

**Rescission of Review**

In accordance with 19 CFR 351.213(d)(i), the Department will rescind an administrative review “if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.” We received the letters withdrawing the requests for the review of the companies listed above within the 90-day time limit. The Department received no other requests for review of these companies. Pursuant to 19 CFR 351.213(d)(1), the Department is rescinding the review in part with respect to PRCBs from Thailand produced and/or exported by these companies. The Department will issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after publication of this notice.

**Notification to Importer**

This notice serves as a final 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 this review period. Failure to comply with this requirement could result in the Department’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice is published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 31, 2008.

**Edward C. Yang,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E8-71 Filed 1-6-09; 8:45 am]

**BILLING CODE 3510-DS-S**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[C-533-849]

**Commodity Matchbooks From India: Postponement of Preliminary Determination in the Countervailing Duty Investigation**

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

**DATES:** *Effective Date:* January 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** Sean Carey or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1391 and (202) 482-3964, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On November 18, 2008, the Department of Commerce (the Department) initiated a countervailing duty investigation on commodity matchbooks from India. *See Commodity Matchbooks From India: Initiation of Countervailing Duty Investigation*, 73 FR 70968 (November 24, 2008). The preliminary determination is currently due no later than January 22, 2009. On December 22, 2008, D.D. Bean & Sons Co. (Petitioner), requested that the Department postpone the preliminary determination in the countervailing duty investigation on commodity matchbooks from India.

**Postponement of Due Date for Preliminary Determination**

Under section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.205(e), the Department may extend the deadline for reaching a preliminary determination in a countervailing duty investigation until no later than the 130th day after the date on which the administering authority initiates an investigation, if the petitioner makes a timely request for an extension of the period within which the determination must be made under section 703(b) of the Act. Pursuant to 19 CFR 351.205(e), Petitioner’s request for postponement of the preliminary determination was timely made 25 days or more before the scheduled date of the preliminary determination. Because the Department finds no compelling reason to deny Petitioner’s request, we are postponing the due date for the preliminary determination to no later than March 30, 2009.<sup>1</sup>

This determination is issued and published pursuant to sections 703(c)(2) of the Act and 19 CFR 351.205(f).

Dated: December 30, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-31466 Filed 1-6-09; 8:45 am]

**BILLING CODE 3510-DS-P**

<sup>1</sup> Because the 130th day after the date of initiation is Saturday, March 28, 2009, we will issue the preliminary determination no later than the next business day (*i.e.*, Monday, March 30, 2009).

**DEPARTMENT OF COMMERCE****International Trade Administration**

[C-570-942]

**Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination**

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

**SUMMARY:** The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain kitchen appliance shelving and racks from the People’s Republic of China. For information on the estimated subsidy rates, see the “Suspension of Liquidation” section of this notice.

**DATES:** *Effective Date:* January 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** Yasmin Nair or Scott Holland, 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) 482-3813 or (202) 482-1279, respectively.

**SUPPLEMENTARY INFORMATION:****Case History**

The following events have occurred since the publication of the Department of Commerce’s (“Department”) notice of initiation in the **Federal Register**. *See Notice of Initiation of Countervailing Duty Investigation: Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China*, 73 FR 50304 (August 26, 2008) (“*Initiation Notice*”), and the accompanying Initiation Checklist.

On August 21, 2008, the Department requested Quantity and Value (“Q&V”) information from the 12 companies that the petitioners<sup>1</sup> identified as potential producers/exporters of kitchen shelving and racks in the People’s Republic of China (“PRC”). On September 17, 2008, the Department selected two Chinese producers/exporters of certain kitchen appliance shelving and racks (“KASR”) as mandatory respondents, Asber Enterprise Co. (“Asber”) and

<sup>1</sup> The petitioners in this investigation are Nashville Wire Products Inc., SSW Holding Company, Inc., United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, and the International Association of Machinists and Aerospace Workers, District Lodge 6 (Clinton, IA) (collectively, “the petitioners”).

Guangdong Wire King Housewares and Hardware Co., Ltd. (“Wire King”). See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, “Respondent Selection Memo” (September 17, 2008). This memorandum is on file in the Department’s Central Records Unit in Room 1117 of the main Department building (“CRU”).

On September 24, 2008, the U.S. 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 Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China (“PRC”). See *Certain Kitchen Appliance Shelving and Racks from China*, Investigation Nos. 701–TA–458 and 731–TA–1154, 73 FR 55132 (September 24, 2008).

On September 29, 2008, the Department postponed the deadline for the preliminary determination in this investigation until December 22, 2008. See *Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 73 FR 56550 (September 29, 2008).

On October 3, 2008, the petitioners submitted new subsidy allegations to the Department.

On October 7, 2008, we issued the countervailing duty (“CVD”) questionnaires to the Government of the People’s Republic of China (“GOC”), Asber, and Wire King. On October 8, 2008, we issued a correction to the CVD Questionnaire to Asber and Wire King.

On October 23, 2008, counsel for Asber notified the Department that the company would not participate further in the investigation.

On November 18, 2008, the Department determined to investigate certain of the newly alleged subsidies, specifically those relating to the following local subsidy programs: Exemption from Land Development Fees for Enterprises Located in Industrial Cluster Zones (“ICZ”); Reduction in Farmland Development Fees for Enterprises Located in ICZ; Exemption from District and Township Level Highway Construction Fees for Enterprises Located in ICZ; Exemptions from or Reductions in Educational Supplementary Fees and Embankment Defense Fees for Enterprises Located in ICZ; Preferential Electricity Rates Charged to Enterprises Located in ICZ; Special Subsidy from the Technology Development Fund to Encourage Technology Innovation; Special Subsidy

