

Dated: October 28, 2009.

**Christopher Cassel,**

*Director.*

*Subsidies Enforcement Office Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-948]

#### **Certain Steel Grating 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 (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain steel grating (CSG) from the People's Republic of China (PRC). For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** November 3, 2009.

**FOR FURTHER INFORMATION CONTACT:** Sean Carey or Justin Neuman, 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) 482-3964 and (202) 482-0486, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Case History**

The following events have occurred since the publication of the Department's notice of initiation in the *Federal Register*. See *Certain Steel Grating From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 30278 (June 25, 2009) (*Initiation Notice*).

On July 17, 2009, due to the large number of producers and exporters of certain steel grating in the PRC, we determined that it would not be possible to investigate individually each known exporter or producer. Therefore, based on data from U.S. Customs and Border Protection (CPB), and in accordance with section 777A(e)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), the Department selected as mandatory respondents the two largest Chinese

producers/exporters of steel grating that could reasonably be examined, Ningbo Jiulong Machinery Manufacturing Co., Ltd. (Ningbo Jiulong) and United Steel Structures Ltd. (USSL). See Memorandum to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Countervailing Duty Investigation: Certain Steel Grating (CSG) from the People's Republic of China (PRC)" (July 17, 2009) (Respondent Selection Memorandum). A public version of this memorandum is on file in the Department's Central Records Unit (CRU) in Room 1117 of the main Department building. On July 20, 2009, we issued CVD questionnaires to the Government of the People's Republic of China (GOC), to Ningbo Jiulong, and to USSL.

At the request of Alabama Metal Industries Corp. and Fisher and Ludlow (collectively, Petitioners), on August 10, 2009, the Department postponed the preliminary determination of this investigation until October 26, 2009. See *Certain Steel Grating from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 74 FR 39921 (August 10, 2009). We received responses from the GOC and both mandatory respondent companies on September 9, 2009. We issued a supplemental questionnaire to the GOC on September 30, 2009, and to Ningbo Jiulong on October 1, 2009. After providing extensions of the due date for these questionnaire responses to the GOC and Ningbo, timely responses were submitted by the GOC on October 15, 2009, and by Ningbo Jiulong on October 13 and 15, 2009.

On July 13, 2009, Petitioners submitted new subsidy allegations regarding six programs. On July 20, 2009, the GOC submitted comments on these allegations. On September 21, 2009, the Department determined to investigate four of these newly alleged subsidy programs pursuant to section 775 of the Act. See Memorandum to Barbara E. Tillman, Director AD/CVD Operations, Office 6, "Countervailing Duty Investigation of Certain Steel Grating from the People's Republic of China (PRC): Initiation Analysis of New Subsidy Allegations" (September 21, 2009) (New Subsidy Initiation Memorandum). Questionnaires regarding these newly alleged subsidies were sent to the GOC and the mandatory respondent companies on September 21, 2009. The GOC, Ningbo Jiulong, and USSL submitted responses to the new subsidy allegations questionnaires on October 15, 2009. On October 20, 2009, Petitioners provided pre-preliminary

comments. On October 21, 2009, the GOC submitted additional supplemental information. On October 22, 2009, Petitioners provided comments prior to the preliminary determination. On October 23, 2009, the GOC provided additional comments.

In its questionnaire response, USSL reported that it does not produce CSG. USSL does produce and sell large steel structures, for projects such as power plants, smelters, petrochemical plants and high-rise buildings, of which CSG is a minor component. The CSG incorporated into the steel structures that USSL produces and sells is purchased from an unaffiliated supplier. Based on this information, it appears that USSL is not one of the two largest producers or exporters of CSG from the PRC, and that USSL does not produce CSG. Subsequently, on October 16, 2009, USSL submitted a letter stating that it should not be considered to be an exporter of CSG for purposes of this investigation. Also on October 16, 2009, Petitioners filed a letter stating that they do not object to the deselection of USSL as a mandatory respondent.

Given this unique combination of circumstances, we have reconsidered the selection of USSL as a respondent in this investigation. Based on the information provided in USSL's questionnaire response, the letters from USSL and Petitioners, and the discretion provided to the Department under section 351.204(c)(1) of the regulations, we have decided to discontinue the individual examination of USSL in this investigation. For a detailed discussion of the bases for this decision, see Memorandum for Ronald K. Lorentzen from John M. Andersen, "Countervailing Duty Investigation of Certain Steel Grating from the People's Republic of China: Whether USSL Should be Maintained as a Mandatory Respondent," dated October 23, 2009.

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

On the same day the Department initiated this countervailing duty investigation, see *Initiation Notice*, the Department also initiated an antidumping duty investigation of certain steel gratings from the PRC. See *Certain Steel Grating from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 74 FR 30273 (June 25, 2009). The countervailing duty investigation and the antidumping duty investigation have the same scope with regard to the merchandise covered.

On October 23, 2009, in accordance with section 705(a)(1) of the Act,

Petitioners requested alignment of the final countervailing duty determination with the final antidumping duty determination of certain steel grating 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 antidumping duty determination. Consequently, 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 no later than March 13, 2010, unless postponed.

### Scope Comments

In accordance with the Preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)) (*CVD Preamble*), in our *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. See *Initiation Notice*, 74 FR at 30279. No such comments were filed on the record of this investigation.

### Scope of the Investigation

The products covered by the investigation are certain steel grating, consisting of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process, regardless of: (1) size or shape; (2) method of manufacture; (3) metallurgy (carbon, alloy, or stainless); (4) the profile of the bars; and (5) whether or not they are galvanized, painted, coated, clad or plated. Steel grating is also commonly referred to as "bar grating," although the components may consist of steel other than bars, such as hot-rolled sheet, plate, or wire rod.

