhibit 118 (September 17, 2007).

East Pipe’s water supplier, Weifang Treated Water Company, Ltd., is a majority privately owned company. Therefore, for East Pipe, we preliminarily determine that water is not provided by an “authority” and, hence, that no countervailable subsidy is bestowed. See section 771(5)(b) of the Act. We will continue to examine whether East Pipe’s water supplier is a private entity during the course of this investigation. Regarding Shuangjie, the GOC did not provide water rate schedules.

For Kingland, the GOC has provided the *Circular on Adjusting the Water Resource Charge Rate ZHEJIAFEI*

{2004} No. 209 and *Circular of Huzhou City People’s Government on Approving and Forwarding the Provisional Regulation on the Collection of River Network Water Supply Fee Issued by City Water Resource Bureau*

HUZHENGFA {2002} No. 39, provided within the GOC supplemental response as exhibits S - 5 and S - 6 (October 23, 2007). These two schedules show that uniform rates are charged, with no discounts for any industry groups.

Therefore, for the same reasons described above for electricity, we preliminarily determine that record evidence demonstrates that the provision of water in Zhejiang Province and Huzhou City (location of Kingland Pipe) is neither *de jure* nor *de facto* specific. Consequently, we preliminarily find that the government’s provision of water does not confer a countervailable subsidy on Kingland.

Because the GOC has failed to provide the requested rate information for water purchased by Shuangjie, we are preliminarily treating this program as countervailable for this company. See *Selection of Adverse Facts Available Rate* section, above.

**C. VAT Rebates** (originally referred to as “Export Incentive Payments Characterized as “VAT Rebates”)

According to the GOC, the “exemption, deduction and refund” of VAT applies if a manufacturer exports its self-produced goods by itself or via a trading company. See Article 1 of the *Circular on Further Promotion of Methodology of “Exemption, Deduction, and Refund” of Tax for Exported Goods* (CAISHUI (2002) No. 7) provided within the GOC response at Exhibit 98. Under the “VAT refund system,” when a producer/exporter purchases inputs (e.g., raw materials, components, fuel and power) it pays a VAT based on the purchase price of inputs. The GOC reported the VAT rates paid by CWP producers/exports for inputs are as follows: hot-rolled steel strips, zinc and electricity power at a rate of 17 percent; fuel at 13 percent; and water at 6 percent. Once the exporter/producer exports subject merchandise, a VAT payment and tax exemption form is prepared and filed with the relevant state tax authority. CWP exporters receive a VAT refund of 13 percent of the export price.

The Department’s regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted “exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.” 19 CFR

351.517(a); see also 19 CFR 351.102 (for a definition of “indirect tax”). Information in the company responses shows that East Pipe and Kingland paid the VAT on their inputs, and applied for and received a VAT refund on their export sales.

To determine whether a benefit was provided under this program, the Department analyzed whether the amount of VAT exempted during the POI exceeded the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Because the VAT rate levied on CWP in the domestic market (17 percent) exceeded the amount of VAT exempted upon the export of CWP (13 percent), the Department preliminarily determines that, for the purposes of this investigation, the VAT refund received upon the export of CWP does not confer a countervailable benefit.

### III. Post-POI Programs

#### E. Government Restraints on Exports

**Hot-rolled Steel and Zinc:** Petitioners alleged that the GOC restrains exports of hot-rolled steel and zinc by means of export taxes, which artificially suppress the price a producer in the PRC can charge for these inputs into CWP.

In its response, the GOC provided the *Announcement on Adjustments of Provisional Import or Export Duty for Certain Merchandises* (PRC Customs Announcement No. 22, 2007) See Exhibit 122 of the GOC questionnaire response (September 17, 2007). This document shows that on May 30, 2007, the GOC announced a provisional export duty rate for hot-rolled steel of five percent and an increase in the provisional export duty rate for zinc from five percent to ten percent. These changes were implemented retroactively to begin on July 1, 2006.

The POI for this investigation is January 1, 2006 through December 31, 2006, and the export restraints allegedly giving rise to a subsidy were announced on May 30, 2007, i.e., after the POI. Although the export duties were implemented retroactively, there is no basis to conclude that the export duties affected the prices paid by the respondents for hot-rolled steel and zinc prior to May 30, 2007, because those purchases had already been made. Therefore, any subsidy conferred by the export duties on hot-rolled steel and zinc would properly be addressed under our Program-wide Change regulation, 19 CFR 351.526(a). That regulation states that the Department may take a program-wide change into account in establishing the estimated countervailing duty cash deposit rate if:

(1) the Department determines that subsequent to the period of investigation or review, but before a preliminary determination in an investigation, a program-wide change has occurred; and (2) the Department is able to measure the change in the amount of countervailable subsidies provided under the program in question.

In this investigation, East Pipe and Kingland submitted their monthly purchase prices for hot-rolled steel and zinc for periods prior to and following the May 30, 2007, announcement. The data show fluctuations in the prices of these inputs both before and after the announcement of the export duties. Moreover, the data available for the months after the announcement are limited. For these reasons, we cannot measure the subsidy, if any, arising from the imposition of the export duties, and we are not including these alleged subsidy programs in our cash-deposit rates.

#### IV. Programs Determined To Be Terminated

##### A. Exemption from Payment of Staff and Worker Benefits for Export-oriented Industries

The Department has determined that this program was terminated on January 1, 2002, with no residual benefits. See *CFS from the PRC* and accompanying Issues and Decision Memorandum at "Programs Determined to be Terminated."