from the Technology Development Fund to Encourage Technology Development; Subsidies to Encourage Enterprises in ICZ to Hire Post-Doctoral Workers; Land Purchase Grants to Enterprises Located in ICZ and Encouraged Enterprises; Discounted Electricity Rates for Foreign-Invested Enterprises (“FIEs”); Exemption from Project Consulting Fee for FIEs; Exemption from Accommodating Facilities Fees for High-Tech and Large-Scale FIEs; Income Tax Deduction for Technology Development Expenses of FIEs; Preferential Land-Use Charges for Newly-Established, Industrial Projects in Zhongshan’s Industrial Zones (“IZs”); Reduction of Land Price at the Township Level for Newly-Established, Industrial Projects in Zhongshan’s IZ; Reduction in Urban Infrastructure Fee for Industrial Enterprises in IZ; Income Tax Rebate for “Superior Industrial Enterprise” in Zhongshan; Accelerated Depreciation for New Technological Transformation Projects “Superior Industrial Enterprises” in Zhongshan; Exemption from the Tax on Investments in Fixed Assets for “Superior Industrial Enterprises” in Zhongshan; and Preferentially-Priced Electricity for “Superior Industrial Enterprises.” See Memorandum to Susan Kuhbach, Director, AD/CVD Operations, Office 1, “New Subsidy Allegations” (November 18, 2008). Questionnaires regarding these newly alleged subsidies were sent to the GOC and Wire King on November 18, 2008.

We received responses to our questionnaire from the GOC and Wire King on November 20, 2008. See the GOC’s Original Questionnaire Response (November 20, 2008) (“GQR”) and Wire King’s Original Questionnaire Response (November 20, 2008) (“WKQR”). We sent supplemental questionnaires on the following dates: December 4 and December 12, 2008 (Wire King) and December 5, 2008 (GOC). We received responses to these supplemental questionnaires as follows: Wire King’s First Supplemental Response on December 11, and December 15 (“WK1SR”) and Wire King’s Second Supplemental Response on December 17 (“WK2SR”) and GOC’s First Supplemental Response on December 11 (“G1SR”).

On November 24, December 3, December 8, and December 16, 2008, the petitioners submitted comments on the questionnaire responses filed by the GOC and Wire King.

We received responses to the new subsidy allegation questionnaires on December 9, 2008 from the GOC (“GOC NSAQR”) and Wire King (“WK NSAQR”).

On December 19, 2008, the petitioners requested that the final determination of this CVD investigation be aligned with the final determination in the companion antidumping duty (“AD”) investigation in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the “Act”).

The petitioners provided comments on December 16 and 17, 2008, regarding certain issues for the preliminary determination.

#### 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*, 73 FR at 50304. We did not receive comments concerning the scope of the AD and CVD investigations of KASR from the PRC.

#### Scope of the Investigation

The scope of this investigation consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens (“certain kitchen appliance shelving and racks” or “the subject merchandise”). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

- Shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- Baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- Side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or
- Subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches.

The subject merchandise is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.2 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this investigation is shelving in which the support surface is glass.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") statistical reporting numbers 8418.99.80.50, 7321.90.50.00, 7321.90.60.90 and 8516.90.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

#### Period of Investigation

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

#### Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

On August 26, 2008, and August 27, 2008, respectively, the Department initiated the CVD and AD investigations of certain kitchen appliance shelving and racks from the PRC. See *Initiation Notice and Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 50596 (August 27, 2008). The CVD investigation and the AD investigation have the same scope with regard to the merchandise covered.

As noted above, on December 19, 2008, the petitioners submitted a letter requesting alignment of the final CVD determination with the final determination in the companion AD investigation of certain kitchen appliance shelving and racks from the PRC. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning these final determinations such that the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than May 12, 2009, unless postponed.

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

On October 25, 2007, the Department published *Coated Free Sheet Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October

25, 2007) ("*CFS from the PRC*"), and the accompanying Issues and Decision Memorandum ("*CFS Decision Memorandum*"). In *CFS from the PRC*, the Department found that

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

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

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

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

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

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

#### Non-Cooperative Companies

In the instant investigation, the following five companies provided no response to the Department's "quantity and value" questionnaire issued during the respondent selection process:

Changzhou Yixiong Metal Products Co., Ltd.; Foshan Winleader Metal Products Co., Ltd.; Kingsun Enterprises Group Co., Ltd.; Zhongshan Iwatani Co., Ltd.; and Yuyao Hanjun Metal Work Co./Yuyao Hanjun Metal Products Co., Ltd. (collectively, "non-cooperative Q&V companies"). We attempted to solicit quantity and value information from these companies, and confirmed delivery of our questionnaires through Federal Express. In our attempt, we warned that "failure to respond to this questionnaire may result in the Department determining that your company has decided not to participate in this proceeding and that your company has not cooperated to the best of its ability. As a consequence, the Department would consider applying facts available with an adverse inference in accordance with section 776(b) of the Tariff Act of 1930." See Letters to Changzhou Yixiong Metal Products Co., Ltd., *et al.*, from Susan H. Kuhbach, Director, AD/CVD Operations, Office 1, "Quantity and Value Questionnaire for the Countervailing Duty Investigation of Certain Kitchen Appliance Shelving and Racks From the People's Republic of China" (August 21, 2008). See Respondent Selection Memorandum for the details of our attempts to solicit information from the 12 producers and exporters identified in the petition.

The five non-cooperative Q&V companies withheld requested information and significantly impeded this proceeding. Specifically, by not responding to requests for information concerning the quantity and value of their sales, they impeded the Department's ability to select the most appropriate respondents in this investigation. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have based the CVD rate for the non-cooperative Q&V companies on facts otherwise available.

We further determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to the Department's quantity and value questionnaires, these companies did not cooperate to the best of their ability in this investigation. Accordingly, we find that an adverse inference is warranted to ensure that the non-cooperating Q&V companies will not obtain a more favorable result than had they fully complied with our request for information.

#### Asber

As noted above, Asber was selected as a mandatory respondent. Asber, however, did not provide the requested information that is necessary to

determine a CVD rate for this preliminary determination and significantly impeded this proceeding. Specifically, Asber did not respond to the Department's October 7, 2008 CVD questionnaire. On October 23, 2008, counsel for Asber notified the Department that Asber would not participate in the investigation. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2)(A) and (C) of the Act, we have based the CVD rate for Asber on facts otherwise available.