The scope of the investigation excludes expanded metal grating, which is comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded, and does not involve welding or joining of multiple pieces of steel. The scope of the investigation also excludes plank type safety grating which is comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, that has been pierced and cold formed, and does not involve welding or joining of multiple pieces of steel.

Certain steel grating that is the subject of the investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.90.7000. While the HTSUS subheading is provided for

convenience and customs purposes, the written description of the scope of the investigation is dispositive.

### Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On July 20, 2009, the ITC published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly subsidized imports of certain steel grating from the PRC. See *Certain Steel Grating From China Determinations*, 74 FR 35204 (July 20, 2009); and *Certain Steel Grating from China (Preliminary)*, USITC Pub. 4087, Inv. Nos. 701-TA-465 and 731-TA-1161 (July 2009).

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

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and the accompanying Issues and Decision Memorandum (CFS Decision Memorandum). In *CFS from the PRC*, the Department found that, "given the substantial differences between the Soviet-style economies and the PRC's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from the {PRC}." See CFS Decision Memorandum, at Comments 1 and 6.

The Department has subsequently affirmed its decision to apply the CVD law to the PRC, most recently in *Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Shelving and Racks from the PRC*), and the accompanying Issues and Decision Memorandum (*Shelving and Racks Decision Memorandum*).

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

determination. See *Shelving and Racks Decision Memorandum*, at Comment 3.

### Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the period of investigation (POI), is January 1, 2008 through December 31, 2008.

### Subsidies Valuation Information

#### *Cross-Ownership*

In its September 9, 2009 questionnaire response, Ningbo Jiulong reported that it is cross-owned with its affiliated supplier of twisted wire rod, Ningbo Zhenhai Jiulong Electronic Equipment Factory (JEE). Ningbo Jiulong reported that it purchases twisted wire rod only from JEE. The information provided by JEE shows that it sells nearly all of its production to Ningbo Jiulong. The two operations are co-located on the same premises, however, they are separately incorporated and share no common ownership. Ningbo Jiulong reported that it is a privately owned enterprise, while JEE is identified as a collectively owned enterprise (COE) under the authority of the Civil Affairs Bureau Zhenhai Ningbo. The sole "legal representative" of JEE is also reported as being in charge of its full operation, and is a shareholder in Ningbo Jiulong.

Ningbo Jiulong claims that it is able to use or direct the individual assets of JEE in essentially the same ways it can use its own assets, and thus meets the criteria for cross-ownership within the meaning of 19 CFR 351.525(b)(6)(vi). However, the information and supporting documentation submitted by Ningbo are not sufficient to support a finding that the legal representative is in a position to control Ningbo Jiulong as well as JEE. Nor has Ningbo Jiulong demonstrated that a private individual can control a government entity, such as a COE. Absent such information, we must preliminarily determine, contrary to Ningbo Jiulong's contentions, that the regulatory requirements for cross ownership have not been met, *i.e.*, that one company can use and control the assets of another company as its own. That Ningbo Jiulong is a privately owned company, while JEE is a COE that shares no common ownership with Ningbo Jiulong, is further evidence that Ningbo Jiulong, as a private entity, is not in the position to control or direct the use of the assets of a government-owned entity as its own. Therefore, we preliminarily determine that cross ownership does not exist between Ningbo Jiulong and JEE. As such, for the purposes of this preliminary determination, we are only examining subsidies provided to Ningbo Jiulong,

exclusive of any subsidies provided to JEE.

#### Application 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 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.

In the instant investigation, Ningbo Jiulong identified the producers of the hot-rolled steel input that Ningbo Jiulong used in the manufacture of the subject merchandise, but failed to provide information related to whether several of the producers were private or government-owned. The Department's original questionnaire instructed Ningbo Jiulong and the GOC to coordinate in identifying the producers of hot-rolled steel as private or government-owned. We attempted twice to solicit this information from the GOC, in both the original questionnaire and the supplemental questionnaire that was issued on September 29, 2009.

In the instant investigation, Ningbo Jiulong and the GOC withheld requested information and significantly impeded this proceeding. Specifically, Ningbo Jiulong and the GOC failed to respond to requests for information concerning certain of the producers of hot-rolled steel. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have determined, based on facts otherwise available, to treat these producers as state-owned enterprises for the purpose of identifying and measuring the countervailable subsidy rate from the GOC provision of hot-rolled steel for less than adequate remuneration.

As noted above, the GOC also failed to provide requested information about the amount of production and consumption of hot-rolled steel or coils represented by state-owned companies. In light of this, we preliminarily determine that the GOC has not acted to the best of its ability to provide the

information needed for this investigation and, hence, has failed to cooperate. Consequently, an adverse inference is warranted in the application of facts available. As adverse facts available (AFA), we are assuming that the GOC's dominance of the market in the PRC for this input results in significant distortion of the prices and, hence, that use of an external benchmark is warranted.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See *Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act*, H. Doc. No. 316, 103d Cong., 2d Session (1994), at 870.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See *e.g.*, SAA, at 870. The Department considers information to be corroborated if it has probative value. See *id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. See SAA, at 869.

To corroborate the Department's treatment of the companies that produced the hot-rolled steel purchased by the mandatory respondent as authorities and our finding that the GOC dominates the domestic market for this input, we are relying on *Circular Welded Carbon Quality Steel Line Pipe*

*from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (*Line Pipe from the PRC*). In that case, the Department determined that the GOC owned or controlled the entire hot-rolled steel industry in the PRC. See *Line Pipe from the PRC* and accompanying Issues and Decision Memorandum at Comment 1. Because there is no information available on this record to rebut that finding, we determine that the adverse inference we are applying with regard to the hot-rolled steel industry is corroborated to the extent practicable as require by the Act.