#### V. Programs Preliminarily Determined To Be Not Used By East Pipe and Kingland

We preliminarily determine that East Pipe and Kingland did not apply for or receive benefits during the POI under the programs listed below.

A. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program

B. The "Two Free, Three Half" Program

C. Reduced Income Tax Rates for Foreign Invested Enterprises (FIEs) Based on Location

D. Local Income Tax Exemption and Reduction Program for "Productive" FIEs

E. Income Tax Exemption Program for Export-oriented FIEs

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

G. Reduced Income Tax Rate for Technology and Knowledge Intensive FIEs

H. Reduced Income Tax Rate for High or New Technology FIEs

I. Preferential Tax Policies for Research and Development at FIEs

J. Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies

K. Income Tax Credits on Purchases of Domestically Produced Equipment by FIEs

L. Program to Rebate Antidumping Legal Fees in Shenzhen and Zhejiang Provinces

M. Funds for "Outward Expansion" of Industries in Guangdong Province

N. Export Interest Subsidy Funds for Enterprises Located in Shenzhen and Zhejiang Provinces

O. Loans Pursuant to Liaoning Province's Five-year Framework

P. VAT and Tariff Exemptions on Imported Equipment

Q. VAT Rebates on Domestically Produced Equipment

R. The State Key Technologies Renovation Project Fund

S. Grants to Loss-making State-owned Enterprises

T. Provision of Inputs for Less Than Adequate Remuneration: Natural Gas

U. Foreign Currency Retention Program

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 further investigate whether these programs were used by respondent companies during the POI.

#### VI. Programs for Which More Information is Required

##### A. Provision of Land for Less than Adequate Remuneration

Citing Article 29 of the *Implementation Rules of the Law on Administration of Land*, land-use rights can be obtained from the government in one of three ways: 1) purchase; 2) lease; and 3) as an equity investment (*see* GOC response at Exhibit 121 (September 17, 2007)). The GOC further states that the price of land-use rights may be determined by means of public bidding, auction, independent appraisal, and negotiation.

East Pipe reported that it obtained its land-use rights through the management buy-out of Maite Steel in 2001 and East Pipe has provided appraisals which, it claims, demonstrate that adequate remuneration was paid for the land. Kingland Group purchased its land use rights in 2000 and transferred a portion of these to Kingland Pipeline in 2002. Kingland provided reference prices contemporaneous with its

purchase of land-use rights for similar industrial land.

The GOC has indicated, and the company responses appear to confirm, that the administration of state-owned lands is highly decentralized with the authority to sell, lease, or invest land-use rights left to local authorities. At this time, we do not have sufficient information from the local governments to determine whether their provision of land-use rights to East Pipe and Kingland confers a countervailable subsidy. In particular, we do not know how prices for land-use rights are set or the methods for transferring land-use rights. We intend to seek further information on these questions and to issue an interim analysis describing our preliminary findings with respect to this program before the final determination so that parties will have the opportunity to comment on our findings before the final determination.

#### Other Subsidies (Kingland)

As explained in the *Programs Preliminarily Determined to Be Countervailable* section, above, Kingland received grants from various city, district, and provincial governments. We have preliminarily determined certain of these grants to be countervailable. However, for the other grants, we intend to seek further information regarding the programs under which they were given.

#### Verification

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

#### Suspension of Liquidation

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

Exporter/Manufacturer	Net Subsidy Rate
Tianjin Shuangjie Steel Pipe Co., Ltd., Tianjin Shuangjie Steel Pipe Group Co., Ltd., Tianjin Wa Song Imp. & Exp. Co., Ltd., and Tianjin Shuanglian Galvanizing Products Co., Ltd.	264.98
Weifang East Steel Pipe Co., Ltd.	0

Exporter/Manufacturer	Net Subsidy Rate
Zhejiang Kingland Pipeline and Technologies Co., Ltd., Kingland Group Co., Ltd, Beijing Kingland Centruy Technologies Co., Zhejiang Kingland Pipeline Industry Co., Ltd., and Shanxi Kingland Pipeline Co., Ltd. ....	16.59
All Others .....	16.59

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an “all others” rate by weighting the individual company subsidy rate of each of the companies investigated by each company’s exports of the subject merchandise to the United States. However, the “all others” rate may not include zero and *de minimis* rates or any rates based solely on the facts available. In this investigation, because we have only one rate that can be used to calculate the “all others” rate, Kingland’s rate, we have assigned that rate to “all others.”

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of CWP 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. Moreover, in accordance with section 703(e)(2)(A), for Kingland, Shuangjie, and for “all other” Chinese exports of CWP, we are directing CBP to apply the suspension of liquidation to any unliquidated entries entered, or withdrawn from warehouse for consumption, on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**. Neither the suspension of liquidation nor the requirement for a cash deposit or bond will apply to merchandise produced and exported by East Pipe because the Department has preliminarily determined that East Pipe did not receive any countervailable subsidies.

#### ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this

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

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

#### Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement.

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

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 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: November 5, 2007.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E7–22144 Filed 11–9–07; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### North American Free-Trade Agreement, Article 1904 Binational Panel Reviews

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of First Request for Panel Review.

**SUMMARY:** On November 6, 2007, Holcim Apasco, S.A. de C.V. filed a First Request for Panel Review with the United States section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Notice of Final Results of the Antidumping Changed Circumstances Review made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** (72 FR 61863) on November 1, 2007. The NAFTA Secretariat has assigned Case Number USA–MEX–2007–1904–02 to this request.

#### FOR FURTHER INFORMATION CONTACT:

Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement (“Agreement”) establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for