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

In deciding which facts to use as adverse facts available ("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 other information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding. See, e.g., *Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (LWS from the PRC), and the accompanying Issues and Decision

Memorandum (LWS Decision Memorandum) at "Selection of the Adverse Facts Available." In previous CVD investigations into products from the PRC, we have adapted this practice to use the highest rate calculated for the same or similar programs in other PRC CVD investigations. *Id.* For the preliminary determination, consistent with the Department's recent practice, we are computing a total AFA rate for the non-cooperating companies, including Asber, generally using program-specific rates determined for the cooperating respondent or past cases. Specifically, for programs other than those involving income tax exemptions and reductions, we will apply the highest calculated rate for the identical program in this investigation if a responding company used the identical program. If there is no identical program match within the investigation, we will use the highest non-*de minimis* rate calculated for the same or similar program in another PRC CVD investigation. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, we will apply the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies. See, e.g., *Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (Oct. 2, 2008), (*LWTP from the PRC*), and the accompanying Issues and Decision Memorandum ("LWTP Decision Memorandum") at "Selection of the Adverse Facts Available Rate."

Further, where the GOC can demonstrate through complete, verifiable, positive evidence that non-cooperative companies (including all their facilities and cross-owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department does not intend to include those provincial programs in determining the countervailable subsidy rate for the non-cooperative companies, including Asber. See *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 73 FR 42324 (July 21, 2008) (*Lawn Groomers from the PRC*), and the accompanying Initiation Checklist. In this investigation, the GOC has not provided any such information. Therefore, the Department makes the adverse inference that the non-cooperative Q&V companies had facilities and/or cross-owned affiliates that received subsidies under all of the

sub-national programs alleged prior to the selection of mandatory respondents. With respect to the provincial or local programs alleged after respondent selection, we only assigned adverse rates to those mandatory respondents that petitioners alleged were located in the respective province or locality. See LWTP Decision Memorandum at pages 2-3. Consequently, in this case, we will include the following seven new subsidy programs in the calculation of Asber's rate: "Preferential Land-Use Charges for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones," "Reduction of Land Price at the Township Level for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones," "Reduction in Urban Infrastructure Fee for Industrial Enterprises in Industrial Zones," "Income Tax Rebate for 'Superior Industrial Enterprises' in Zhongshan," "Accelerated Depreciation for New Technological Transformation Projects, 'Superior Industrial Enterprises' in Zhongshan," "Exemption From the Tax on Investments in Fixed Assets for 'Superior Industrial Enterprises' in Zhongshan" and "Preferentially-Priced Electricity for 'Superior Industrial Enterprises.'" "

#### *Foreign-Invested Enterprise (FIE) Income Tax Rate Reduction and Exemption Programs*

For the four income tax rate reduction or exemption programs,<sup>2</sup> we have applied an adverse inference that the non-cooperative Q&V companies and Asber paid no income taxes during the POI. 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 all income tax reduction or exemption programs combined is 33 percent and we are applying a countervailing duty rate of 33 percent on an overall basis for these four income tax programs (*i.e.*, these four income tax programs combined to provide a countervailable benefit of 33 percent). This 33 percent AFA rate does not apply to tax credit or tax refund programs. See, e.g., CWP Decision Memorandum, at 2; LWTP Decision Memorandum, at "Selection of the Adverse Facts Available Rate."

<sup>2</sup> "Two Free, Three Half" Program; Income Tax Reductions for FIEs based on Geographic Location; Income Tax Reduction for Export-Oriented FIEs; and Local Income Tax Exemption or Reduction Program for "Productive" FIEs.

### *Income Tax Credits and Rebates and Accelerated Depreciation*

The 33 percent AFA rate does not apply to the six income tax credit and rebate or accelerated depreciation programs because such programs may not affect the tax rate and, hence, the subsidy conferred, in the current year. Wire King did not use the “Income Tax Credits for Purchases of Domestically Produced Equipment by FIEs,” “Income Tax Refund for Reinvestment of Profits in Export-oriented Enterprises,” “Preferential Tax Subsidies for Research and Development at FIEs,” “Income Tax Credits for Purchases of Domestically Produced Equipment by Domestically Owned Companies,” “Income Tax Rebate for ‘Superior Industrial Enterprises’ in Zhongshan,”<sup>3</sup> or “Accelerated Depreciation for New Technological Transformation Projects ‘Superior Industrial Enterprises’ in Zhongshan”<sup>4</sup> programs, nor have we found greater than *de minimis* benefits for these direct tax programs in other countervailing duty proceedings. Therefore, we have preliminarily determined to use the highest non-*de minimis* rate for any indirect tax program from a China CVD investigation. The rate we selected is 1.51 percent, which was the rate calculated for respondent Gold East Paper (Jiangsu) Co., Ltd (GE) for the “Value-added Tax and Tariff Exemptions on Imported Equipment,” program. See *CFS From the PRC* and CFS Decision Memorandum, at pages 13–14.

### *Indirect Tax and VAT/Tariff Reductions and Exemptions*

For “Exemption from City Construction Tax and Education Tax for FIEs in Guangdong Province,” the rate we selected was 0.03 percent, which is the rate preliminarily determined for respondent Wire King’s rate in this investigation. For the remaining indirect tax and VAT/Tariff Reduction programs, which Wire King did not use, we are applying the 1.51 percent rate calculated from respondent GE’s “Value-added Tax and Tariff Exemptions on Imported Equipment” program. See *CFS From the PRC*, 72 FR 60645, and CFS Decision Memorandum, at pages 13–14. These remaining indirect tax and VAT/Tariff Reduction programs are: “Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax,” “Exemption from Real Estate Tax

and Dyke Maintaining Fee for FIEs in Guangdong Province,” “Reduction in Urban Infrastructure Fee for Industrial Enterprises in Industrial Zones,”<sup>5</sup> “Exemption from the Tax on Investments in Fixed Assets for ‘Superior Industrial Enterprises’ in Zhongshan,”<sup>6</sup> “Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries,” “VAT Rebates for FIEs Purchasing Domestically-Produced Equipment,” “Import Tariff Exemption for the “Encouragement of Investment by Taiwanese Compatriots,” “Import Tariff Refunds and Exemptions for FIEs in Guangdong,” and “Import Tariff and VAT Refunds and Exemptions for FIEs in Zhejiang.”