#### Analysis of Programs

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

##### *I. Programs Preliminarily Determined to Be Countervailable*

###### A. Government Provision of Hot-Rolled Steel for Less than Adequate Remuneration

As discussed under "Application of Facts Otherwise Available and Adverse Inferences," above, for purposes of this preliminary determination, we are relying on "adverse facts available," in part, for our analysis regarding the GOC's provision of hot-rolled steel to producers of certain steel grating. First, as a result of the GOC's decision not to provide the requested ownership information for certain of the companies that produced the hot-rolled steel input purchased by Ningbo Jiulong during the POI, we are treating these hot-rolled steel producers as "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily determine that Ningbo Jiulong has received a financial contribution from these companies that produced the hot-rolled steel input purchased by Ningbo Jiulong during the POI, in the form of the provision of a good within the meaning of section 771(5)(D)(iii) of the Act. For certain other producers of the hot-rolled steel input purchased by Ningbo during the POI, the GOC has provided some information and documentation which indicates that they are privately owned. Therefore, for purposes of the preliminary determination, we are finding these producers to be privately owned. However, the GOC has not provided all of the requested supporting documentation for these companies. We intend to provide the GOC a final opportunity to submit documentation (*e.g.*, capital verification reports and articles of association) necessary to

demonstrate definitively that during the entire POI these companies were privately owned. If necessary information is not available, the Department may apply “facts otherwise available,” in accordance with section 776 of the Act.

The basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services is set forth in 19 CFR 351.511(a)(2). 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 *Softwood Lumber from Canada Investigation*, 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 Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (Softwood Lumber Final) and accompanying Issues and Decision Memorandum (*Softwood Lumber Memorandum*) at 36.

Beginning with tier one, the Department 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 *CVD Preamble* at 65377. 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.

As explained under “Application of Facts Otherwise Available and Adverse Inferences,” above, we are relying on AFA for purposes of making a preliminary determination that GOC authorities play a significant role in the PRC market for hot-rolled steel. Because of the dominant role played by GOC authorities in the production of hot-

rolled steel, we preliminarily determine that the actual prices charged by privately owned producers in the PRC for hot-rolled steel during the POI are not appropriate tier one benchmarks under our regulations. See *Line Pipe from the PRC* at Comment 1.

Consequently, we determine that there are no tier one benchmark prices available for hot-rolled steel, and we have turned to a tier-two hot-rolled steel benchmark, i.e., world market prices available to purchasers in the PRC under 19 CFR 351.511(a)(2)(ii). Petitioners provided “Steel Benchmark” price data for hot-rolled steel. See *Petition for the Imposition of Antidumping and Countervailing Duties: Certain Steel Grating from the People’s Republic of China*, May 29, 2009 (Petition) at Exhibit 77. In addition, we researched world market prices for hot-rolled steel, and we have placed on the record publicly available information on world steel prices from an industry publication, MEPS, during the POI for hot-rolled steel coil. We find that this is the most appropriate hot-rolled steel input to use based on the production process reported by Ningbo Jiulong and the 15 Chinese tariff numbers identified by the GOC under which this input can be classified. See Exhibit 1 of Ningbo Jiulong’s September 10, 2009 questionnaire response; see also GOC’s September 14, 2009 questionnaire response at 17–18. The Department has relied on pricing data from industry publications such as MEPS in recent CVD proceedings involving the PRC. See *Shelving and Racks Decision Memorandum* at 15; see also *Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 31966 (*CWP from the PRC*) and the accompanying Issues and Decision Memorandum at 11 (*CWP Decision Memorandum*); see also *Light-Walled Rectangular Pipe and Tube From People’s Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*LWRP from the PRC*) and the accompanying Issues and Decision Memorandum at 9 (*LWRP Decision Memorandum*). These prices of hot-rolled steel coil are reported on a monthly basis in U.S. dollars per metric ton (MT). See *Calculation Memorandum for the Preliminary Affirmative Countervailing Duty Determination; Certain Steel Grating from the People’s Republic of China* (Calculation Memorandum) at Attachment 4, dated concurrently with this notice.

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 a freight cost that would be incurred based on the average cost of shipping hot-rolled steel coils from Europe. We have also added import duties, as reported by the GOC, and the VAT applicable to imports of hot-rolled steel coils into the PRC. See *Calculation Memorandum* at Attachment 4. To determine the price that constitutes adequate remuneration, we first converted the monthly MEPS prices for hot-rolled steel coils from U.S. dollars to RMB using U.S. dollar to RMB exchange rates, as reported by the Federal Reserve Statistical Release. For each month, we averaged the MEPS prices and the “Steel Benchmark” prices. We then compared the monthly price Ningbo Jiulong paid to each supplier that we found to be an “authority,” to the corresponding month’s adjusted hot-rolled steel benchmark price. Comparing the resulting monthly benchmark unit prices to the monthly average unit prices paid by Ningbo Jiulong for hot-rolled steel coil produced by the GOC during the POI, we determine that hot-rolled steel was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark price and what the respondent paid for hot-rolled steel coil. See 19 CFR 351.511(a).

Finally, with respect to specificity, although the GOC stated that the number of industries that purchase hot-rolled steel are “too numerous to mention,” the GOC provided no additional supporting documentation to substantiate this claim. See GOC’s September 15, 2009 questionnaire response at 18. The questionnaire clearly requested that the GOC provide a list of industries in the PRC that purchase hot-rolled steel directly. Because the GOC did not provide the requested information necessary for analyzing specificity, we preliminarily determine that this subsidy is specific because the recipients are limited in number. See section 771(5A)(D)(iii)(I) of the Act. See *Shelving and Racks Decision Memorandum* at 16. Therefore, we determine that a countervailable subsidy was conferred on Ningbo Jiulong through the GOC’s provision of hot-rolled steel for LTAR. To calculate the benefit, we measured the difference between the delivered world market price and the price Ningbo Jiulong paid for hot-rolled steel produced by the GOC, on a monthly basis, during the

POI. See 19 CFR 351.524(c). We divided the total benefit received by Ningbo Jiulong during the POI by its total sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be 1.61 percent ad valorem for Ningbo Jiulong.

*B. Government Provision of Wire Rod for Less than Adequate Remuneration*

The Department is investigating whether the GOC provided wire rod to the mandatory respondent for LTAR. Ningbo Jiulong reported that during the POI, it obtained twisted wire rod from a COE, JEE. The GOC has identified the 21 Chinese tariff numbers under which wire rod can be classified and provided a two-page excerpt of the PRC tariff code. See GOC's September 14, 2009 questionnaire response at 24. The numerous tariff numbers identified by the GOC provide only a broad classification of wire rod, and the two-page excerpt does not discuss or address the tariff numbers used by the GOC to identify wire rod, or more specifically, twisted wire rod, the type of wire rod purchased by Ningbo Jiulong. For purposes of this preliminary determination, we are considering twisted wire rod to be a type of wire rod, and as such, it is properly included in our investigation of wire rod for LTAR. We will request additional information from the GOC concerning how and where it classifies twisted wire rod within the Chinese tariff classification schedule, and whether twisted wire rod is also classifiable under any of the reported 21 tariff numbers.

In *CWP from the PRC*, the Department determined that a subsidy is conferred if the producer of the input is an "authority" within the meaning of section 771(5)(B) of the Act, and the price paid by the respondent for the input is less than adequate remuneration. See *CWP Decision Memorandum* at 10. Based on the record in the instant investigation, we preliminarily determine that JEE's status as a COE falls within the statutory meaning of an "authority." Documentation from JEE indicates that this company is a COE owned by the Civil Affairs Bureau Zenhai Ningbo. See JEE's September 9, 2009 questionnaire response at 4. In the final determination of LWRP from the PRC, the Department affirmed its decision to treat collectives as government authorities. See *LWRP from the PRC*, and the *LWRP Decision Memorandum* at Comment 5. Because respondents have not provided information on the record to indicate that collectively-owned companies are

not state-controlled, and because it appears that Jiulong Factory is owned by a local government agency (the Civil Affairs Bureau Zhenhai Ningbo), we find that Jiulong Factory should be classified as an "authority." The Department will continue to evaluate this finding for the final determination. As a result, we determine that the wire rod provided by Ningbo Jiulong's sole supplier, JEE, provides a financial contribution in the form of a government provision of a good, and that Ningbo Jiulong received a subsidy to the extent that the price it paid for the wire rod produced by JEE was for LTAR. See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

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 *Softwood Lumber from Canada Investigation*, 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 *Softwood Lumber Final and Softwood Lumber Memorandum* at 36.

Beginning with tier one, the Department 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 *CVD Preamble* at 65377. 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.

In the instant investigation, the GOC reported the total wire rod production by state-owned entities during the POI.

See GOC Questionnaire Response at 22–23. The number of these state-owned entities (SOEs and COEs) accounted for approximately the same percentage of the wire rod production in the PRC as was recently found in *Shelving and Racks from the PRC*, in which the Department determined that the GOC had direct ownership or control of wire rod production. See *Shelving and Racks Decision Memorandum*, at Comment 4. Because the GOC has not provided any information that would lead the Department to reconsider the determination in *Shelving and Racks from the PRC*, we find that the substantial market share held by SOEs shows that the government plays a predominant role in the this market. See *Shelving and Racks Decision Memorandum* at 15. The government's predominant position is further demonstrated by the low level of imports, which accounted for only 0.91 percent of the volume of wire rod available in the Chinese market during the POI. See GOC's September 15, 2009 questionnaire response at 23. Because the share of imports of wire rod into the PRC is small relative to Chinese domestic production of wire rod, it would be inappropriate to use import values to calculate a benchmark. This is consistent with the Department's approach discussed in *LWRP Decision Memorandum*, at Comment 7.

In addition to the government's predominant role in the market, we found in *Shelving and Racks from the PRC* that the 10 percent export tariff and export licensing requirement instituted by the GOC contributed to the distortion of the domestic market in the PRC for wire rod. Such export restraints can discourage exports and increase the supply of wire rod in the domestic market, with the result that domestic prices are lower than they would otherwise be. See *Shelving and Racks Decision Memorandum* at 15.

Consequently, we determine that there are no tier one benchmark prices available for wire rod, and we have turned to a tier-two wire rod benchmark, i.e., world market prices available to purchasers in the PRC under 19 CFR 351.511(a)(2)(ii). Petitioners provided price data from the "Steel Business Briefing," see, Petition at Exhibit 77. In addition, we researched world market prices for wire rod, and we have placed on the record publicly available world steel prices from MEPS during the POI for steel wire rod. We note that the Department has relied on pricing data from industry publications such as MEPS in recent CVD proceedings involving the PRC. See *Shelving and Racks from the PRC* at 15;

see also *CWP from the PRC* and *CWP Decision Memorandum* at 20; see also *LWRP Decision Memorandum* at 9. The steel wire rod prices are reported on a monthly basis in U.S. dollars per metric ton (MT). See *Calculation Memorandum* at Attachment 6.

To determine the price that constitutes adequate remuneration, we first converted the monthly MEPS prices for steel wire rod from U.S. dollars to RMB using U.S. dollar to RMB exchange rates, as reported by the Federal Reserve Statistical Release. Because Ningbo Jiulong's wire rod purchases were reported as one aggregate number comprising all purchases made during the POI, we averaged the monthly MEPS prices and the monthly "Steel Business Briefing" prices for steel wire rod to calculate an annual benchmark price for 2008.

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 a freight cost that would be incurred based on the average cost of shipping wire rod from South America and Europe. We have also added import duties, as reported by the GOC, and the VAT applicable to imports of wire rod into the PRC. See *Calculation Memorandum* at Attachment 6. Comparing the resulting annual benchmark unit price to the unit price paid by Ningbo Jiulong for wire rod during the POI that we found to be produced by an "authority," we determine that wire rod was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark price and what the respondent paid for wire rod. See 19 CFR 351.511(a).