### *Loans*

For the “Preferential Loans and Interest Rate Subsidies in Guangdong Province” loan program, we have preliminarily determined to apply the highest non-*de minimis* subsidy rate for any loan program in a prior China CVD investigation. The rate was 7.99 percent for the “Government Policy Lending Program,” from *Lightweight Thermal Paper From the People’s Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order*, 73 FR 70958 (November 24, 2008) (“*Amended LWTP from the PRC*”).

### *Grants*

For grant programs, Wire King did not use “Funds for ‘Outward Expansion’ of Industries in Guangdong Province,” “Direct Grants—Guangdong,” and “Grants to Promote Exports from Zhejiang Province” programs. The Department has not calculated any above *de minimis* rates for any of these programs in prior investigations, and, moreover, all previously calculated rates for grant programs from prior China CVD investigations have been *de minimis*. Therefore, for each of these programs, we have determined to use the highest calculated subsidy rate for any program otherwise listed, which could have been used by the non-cooperative Q&V companies or Asber. This rate was 13.36 percent for the “Government Provision of Land for Less Than Adequate Remuneration,” program from *LWS From the PRC*. See *LWS Decision Memorandum*, at 14–18.

### *Provision of Goods and Services at Less Than Adequate Remuneration (LTAR) Programs*

Finally, for the “Provision of Wire Rod for Less than Adequate Remuneration by the GOC,” we are using the rate calculated for respondent Wire King. For “Land-Related Subsidies to Companies Located in Specific Regions of Guangdong,” “Preferential Land-Use Charges for Newly-Established, Industrial Projects in Zhongshan’s Industrial Zones,”<sup>7</sup> “Reduction of Land Price at the Township Level for Newly-Established Industrial Projects in Zhongshan’s Industrial Zones,”<sup>8</sup> and “Land-Related Subsidies to Companies Located in Specific Regions of Zhejiang,” programs, we have used the highest calculated rate for a land LTAR program from a previous China CVD investigation. This rate was 13.36 percent for the “Government Provision of Land for Less Than Adequate Remuneration,” program from *LWS From the PRC*. *Id.* For the “Provision of Nickel for Less than Adequate Remuneration by the GOC,” “Government Provision of Electricity at Less than Adequate Remuneration to Companies Located in Development Zones in Guangdong Province,” and “Preferentially-Priced Electricity for ‘Superior Industrial Enterprises,’”<sup>9</sup> we have preliminarily determined to use the highest non-*de minimis* rate calculated for a provision of goods or services at LTAR program from which the non-cooperative respondents and Asber could have benefitted. This rate was 13.36 percent for the “Government Provision of Land for Less Than Adequate Remuneration,” program from *LWS From the PRC*. *Id.*

For further explanation of the derivation of the AFA rates, see Memorandum to the File, “Adverse Facts Available Rate” (December 22, 2008) (“AFA Calc Memo”).

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject

<sup>7</sup> As noted above, this program is only included in Asber’s AFA rate.

<sup>8</sup> As noted above, this program is only included in Asber’s AFA rate.

<sup>9</sup> As noted above, this program is only included in Asber’s AFA rate.

<sup>3</sup> As noted above, this program is only included in Asber’s AFA rate.

<sup>4</sup> As noted above, this program is only included in Asber’s AFA rate.

<sup>5</sup> As noted above, this program is only included in Asber’s AFA rate.

<sup>6</sup> As noted above, this program is only included in Asber’s AFA rate.

merchandise, or any previous review under section 751 concerning the subject merchandise." See *e.g.*, SAA, at 870, 1994 U.S.C.C.A.N. at 4199. The Department considers information to be corroborated if it has probative value. See *id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. See SAA, at 869, 1994 U.S.C.C.A.N. at 4199.

With regard to the reliability aspect of corroboration, we note that these rates were calculated in recent prior final CVD determinations. Further, the calculated rates were based upon verified information about the same or similar programs. Moreover, no information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Finally, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

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

In the absence of record evidence concerning these programs due to non-cooperative Q&V companies and Asber's decision not to participate in the investigation, the Department has reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs of this case. For the programs for which there is no program-type match, the Department has selected the highest calculated subsidy rate for any PRC program from which the non-cooperative Q&V companies and Asber could receive a benefit to use as AFA. The relevance of these rates is that it is an actual calculated CVD rate for a PRC program from which the non-cooperative Q&V

companies and Asber could actually receive a benefit. Further, these rates were calculated for periods close to, and overlapping with, the POI in the instant case. Moreover, these companies' failure to respond to requests for information has "resulted in an egregious lack of evidence on the record to suggest an alternative rate." *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. supp. 2d 1339, 1348 (CIT 2005). Due to the lack of participation by the non-cooperative Q&V companies and Asber and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to the extent practicable.

On this basis, we preliminarily determine that the AFA countervailable subsidy rate for Asber is 197.14 percent *ad valorem*. We preliminarily determine that the AFA countervailable subsidy rate for the non-cooperative Q&V companies is 162.87 percent *ad valorem*. See AFA Calc Memo.

#### *Application of "All Others" Rate to Companies Not Selected as Mandatory Respondents*

In addition to Wire King and Asber, the Department received responses to its quantity and value questionnaire from the following five companies: Hangzhou Dunli Import & Export Co., Jiangsu Weixi Group Co., Leader Metal Industry Co. Ltd., Meizhigao Co.,<sup>10</sup> and New King Shan, Zhuhai. See *Respondent Selection Memorandum*. While these five companies were not chosen as mandatory respondents, because they cooperated fully with the Department's request for quantity and value information regarding their sales, we are applying the all others rate to them.