Finally, with respect to specificity, the GOC has provided information regarding end uses for wire rod. See GOC questionnaire response at 26 and Exhibit-O-II-D.2. 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 the listed industries may represent numerous products, section 771(5A)(D)(iii)(I) of the Act directs the Department to conduct its analysis on an enterprise or industry basis. Based on our review of the data and consistent with our past practice, we 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) of the Act. See also

*LWRP Decision Memorandum* at Comment 7. Therefore, we determine that a countervailable subsidy was conferred on Ningbo Jiulong through the GOC's provision of wire rod for LTAR. To calculate the subsidy, we took the difference between the delivered world market price and the price Ningbo Jiulong paid for wire rod produced by the government during the POI. See 19 CFR 351.524(c). We divided this by Ningbo Jiulong's total sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 3.65 percent *ad valorem* for Ningbo Jiulong.

#### C. *Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment*

Ningbo Jiulong reported receiving an income tax credit on the tax return it filed during the POI under the "Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment" program. According to the GOC, this program was established on July 1, 1999, pursuant to "Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation." The GOC states that under the program, a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous tax year. The GOC further states that pursuant to the "Circular on Relevant Issues with Respect to Ceasing Implementation Of Income Tax Credit To Purchase Of Domestically Produced Equipment by Enterprises," the program has been terminated, effective January 1, 2008.

We determine that the income tax deductions provided under the program constitute a financial contribution, in the form of revenue forgone, and a benefit, in an amount equal to the tax savings, under section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1), respectively. We further find that this program is specific under section 771(5A)(C) of the Act because the receipt of the tax savings is contingent upon the use of domestic equipment over imported equipment, and therefore constitutes an import substitution subsidy. To calculate the benefit, we used the amount of tax savings Ningbo Jiulong received on the tax return it filed during the POI, pursuant to 19 CFR 351.509(a)(2)(b). In accordance with 19

CFR 351.509(c), we have allocated benefits received under the program to the POI.

To calculate the net subsidy rate, we divided the benefit by Ningbo Jiulong's total sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 1.68 percent *ad valorem* for Ningbo Jiulong.

## II. *Programs Discovered During the Course of the Investigation and Preliminarily Found to be Countervailable*

### A. *Export Grant 2008*

Ningbo Jiulong reported that it received benefits under the "Export Grant 2008" program from the State Tax Authority Ningbo City during the POI. According to Ningbo Jiulong, the grant is received on a monthly basis, at a rate of 0.03 RMB for each US\$1 of exports during that month. Based on information on the record, the Department finds that this grant constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act. A benefit is received equal to the amount of the grant, in accordance with 19 CFR 351.504(a). Because the grant appears to be contingent on export performance, the Department preliminarily determines that it is specific within the meaning of section 771(5A)(B) of the Act.

Because grants under this program are not exceptional and the company can expect to receive them on an ongoing basis, we are treating them as recurring, under 19 CFR 351.524(c)(2) and allocating the grants received to the year of receipt. To calculate the net subsidy rate, we first summed all of the grants received by Ningbo Jiulong during the POI and then divided this amount by Ningbo Jiulong's total export sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.09 percent *ad valorem* for Ningbo Jiulong.

### B. *Jiulong Lake Town Grant 2008*

In its response to the supplemental questionnaire, Ningbo Jiulong reported that this grant is a conglomeration of four separate awards provided by Ningbo Zhenhai Jiulong Lake Town Government and received by Ningbo Jiulong during the POI: 1) the Technical Reform Input Award, which is awarded to only one company; 2) the Advancement in Sales Award, which is awarded to three companies; 3) the District Model Enterprise for Environmental Protection award, which is awarded to only one company; and 4) the Advanced Enterprise in Energy-Saving award, which is awarded to three companies. Based on information



on the record, the Department finds that these awards constitute financial contributions in the form of grants, within the meaning of section 771(5)(D)(i) of the Act. The benefit received is equal to the amount of the grants, in accordance with 19 CFR 351.504(a). Because it appears that only a limited number of companies received each grant, the Department preliminarily determines that these grants are specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), we have performed the "0.5 percent test," and, because the benefits are less than 0.5 percent of total sales, we have allocated benefits received under the program to the year of receipt.

To calculate the net subsidy rate, we divided sum of all the grants under this program received during the POI by Ningbo Jiulong's total sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.04 percent *ad valorem* for Ningbo Jiulong.

#### C. Energy Saving Grant 2008

Ningbo Jiulong reported receiving benefits under the "Energy Saving Grant 2008" program during the POI. According to Ningbo Jiulong, these grants are provided by the Ningbo Zhenhai Development and Reform Bureau as an award for investment in energy-saving projects. The amount of the grant is calculated as a percentage of the total investment made in energy-saving projects. Based on information on the record, the Department finds that this grant constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act. There is a benefit equal to the amount of the grant in accordance with 19 CFR 351.504(a). Ningbo Jiulong reported that, during the POI, only 19 companies received grants for investments made in energy-saving projects under this program. Because these grants were provided to a limited number of enterprises, the Department preliminarily determines this program to be specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), and as a result of the "0.5 percent test," we have allocated benefits received under the program to the year of receipt.

To calculate the net subsidy rate, we divided the grant amount by Ningbo Jiulong's total sales of subject merchandise during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.14 percent *ad valorem* for Ningbo Jiulong.

#### D. Foreign Trade Grant 2008

Ningbo Jiulong reported that it received a grant under the "Foreign Trade Grant 2008" program during the POI. Ningbo Jiulong states that the grant was a flat award amount, available after an eligible firm reached a minimum value of exports. Based on information on the record, the Department finds that a financial contribution was provided in the form of a grant within the meaning of section 771(D)(i) of the Act. A benefit exists in the amount of the grant, within the meaning of 19 CFR 351.504(a). Because the awarding of the grant is contingent upon a company reaching a minimum level of export sales, the Department preliminarily determines that this grant is an export subsidy and therefore specific under section 771(5A)(B) of the Act. In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(a) and (c), and as a result of the "0.5 percent test" performed with Ningbo Jiulong's total exports, we have allocated benefits received under the program to the year of receipt.

To calculate the net subsidy rate, we divided the grant amount by Ningbo Jiulong's total export sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.01 percent *ad valorem* for Ningbo Jiulong.

#### E. Famous Brand Grant 2008

Ningbo Jiulong reported receiving grants under the "Famous Brand Grant 2008" program from the Bureau of Quality and Technical Supervision during the POI. According to Ningbo Jiulong, eligibility for the receipt of benefits under the program is contingent on a company owning a Ningbo famous brand and being located in Zhenhai District, and four companies received grants under this program. Based on information on the record, the Department finds that this program constitutes a financial contribution in the form of a grant in accordance with section 771(5)(D)(i) of the Act. The amount of the benefit is equal to the amount of the grant, according to 19 CFR 351.504(a). We preliminarily determine that the program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the grant, whether considered on an enterprise or industry basis, are limited in number. In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), and as a result of the "0.5 percent test," we have allocated benefits received under the program to the year of receipt.

To calculate the net subsidy rate, we divided the benefit by Ningbo Jiulong's total sales during the POI. On this basis, we preliminarily determine the net

countervailable subsidy rate to be 0.02 percent *ad valorem* for Ningbo Jiulong.

#### F. Innovative Small- and Medium-Sized Enterprise Grant 2008

Ningbo Jiulong identified itself as a recipient of the "Innovative Small-and Medium-Sized Enterprise Grant 2008" from the Ningbo Zhenhai Development and Reform Bureau during the POI. Criteria for receipt of benefits under this program include minimum sales and sales growth levels, as well as ownership of certain brands and technologies. Based on information on the record, the Department finds that this grant is a financial contribution within the meaning of section 771(5)(D)(i) of the Act. The amount of the benefit is equal to the amount of the grant, which is the same amount for all companies that meet the eligibility criteria of the program. Because only nine companies received the grant during the POI, the Department preliminarily determines that the grant is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because it is provided to a group of enterprises that is limited in number. In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), and as a result of the "0.5 percent test," we have allocated benefits received under the program to the year of receipt.

To calculate the net subsidy rate, we divided the grant amount by Ningbo Jiulong's total sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.04 percent *ad valorem* for Ningbo Jiulong.

#### G. Water Fund Refund/Exemption 2008

Ningbo Jiulong reported that it received benefits under the "Water Fund Refund/Exemption 2008" program during the POI, and that receipt of these benefits was contingent on it being an exporting company. From January to July 2008, Ningbo Jiulong reports that the amount it paid into the water fund, which is a percentage of its total sales, was refunded to it. From August to December 2008, Ningbo Jiulong reports that it was exempted from the water fund payments normally required. For funds received between January and July of 2008, there is a financial contribution within the meaning of section 771(5)(D)(i) of the Act. A benefit exists in the amount of the refund, in accordance with 19 CFR 351.504(a). For the amount of the water fund that Ningbo Jiulong was exempted from paying, a financial contribution exists within the meaning of section 771(5)(D)(ii) of the Act. The benefit is equal to the amount of the water fund payments that Ningbo Jiulong would

have otherwise made, in accordance with 19 CFR 351.509(a)(1). Because eligibility for the receipt of benefits under this program is contingent on the recipient being an exporting company, the program is specific within the meaning of section 771(5A)(B) of the Act.

Because grants under this program are received on a monthly basis, we are treating them as recurring, and allocating the grants received during the POI to the year of receipt. To calculate the net subsidy rate, we added together the water fund refunds received for January through July 2008 and the value of the water fund payments from which Ningbo Jiulong was exempt for August through December 2008. We then divided the total benefit by Ningbo Jiulong's total export sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.14 percent *ad valorem* for Ningbo Jiulong.

#### H. Product Quality Grant

In Ningbo Jiulong's original questionnaire response, it provided an exhibit in Chinese identifying fifteen grant programs from which it had received benefits. However, two of those programs were not listed in the English translation of that document. In the supplemental questionnaire issued by the Department, we asked Ningbo Jiulong to provide an exact, line-by-line translation of the original exhibit. Ningbo Jiulong provided this full translation in its supplemental questionnaire response, which identified the "Product Quality Grant" program as a program under which it received benefits during the POI. Based on the facts available to the Department, we preliminarily conclude that the "Product Quality Grant" constitutes a financial contribution within the meaning of section 771(5)(D)(i) of the Act, and that a benefit is received in the amount of the grant in accordance with 19 CFR 351.504(a). Because neither the GOC nor Ningbo Jiulong provided information about the number or types of recipients of grants under this program, we must rely on facts available pursuant to section 776(a)(1) and (a)(2)(B) of the Act. Further, because we find that the respondents should have been able to provide this information, we preliminarily determine that they failed to act to the best of their abilities. Accordingly, we are making an adverse inference under section 776(b) of the Act, in applying the facts otherwise available concerning this program. On this basis, we preliminarily determine the Product Quality Grant to be specific. As such, it provides a countervailable subsidy within the meaning of section

771(5) of the Act. In accordance with 19 CFR 351.504(c) and 19 CFR 351.524(b)(2), and as a result of the "0.5 percent test," we have allocated the grant received under the program to the year of receipt.

To calculate the net subsidy rate, we divided the grant amount by Ningbo Jiulong's total sales during the POI. On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.02 percent *ad valorem* for Ningbo Jiulong.