#### **Subsidies Valuation Information**

##### *Allocation Period*

The average useful life ("AUL") period in this proceeding, as described in 19 CFR 351.524(d)(2), is 12 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. See U.S. Internal Revenue Service Publication 946 (2007), *How to Depreciate Property*, at Table B-2: Table of Class Lives and Recovery Periods. 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

<sup>10</sup>Meizhigao Co. reported that it did not have shipments of the subject merchandise to the United States during the POI, except for one sample sale.

subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) direct 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.

Wire King responded on behalf of itself, a Hong Kong-owned foreign invested enterprise. Wire King identified several affiliated companies and claims that these affiliates do not produce the subject merchandise and do not provide inputs to Wire King. We intend to seek further information from Wire King regarding certain affiliates that may provide an input to Wire King or otherwise fall within the situations described in 19 CFR 351.525(b)(6)(iii)-(v). For purposes of the Preliminary Determination, we are limiting our analysis to Wire King.

#### **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. Income Tax Reduction for Foreign Invested Enterprises ("FIEs") Based on Geographic Location*

To promote economic development and attract foreign investment, "productive" FIEs located in coastal economic zones, special economic

zones or economic and technical development zones in the PRC receive preferential tax rates of 15 percent or 24 percent, depending on the zone, under Article 7 of the *Foreign Investment Enterprise Tax Law* (“FIE Tax Law”). See GQR, at Exhibit 4. This program was created June 15, 1988, pursuant to the *Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Development Zone* issued by the Ministry of Finance. See GQR, at Exhibit 11. The March 18, 1988, *Circular of State Council on Enlargement of Economic Areas* enlarged the scope of the coastal economic areas and the July 1, 1991, *FIE Tax Law* continued this policy. See GQR, at Exhibit 4.

The Department has previously found this program to be countervailable. See *CFS from the PRC*, *LWTP from the PRC*, and *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (“*Tires from the PRC*”) and accompanying Issues and Decision Memorandum (“*Tires Decision Memorandum*”).

Wire King is located in a coastal economic development zone and was subject to the reduced income tax rate of 24 percent for the tax returned filed during the POI.

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

To calculate the benefit, we treated Wire King’s income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company’s tax savings received during the POI by the company’s total sales during that period. To compute the amount of the tax savings, we compared the income tax rate Wire King would have paid in the absence of the program (30 percent) with the rate it paid (24 percent).

On this basis, we preliminarily determine that Wire King received a

countervailable subsidy of 0.30 percent *ad valorem* under this program.

#### B. Income Tax Reduction for Export-Oriented FIEs

Article 75(7) of the *Detailed Rules for Implementation of the Income Tax Law of the People’s Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* and the *FIE Tax Law* authorize export-oriented FIEs to reduce their income tax to half the national income tax rate. See GQR, at 6. Export-oriented FIEs are defined as FIEs with export product sales that exceed 70 percent of their total sales value.

Wire King qualified for this benefit and paid a reduced income tax rate of 12 percent for the tax return filed during the POI. See WKQR, at 10.

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

To calculate the benefit, we treated Wire King’s income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company’s tax savings received during the POI by the export sales of Wire King during that period. To compute the amount of the tax savings, we compared the rate Wire King would have paid in the absence of the program (24 percent) with the rate the company paid (12 percent). On this basis, we preliminarily determine the countervailable subsidy attributable to Wire King to be 0.94 percent *ad valorem* under this program.

#### C. Local Income Tax Exemption or Reduction for “Productive” FIEs

Under Article 9 of the *FIE Tax Law*, the provincial governments have the authority to grant an exemption or reduction in local income taxes to FIEs. See GQR, at 36. The GOC states that, according to the “Equity Joint Venture Tax Law,” the local income tax rate is set at ten percent of the enterprise income tax rate, which was 30 percent during the POI. According to the GOC, the Guangdong People’s Government published its own *Rules on Exemption and Reduction of Local Income Tax for Foreign Invested Enterprises*. *Id.* Under Article 5 of these rules, productive and/

or export-oriented FIEs that were eligible to pay income tax at half the normal rate shall also be exempted from the local income tax during the same period.

Wire King reported being exempted from local income tax on the tax return filed during the POI. See WKQR, at 15.

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

To calculate the benefit, we treated Wire King’s income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company’s tax savings received during the POI by the export sales of Wire King during that period. To compute the amount of the tax savings, we compared the rate Wire King would have paid in the absence of the program (3 percent) with the rate the company paid (zero). On this basis, we preliminarily determine the countervailable subsidy attributable to Wire King to be 0.23 percent *ad valorem* under this program.

#### D. Exemption From City Construction Tax and Education Tax for FIEs in Guangdong Province

Pursuant to the *Circular on Temporarily Not Collecting City Maintenance and Construction Tax and Education Fee Surcharge for FIEs and Foreign Enterprises* (GUOSHUIFA {1994} No. 38), the local tax authorities exempt all FIEs and foreign enterprises from the city maintenance and construction tax and education fee surcharge. See GQR, at Exhibit 23. The city maintenance and construction tax is normally seven percent of a company’s VAT payable, while the education fee surcharge is normally three percent of a company’s VAT payable. See GQR, at Exhibits 21 and 22; see also, G1SR, at 8–9.

Wire King reported that it was exempted from the city construction tax and educational surcharges during the POI. See WKQR, at 16.

We preliminarily determine that the exemptions from the city construction tax and education surcharge under this program confer a countervailable subsidy. The exemptions are financial

contributions in the form of revenue forgone by the government and provide a benefit to the recipient in the amount of the savings. See section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemptions afforded by this program are limited as a matter of law to certain enterprises, FIEs, and, hence, specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated Wire King's tax savings and exemptions as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's savings received during the POI by the total sales of Wire King during that period. To compute the amount of the city construction tax savings, we compared the rate Wire King would have paid in the absence of the program (seven percent of its VAT payable during the POI) with the rate the company paid (zero). See WKQR, at 16. To compute the amount of the savings from the educational surcharge exemption, we compared the rate Wire King would have paid in the absence of the program (three percent of VAT payable during the POI) with the rate the company paid (zero). *Id.* On this basis, we preliminarily determine the countervailable subsidy attributable to Wire King to be 0.03 percent *ad valorem* under this program.