#### III. Program Discovered During the Course of the Investigation and Preliminarily Found To Be Not Countervailable

##### Cleaning Production Grant 2008

Ningbo Jiulong reported that it received benefits under the "Cleaning Production Grant 2008" program from the Ningbo Zhenhai Environment Protection Bureau during the POI. The grant is provided to organizations that carry out energy-saving and environmental protection projects. Information in the record shows that grants under this program are provided to a large number of businesses and organizations across a wide range of fields, including numerous and diverse industries ranging from appliance manufacturers to garment makers and chemical companies, as well as schools, district governments, hospitals, restaurants and a number of individuals. See Ningbo Jiulong's September 21, 2009 supplemental questionnaire response. Based on the value of the grant that Ningbo Jiulong received, and the total amount of grants provided, Ningbo Jiulong does not appear to have received a predominant or disproportionate share of the grants distributed. As such, we preliminarily determine that Ningbo Jiulong's receipt of the Cleaning Production Grant 2008 is not specific in accordance with section 771(5A)(D)(iii)(I), (II) and (III) of the Act and is therefore not countervailable. We will continue to gather information about this program for the final determination.

#### IV. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that Ningbo Jiulong did not apply for or receive benefits during the POI under the programs listed below. We will examine these programs and Ningbo Jiulong's reported non-use of these programs further through supplemental questionnaires issued after this preliminary determination and during verification.

##### A. Government Provision of Steel Bar for Less than Adequate

##### Remuneration

- B. Government Provision of Steel Plate for Less than Adequate Remuneration
- C. Government Provision of Land-Use Rights to SOEs for Less than Adequate Remuneration
- D. "Two Free, Three Half" Program
- E. Reduced Income Tax Rates for Export-Oriented FIEs
- F. Preferential Income Tax Policy for Enterprises in the Northeast Region
- G. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China
- H. Tax Subsidies for FIEs in Specially Designated Geographic Areas
- I. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs
- J. Income Tax Credits for FIEs Purchasing Domestically Produced Equipment
- K. Preferential Tax Programs for FIEs Recognized as High or New Technology Enterprises
- L. Import Tariff and Value Added Tax (VAT) Exemptions for Encouraged Industries Importing Equipment for Domestic Operations
- M. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund
- N. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program
- O. Grants to "Third-Line" Military Enterprises
- P. Guangdong and Zhejiang Province Program to Rebate Antidumping Fees
- Q. The State Key Technology Project Fund
- R. Export Incentive Payments Characterized as "VAT Rebates"
- S. VAT Refunds for FIEs Purchasing Domestically-Produced Equipment

#### V. Program for Which We Preliminarily Determine Ningbo Jiulong To Be Ineligible

Petitioners have alleged the existence of certain provincial/municipal programs that are potentially available to producers of certain steel grating. The Department initiated an investigation into these programs prior to respondent selection. Because Ningbo Jiulong and all of its production facilities are located in the city of Ningbo, Zhejiang Province, and not in the provinces or municipalities that administer these programs, we preliminarily determine that Ningbo Jiulong is ineligible to receive benefits under these programs.

- A. Liaoning Province "Five Points, One Line" Program
- B. Guangzhou City Famous Exports



*Brands*

*C. Grants to Companies for “Outward Expansion” in Guangdong Province*

*VI. Programs Preliminarily Determined Not to Provide Benefits During the POI*

Ningbo Jiulong reported that it received grants under several additional programs in years prior to the POI. We requested, and Ningbo Jiulong provided, its total sales and total export values for the years in which these grants were received. We performed the “0.5 percent test,” as prescribed under 19 CFR 351.524(b)(2), for the years in which these grants were received. Because these grants were less than 0.5 percent of their relevant sales, the Department has determined that these grants would have been expensed in the year of receipt. Therefore, we preliminarily determine that grants which Ningbo Jiulong reported receiving under the programs below did not benefit Ningbo Jiulong’s production, sale, or exports of certain steel grating during the POI. See Calculation Memorandum at Attachment 10.

- A. *Technical Upgrading Grant 2005*
- B. *Power Engine Grant 2005*
- C. *Technical Innovation Grant 2006*
- D. *Export Grant 2006*
- E. *Technical Upgrading Grant 2007*
- F. *Export Grant 2007*

*VII. Program for Which We Need Additional Information*

*GOC Provision of Electricity for Less than Adequate Remuneration*

The Department initiated on the GOC’s provision of electricity for LTAR in the New Subsidy Initiation Memorandum on September 21, 2009. The GOC and Ningbo Jiulong reported in their respective new subsidy allegation questionnaire responses that no benefits were provided under the program. According to the GOC, “no benefit is conferred on end users of electricity, which is provided as generally available infrastructure to all user types.” See the GOC’s October 15, 2009 New Subsidy Allegation Questionnaire Response at page 8. Because this was the GOC’s initial questionnaire response regarding the new subsidy allegations, there has not been sufficient time for the Department to issue a supplemental questionnaire to the GOC regarding the provision of electricity. Furthermore, the GOC reported that it was still in the process of gathering key information with regard to how Zhejiang Province accounts for its cost elements; how cost increases are factored into the retail price for electricity; and, how these final price increases are allocated across the

province and across tariff end-user categories. See *Id.* at 12. Without this information, the Department is unable to determine whether a benefit was provided to Ningbo Jiulong from the provision of electricity. Therefore, the Department will request from the GOC the additional information needed to complete our analysis of whether this program provides a countervailable subsidy to Ningbo Jiulong.