#### *E. Provision of Wire Rod for Less Than Adequate Remuneration*

The Department is investigating whether GOC authorities provided wire rod to producers of KASR for LTAR. In its original questionnaire response, Wire King stated that it obtained its wire rod primarily from trading companies and it provided the names of the trading companies and the amounts purchased from each of them (by month) during the POI. Wire King also stated that it was working with its trading companies to obtain the names of the companies that produced the wire rod. Wire King provided those names in Exhibit 1 of the WK2SR.

In our original and supplemental questionnaires, we asked Wire King to provide the names of its wire rod producers to the GOC so that the government could respond to our questions about the ownership of these companies. Because the company names were not provided by Wire King until shortly before this preliminary determination, the GOC has not had sufficient time to provide the requested ownership information. Consequently, for purposes of this preliminary determination we have relied on facts available regarding ownership of these wire rod producers. See "Business Proprietary Information Memorandum

for the Preliminary Results," December 22, 2008 ("*BPI Memo*"). We will seek the necessary ownership information from the GOC for our final determination.

In *CWP From the PRC*, the Department determined that when a respondent purchases an input from a trading company, a subsidy is conferred if the producer of the input is an "authority" within the meaning of section 771(5)(B) and the price paid by the respondent for the input is less than adequate remuneration. (CWP Decision Memorandum at p.10). Moreover, in *Tires from the PRC*, the Department determined that majority government ownership of a producer is sufficient to qualify it as an "authority." (Tires Decision Memorandum at p. 10). Based on the record in the instant investigation, we preliminarily determine that certain wire rod producers that supply Wire King are majority-government owned and, hence, authorities. Thus, Wire King received a subsidy to the extent that the price it paid for wire rod produced by these suppliers was less than adequate remuneration.

The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Canadian Lumber*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. (See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) ("*Canadian Lumber*") and accompanying Issues and Decision Memorandum at page 36.)

Beginning with tier one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are

significantly distorted. As explained in the CVD Preamble: "Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy." See *Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (CVD Preamble). The CVD Preamble further recognizes that distortion can occur when the government provider constitutes a majority, or in certain circumstances, a substantial portion of the market.

The GOC has reported that state-owned enterprises ("SOEs") accounted for approximately 45.67 percent of the wire rod production in the PRC during the POI. While this is not a majority of the production, the SOEs' market share is substantial and there are other examples of government involvement in the market. Specifically, a 10 percent export tariff on wire rod was put in place during the POI and export licensing was instituted. Moreover, in reporting the share of PRC wire rod production accounted for by SOEs, the GOC defined SOEs as firms having 50 percent or more government ownership. It is entirely possible, based on a fuller analysis, that the Department would find that additional wire rod producers are "authorities" and, hence, that the GOC accounts for more than 45.67 percent of production, *i.e.*, the reported level may be a conservative measure.

The GOC also placed on the record aggregate import price data for wire rod from various countries. Information from the GOC indicates that imports of wire rod accounted for 1.53 percent of the volume of wire rod available in the Chinese market during the POI. Because the share of imports of wire rod into the PRC is small relative to Chinese domestic production of wire rod, we are not using the aggregate import price data in our benchmark calculations. This is consistent with the Department's approach in *Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 35632 (June 24, 2008) ("*LWRP From the PRC*") and the accompanying issues and decision memorandum ("*LWRP Decision Memorandum*") at Comment 7.

Consequently, we preliminarily determine that there are no tier one benchmark prices and have turned to tier two, *i.e.*, world market prices in the PRC. Petitioners have put on the record data from the *Steel Business Briefing* ("*SBB*") which includes monthly prices for mesh wire rod in North America and Europe. See Exhibit 82 of petitioners' July 31, 2008, petition. Wire King

submitted monthly prices for mesh wire rod in Asia from two sources: SBB and MEPS International Ltd. ("MEPS"). In analyzing this data, the Department found world market prices from MEPS, which we have placed on the record. See Memorandum to the File, "Information Re: World Market Prices on Record," (December 22, 2008).

We preliminarily determine that data from both SBB and MEPS should be used to derive a world market price for wire rod that would be available to purchasers of wire rod in the PRC. We note that the Department has relied on pricing data from industry publications such as SBB and MEPS in recent CVD proceedings involving the PRC. See CWP Decision Memorandum at p. 11 and LWRP Decision Memorandum at p. 9. Also, 19 CFR 351.511(a)(2)(ii), states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, we first derived a world market SBB price by averaging the monthly prices for the North America, Europe and Asia from SSB and then averaged that result with the MEPS world market price.

The prices for wire rod in SBB and MEPS are expressed in U.S. dollars ("USD") per short ton ("ST"). Therefore, to determine what price would constitute adequate remuneration, we first converted the benchmark prices from U.S. dollars to renminbi ("RMB") using USD to RMB exchange rates, as reported by the Federal Reserve Statistical Release.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we have included the freight costs that would be incurred in shipping wire rod from North America, Europe and Asia. We have also added import duties, as reported by the GOC, and the VAT applicable to imports of wire rod into the PRC.

Comparing the benchmark unit prices to the unit prices paid by the respondent for wire rod, we preliminarily determine that wire rod was provided for less than adequate remuneration and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. See 19 CFR 351.511(a).

Finally, with respect to specificity, the GOC has provided information on end uses for wire rod. See GQR at

Exhibit 17. The GOC stated that the end uses would relate to the type of industry involved as a direct purchaser of the input. See GQR at Exhibit 33.

While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we preliminarily determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. See section 771(5A)(D)(iii)(I). See also LWRP Decision Memorandum at Comment 7.