**Verification**

In accordance with section 782(i)(1) of the Act, we intend to 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 Ningbo Jiulong, the only producer/exporter of the subject merchandise individually investigated. 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 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.<sup>1</sup> In this investigation, Ningbo Jiulong’s rate meets the criteria for the all others rate. Therefore, we have assigned Ningbo Jiulong’s rate to all other producers and exporters. We preliminarily determine the total estimated net countervailable subsidy rates to be:

| Manufacturer/Exporter                                 | Net Subsidy Rate        |
|---|-------------------------|
| Ningbo Jiulong Machinery Manufacturing Co., Ltd. .... | 7.44 percent ad valorem |
| All Others .....                                      | 7.44 percent ad valorem |

In accordance with section 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection to suspend liquidation of all entries of certain steel grating 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

<sup>1</sup> Pursuant to 19 CFR 351.204(d)(3), the Department must also exclude the countervailable subsidy rate calculated for a voluntary respondent. In this investigation we had no producers or exporters request to be voluntary respondents.

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)(B) 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. Unless otherwise notified by the Department, case briefs for this investigation must be submitted no later than 50 days after the date of publication of the preliminary determination. 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, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written

request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) the party's name, address, and telephone number; (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 issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: October 26, 2009.

**John M. Andersen,**

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

[FR Doc. E9-26318 Filed 11-2-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XS46

#### Pacific Coast Groundfish Fishery; Intent To Prepare an Environmental Impact Statement for the 2011-2012 Biennial Harvest Specifications and Management Measures

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

**ACTION:** Notice of intent to prepare an environmental impact statement (EIS); request for written comments; notice of public scoping meetings.

**SUMMARY:** NMFS and the Pacific Fishery Management Council (Council) announce their intent to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) to analyze the impacts on the human, biological, and physical environment of setting harvest specifications and management measures for 2011 and 2012, pursuant to the Pacific Coast Groundfish Fishery Management Plan.

**DATES:** Public scoping will be conducted through regular meetings of the Pacific Fishery Management Council and its advisory bodies starting with the October 31–November 5, 2009, Council meeting and continuing through the June 12–17, 2010, meeting. Written comments will be accepted through December 3, 2009 (see **SUPPLEMENTARY INFORMATION**). Written, faxed or e-mailed comments must be received by 5 p.m. Pacific Daylight time on December 3, 2009.

**ADDRESSES:** You may submit comments, on issues and alternatives, identified by 0648-XS46 by any of the following methods:

• *E-mail:*

*GroundfishSpex2011\_12.nwr@noaa.gov*. Include 0648-XS46 and enter *AScopingComments@* in the subject line of the message.

• *Fax:* 503-820-2299, attention: John DeVore.

• *Mail:* Donald McIsaac, Pacific Fishery Management Council, 7700 NE Ambassador Pl., Suite 101, Portland, OR 97220, attention: John DeVore.

**FOR FURTHER INFORMATION CONTACT:** Mr. John DeVore, Pacific Fishery Management Council, *phone:* 503-820-2280, *fax:* 503-820-2299 and *e-mail:* *john.devore@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This **Federal Register** document is available on the Government Printing Office's Web site at: *http://www.gpoaccess.gov/fr/index/html*.

**Background and Need for Agency Action**

There are more than 90 species managed under the Pacific Coast Groundfish Fishery Management Plan (groundfish FMP), seven of which have been declared overfished. The groundfish stocks support an array of commercial, recreational, and Indian tribal fishing interests in state and Federal waters off the coasts of Washington, Oregon, and California. In addition, groundfish are also harvested incidentally in non-groundfish fisheries, most notably, the non-groundfish trawl fisheries for pink shrimp, ridgeback prawns, California halibut, and sea cucumber.

The proposed action is needed to manage Pacific Coast groundfish fisheries consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) including preventing overfishing and ensuring that groundfish stocks are maintained at, or restored to, sizes and structures that will produce the highest net benefit to the nation, while balancing environmental and social values.

**The Proposed Action**

Using the "best available science," the proposed action is to establish harvest specifications consistent with an "annual catch limits framework" for calendar years 2011 and 2012 for species and species' complexes managed under the groundfish FMP and to establish management measures that

constrain total fishing mortality to these specified Annual Catch Limits (ACLs). The specifications must be consistent with requirements of the MSA including preventing overfishing and, for stocks that have been declared overfished, setting ACLs appropriately to return stock biomass to the maximum sustainable yield (MSY) level or MSY proxy level. Because seven Pacific Coast groundfish species are currently overfished and managed under rebuilding plans, ACLs must be set consistent with the rebuilding plans and the framework described in MSA section 304(e) and the groundfish FMP, which requires overfished stocks to be rebuilt to the MSY biomass in a time period that is as short as possible, taking into account the status and biology of the overfished stocks, the needs of fishing communities, and the interaction of the overfished stock within the marine ecosystem. To address this mandate, changes to rebuilding plans may be made as part of this biennial process. In addition, based on the 2009 stock assessment, the Secretary of Commerce may declare that petrale sole (*Eopsetta jordani*) is overfished, in which case the Council would develop a rebuilding plan for this stock and amend the groundfish FMP accordingly. Petrale sole ACLs for 2011 and 2012 would be set consistent with any adopted rebuilding plan. The scope of the proposed action may also include adopting the rebuilding plan and amending the groundfish FMP.

Annual catch limits (ACLs), or harvest specifications, must be consistent with National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act and pursuant to revised guidelines, which were published by NMFS on January 16, 2009 (74 FR 3178). The Council is concurrently developing an amendment to the groundfish FMP (Amendment 23) to make the necessary revisions so that the groundfish FMP's harvest management framework is consistent with these revised guidelines. The 2011–2012 annual catch limits would be consistent with the revised harvest management framework.

The Council adopted fixed allocations of catch opportunity between the limited entry groundfish fishery and all other groundfish fishery sectors for 25 groundfish stocks in Amendment 21 to the groundfish FMP, which is pending submission for review by the Secretary of Commerce. There are also existing fixed allocations for sablefish (*Anaplopoma fimbria*) north of 36° N. latitude and Pacific whiting (*Merluccius productus*). Additional allocations may be determined as part of the proposed