Therefore, we preliminarily determine that a countervailable subsidy was conferred on Wire King through the GOC's provision of wire rod for less than adequate remuneration. To calculate the subsidy, we took the difference between the delivered world market price and what Wire King paid for wire rod produced by majority government owned producers during the POI. We divided this by Wire King's total sales during the POI. On this basis, we preliminarily calculated a net countervailable subsidy rate of 11.72 percent *ad valorem* for Wire King.

## II. Programs Determined To Be Terminated

### A. Exemption From Project Consulting Fee for Export-oriented Industries

The Department has determined that this program was terminated in 1998, with no residual benefits. See *CFS From the PRC* and accompanying Issues and Decision Memorandum at "Programs Determined to be Terminated."

## III. Programs Preliminarily Determined Not To Exist

### A. Income Tax Exemption for Investment in Domestic "Technological Renovation"

In its November 20, 2008 questionnaire response, the GOC reported that the Income Tax Exemption for Investment in Domestic "Technological Renovation" program does not exist. The GOC explained that the description corresponds to the investigated program "Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment," which is listed in section III below. See GQR, at 22. Therefore, we have not included this program for purposes of this Preliminary Determination.

## IV. Programs Preliminarily Determined To Be Not Used by Wire King or To Not Provide Benefits During the POI

### A. Exemption From Land Development Fees for Enterprises Located in Industrial Cluster Zones

Under the *Circular on Printing and Distributing the Implementation Rules for the Construction of Intensive Industrial Zones* (SHUNFUBANFA{2002}No.33), the People's Government of Shunde exempted from the land development fees land users located in intensive industrial zones. See GOC NSAQR, at 2. The purpose of this program was to promote the construction of intensive industrial zones in Shunde.

Wire King and the GOC reported that although Wire King is not located in an intensive industrial zone, the Government of Shunde agreed to extend the preferential treatment to land obtained by Wire King in 2003. See WK NSAQR, at 2; see also, GOC NSAQR, at 2. Wire King reported that this exemption occurred only when the land was obtained and, thus, it was a one-time exemption. See WK NSAQR, at 2.

For this one-time exemption from land development fees, based on our calculations, the benefit would be expensed prior to the POI, *i.e.*, the grants were less than 0.5 percent of the relevant sales in the years in which the grants were approved. Therefore, any potential benefit received by Wire King would have been attributed to the year of receipt (*i.e.*, 2003). We note that to calculate the benefit under this program, we used Wire King's 2004 total sales figures, which are the best available facts on the record at this time. The Department will issue a supplemental questionnaire after the preliminary determination is issued in order to obtain Wire King's 2003 sales figures.

### B. Reduction in Farmland Development Fees for Enterprises Located in Industrial Zones

According to the *Circular on Printing and Distributing the Implementation Rules for the Construction of Intensive Industrial Zones* (SHUNFUBANFA{2002}No.33), the People's Government of Shunde has the authority to reduce the farmland cultivation fees for the enterprises located in the intensive industrial zones within Shunde. See GOC NSAQR, at 10. The program was created to protect the farmland.

The GOC and Wire King reported that although Wire King is not located in an intensive industrial zone, the Government of Shunde agreed to grant Wire King a reduction of the farmland

cultivation fee in 2003 when Wire King purchased a parcel of land. *See* WK NSAQR, at 2; *see also*, GOC NSAQR, at 10. Wire King reported that this exemption occurred only when the land was obtained and, thus, it was a one-time reduction. *See* WK NSAQR, at 2.

For this one-time reduction of farmland development fees, based on our calculations, the benefit would be expensed prior to the POI, *i.e.*, the grants were less than 0.5 percent of the relevant sales in the years in which the grants were approved. We note that to calculate the benefit under this program, we used Wire King's 2004 total sales figures, which are the best available facts on the record at this time. The Department will issue a supplemental questionnaire after the preliminary determination is issued in order to obtain Wire King's 2003 sales figures.

Based upon responses by the GOC and Wire King, we preliminarily determine that Wire King did not apply for or receive benefits during the POI under the programs listed below. *See* GQR, G1SR, WKQR, WK1SR, WK2SR, WK NSAQR, and GOC NSAQR.

1. "Two Free, Three Half" program.
2. Income tax refund for reinvestment of profits in export-oriented enterprises.
3. Preferential tax subsidies for research and development by FIEs.
4. Income tax credits for purchases of domestically produced equipment by FIEs.
5. Income tax credits for purchases of domestically produced equipment by domestically owned companies.
6. Reduction in or exemption from the fixed assets investment orientation regulatory tax.
7. Value Added Tax ("VAT") rebates for FIEs purchasing domestically-produced equipment.
8. Import tariff and VAT exemptions for FIEs and certain domestic enterprises using imported equipment in encouraged industries.
9. Import tariff exemptions for the "encouragement of investment by Taiwan Compatriots."
10. Exemption from real estate tax and dyke maintenance fee for FIEs in Guangdong Province.
11. Import tariff refunds and exemptions for FIEs in Guangdong Province.
12. Preferential loans and interest rate subsidies in Guangdong Province.
13. Direct grants in Guangdong Province.
14. Funds for "outward expansion" of industries in Guangdong Province.
15. Land-related subsidies to companies located in specific regions of Guangdong Province.
16. Government provision of electricity at less than adequate

remuneration to companies located in development zones in Guangdong Province.

17. Import tariff and VAT refunds and exemptions for FIEs in Zhejiang.

18. Grants to promote exports from Zhejiang Province.

19. Land-related subsidies to companies located in specific regions of Zhejiang.

20. Provision of Nickel for Less than Adequate Remuneration by the GOC.

21. Government Provision of Water for Less than Adequate Remuneration to Companies Located in Development Zones in Guangdong Province.

22. Exemption from District and Township Level Highway Construction Fees for Enterprises Located in Industrial Cluster Zones.

23. Exemptions from or Reductions in Educational Supplementary Fees and Embankment Defense Fees for Enterprises Located in Industrial Cluster Zones.

24. Preferential Electricity Rates Charged to Enterprises Located in Industrial Cluster Zones.

25. Special Subsidy from the Technology Development Fund to Encourage Technology Innovation.

26. Special Subsidy from the Technology Development Fund to Encourage Technology Development.

27. Subsidies to Encourage Enterprises in Industrial Cluster Zones to Hire Post-Doctoral Workers.

28. Land Purchase Grant Subsidy to Enterprises Located in Industrial Cluster Zones and Encouraged Enterprises.

29. Discounted Electricity Rates for Foreign-Invested Enterprises.

30. Exemption from Accommodating Facilities Fees for High-Tech and Large-Scale Foreign-Invested Enterprises.

31. Income Tax Deduction for Technology Development Expenses of Foreign-Invested Enterprises.

32. Preferential Land-Use Charges for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones.

33. Reduction of Land Price at the Township Level for Newly-Established, Industrial Projects in Zhongshan's Industrial Zones.

34. Reduction in Urban Infrastructure Fee for Industrial Enterprises in Industrial Zones.

35. Income Tax Rebate for "Superior Industrial Enterprises" in Zhongshan.

36. Accelerated Depreciation for New Technological Transformation Projects "Superior Industrial Enterprises" in Zhongshan.

37. Exemption from the Tax on Investments in Fixed Assets for "Superior Industrial Enterprises" in Zhongshan.

38. Preferentially-Priced Electricity for 'Superior Industrial Enterprises.'

## V. Programs for Which More Information Is Required

### A. Government Provision of Electricity for Less Than Adequate Remuneration

The petitioners made several allegations regarding governmental provision of electricity. In the petition, they alleged that companies located within development zones in Guangdong province received electricity for less than adequate remuneration. *See* July 31, 2008 *Antidumping and Countervailing Duty Petition*, which is on file in the Department's CRU. In their new subsidy allegations, petitioners contended that companies located within industrial cluster zones in Shunde District paid preferential rates and that FIEs in Shunde District received electricity discounts. *See* October 3, 2008 *New Subsidy Allegations*, which are on file in the Department's CRU.

The GOC and Wire King responded that the company does not receive any of the alleged benefits. Wire King is a "large scale industrial user" and pays the large scale industrial user rate in Foshan. *See* GQR, at 58. According to the GOC's response, there were 7892 large scale users in Foshan during the POI, and the only companies singled out to receive preferential rates were small- and medium-sized chemical fertilizer producers. *Id.* With respect to the alleged electricity subsidies for certain companies in Shunde, the GOC and Wire King responded that the company is not located in an industrial cluster zone and that discounts paid to FIEs were abolished in 2002. *See* GOC NSAQR, at 21; *see also*, WK NSAQR, at 4. Moreover, according to the GOC, the China Southern Power Grid, the government-owned distributor of electricity in this area, is not obliged to carry out local governments' instructions to provide preferential electricity rates and did not do so. *See* GOC NSAQR, at 21.

Therefore, we preliminarily determine that Wire King did not benefit from alleged electricity subsidies by virtue of its location in particular development zones or because it is an FIE.

However, as the Department stated in LWTP Decision Memorandum at page 24, "in any future administrative review of this proceeding, as well as in other China CVD proceedings (where relevant and practicable), we intend to investigate and analyze further the electricity rate-setting authority in China and the considerations that go into setting those rates." In this investigation we asked for and received certain information from the GOC about electricity rates in the PRC. The GOC

reported that, prior to 2002, electricity prices in Guangdong were determined locally and that they varied across the different municipal regions because the development level of the supplying power plants varied across the municipal regions. *See* GQR, at 56–57. Since 2002, when the National Development and Reform Commission (NDRC) became involved in setting retail electricity prices in Guangdong, these retail price differences have been maintained or narrowed. *See* GQR, at 57. Additionally, the GOC stated that pursuant to the *Provisional Administrative Measures on Prices for Sales of Electricity* retail prices for electricity are composed of the cost of purchasing electricity, the price for transmitting electricity, transmission loss, and governmental surcharges. *Id.* The NDRC Circulars setting out price adjustments for all provinces generally reflect this price structure. *See* GQR, at Exhibits 38 to 44. In Guangdong Province, for example, the average retail price for electricity increased, as did the amounts paid to supplying power plants, the amount paid to cover the debt service for transmission and distribution projects, and various surcharges. *See id.* at Exhibit 44.

For the final determination, we intend to seek further information regarding the GOC's electricity rate-setting policy. Specifically, we will be sending a questionnaire asking the GOC to identify all agencies (local, provincial and national) that are involved in setting rates and the process for determining the increase in rates. We plan to issue a post-preliminary analysis so that parties will have an opportunity to comment on our findings prior to our final determination.

**Verification**

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

**Suspension of Liquidation**

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

Exporter/Manufacturer	Net subsidy rate
Guangdong Wire King Co., Ltd. (formerly known as Foshan Shunde Wireking Housewares & Hardware) .....	13.22

Exporter/Manufacturer	Net subsidy rate
Asber Enterprises Co., Ltd. (China) .....	197.14
Changzhou Yixiong Metal Products Co., Ltd .....	162.87
Foshan Winleader Metal Products Co., Ltd .....	162.87
Kingsun Enterprises Group Co, Ltd .....	162.87
Yuyao Hanjun Metal Work Co./ Yuyao Hanjun Metal Products Co., Ltd .....	162.87
Zhongshan Iwatani Co., Ltd .....	162.87
All-Others .....	13.22

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not investigated, we determined an “all others” rate by weighting the individual company subsidy rate of each of the companies investigated by the company’s exports of the subject merchandise 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 this investigation, because we have only one rate that can be used to calculate the all-others rate, Wire King’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 U.S. Customs and Border Protection (“CBP”) to suspend liquidation of all entries of KASR 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.

**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. Due to the anticipated timing of verification and issuance of verification reports, 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)(i) (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. *See* 19 CFR 351.309(c)(2) and (d)(2).

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 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, 14th Street and Constitution Avenue, NW., Washington, DC 20230, 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. *See id.*

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

Dated: December 22, 2008.

**David M. Spooner,**  
*Assistant Secretary for Import Administration.*

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