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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**19 CFR Part 351**

**[Docket No. 190522468-9468-01]**

**RIN 0625-AB16**

**Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings**

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: The Department of Commerce (Commerce) proposes to modify two regulations pertaining to the determination of benefit and specificity in countervailing duty proceedings. These modifications, if adopted, would clarify how Commerce determines the existence of a benefit resulting from a subsidy in the form of currency undervaluation, and clarify that companies in the traded goods sector of an economy can constitute a group of enterprises for purposes of determining whether a subsidy is specific.

DATES: To be assured of consideration, written comments must be received no later than [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: All comments must be submitted through the Federal eRulemaking Portal at <http://www.regulations.gov>, Docket No. ITA-2019-0002, unless the commenter does not have access to the internet. Commenters that do not have access to the internet may submit the original and one electronic copy of each set of comments by mail or hand delivery/courier. All

comments should be addressed to Jeffrey I. Kessler, Assistant Secretary for Enforcement and Compliance, Room 1870, Department of Commerce, 1401 Constitution Ave., NW, Washington, DC 20230. Comments submitted to Commerce will be uploaded to the eRulemaking Portal at [www.Regulations.gov](http://www.Regulations.gov).

Commerce will consider all comments received before the close of the comment period. All comments responding to this notice will be a matter of public record and will be available on the Federal eRulemaking Portal at [www.Regulations.gov](http://www.Regulations.gov). Commerce will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Laura Merchant, Enforcement and Compliance, at (202) 482-2104, e-mail address: [webmaster-support@ita.doc.gov](mailto:webmaster-support@ita.doc.gov).

FOR FURTHER INFORMATION CONTACT: Gregory Campbell at (202) 482-2239 or Matthew Walden at (202) 482-2963.

#### SUPPLEMENTARY INFORMATION:

##### **Background**

The purpose of the U.S. countervailing duty law is to provide a remedy for U.S. workers and businesses injured by unfairly subsidized imports. It is based upon the recognition that certain government interventions in the market cause distortions to trade and confer unfair advantages on certain economic actors. The countervailing duty law therefore provides for the imposition of a countervailing duty on subsidized imports to offset the portion of the subsidy attributable to the imported goods. Commerce conducts an investigation to determine whether countervailable subsidies have been provided, and the U.S. International Trade Commission

separately determines whether the domestic industry of the like product is injured (or threatened with injury) by reason of those imports. If both agencies reach affirmative determinations, Commerce will instruct U.S. Customs and Border Protection to apply countervailing duties on the subject imports.

A countervailing duty investigation is initiated when Commerce receives a petition filed on behalf of a U.S. industry that requests relief. Commerce can also self-initiate an investigation. An investigation covers a discrete “class or kind” of merchandise, such as off-the-road tires, or corrosion-resistant steel, or frozen shrimp. The investigation is a quasi-judicial proceeding, during which Commerce collects information from interested parties, assembles an administrative record, and receives arguments from interested parties. Commerce then makes its findings based upon the administrative record and parties’ arguments. If the investigation results in affirmative findings, and countervailing duties are imposed, there can be annual reviews of the duties to establish the precise amount of duties each year.

The Tariff Act of 1930, as amended (19 U.S.C. 1671, *et seq.*) (the Act), governs countervailing duty proceedings. It also defines a “subsidy.” Specifically, section 701 of the Act provides that when the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise that is imported into the United States, and material injury or threat of material injury is found by the International Trade Commission, Commerce shall impose a countervailing duty. Section 771(5)(B) of the Act defines a subsidy as existing when: A government or any public entity within the territory of a country provides a financial contribution; provides any form of income or price support; or makes a payment to a funding mechanism to provide a financial contribution, or entrusts or

directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments; and a benefit is thereby conferred. To be countervailable, a subsidy must be specific within the meaning of section 771(5A) of the Act.

There are four types of government financial contributions described in section 771(5)(D) of the Act: (1) A direct transfer of funds or potential direct transfer of funds; (2) foregoing or not collecting revenue that is otherwise due; (3) providing goods or services, other than general infrastructure; and (4) purchasing goods.

Section 771(5)(E) of the Act sets forth certain methods for determining the existence of a benefit for several different types of financial contributions. However, section 771(5)(E) of the Act is not exhaustive; it does not provide the method for determining the existence of a benefit for every type of financial contribution. Commerce's regulations provide further rules for determining the existence of a benefit. In particular, 19 CFR 351.503 sets forth some general principles, while 19 CFR 351.504 through 351.520 provide more specific guidelines for calculating the benefit from certain types of financial contributions.

Section 771(5A) of the Act addresses specificity of subsidies. Section 771(5A)(A) of the Act states that a subsidy is specific if it is an export subsidy described in section 771(5A)(B) or an import substitution subsidy described in section 771(5A)(C), or is determined to be specific pursuant to section 771(5A)(D). Section 771(5A)(D)(i) of the Act states that a subsidy is specific as a matter of law if the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry.

Even if a subsidy is not specific as a matter of law, it could be specific as a matter of fact. Section 771(5A)(D)(iii) of the Act describes four situations in which a subsidy is specific as a

matter of fact: (1) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number; (2) an enterprise or industry is a predominant user of the subsidy; (3) an enterprise or industry receives a disproportionately large amount of the subsidy; or (4) the manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

Section 771(5A)(D)(iv) of the Act states that a subsidy is specific when it is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy. Section 771(5A) of the Act makes clear that the term “enterprise or industry” includes a group of enterprises or industries. Commerce’s regulation at 19 CFR 351.502 sets forth more rules for determining specificity.

Neither the Act nor Commerce’s regulations specify how to determine the existence of a benefit or specificity when Commerce is examining a potential subsidy resulting from the exchange of currency. The proposed modifications to Commerce’s regulations, described below, would address this issue.<sup>1</sup>

Specifically, the modifications described below propose one way to analyze whether the exchange of an undervalued currency results in a countervailable subsidy. They are developed with the recognition that while Commerce is, by statute, the administering authority of the countervailing duty law, the issue of currency undervaluation is complex and unlike many of the subsidies we have examined in the past. As described below, during any countervailing duty proceeding involving a potential subsidy in the form of currency undervaluation, we intend to

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<sup>1</sup> In the past, Commerce has received allegations from petitioning U.S. industries that currency undervaluation in the context of unified currency regimes constitutes a countervailable subsidy. Commerce found the evidence in these allegations insufficient to support initiation. See, e.g., *Utility Scale Wind Towers from the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 77 FR 3447 (January 24, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 76 FR 70966 (November 16, 2011).

seek and to defer to the Department of the Treasury's (Treasury's) evaluation and conclusion as to whether government action on the exchange rate has resulted in currency undervaluation, unless we have good reason to believe otherwise, based on the record as a whole, in which case we will provide Treasury an opportunity to review and rebut the contrary reasoning. Treasury will use a consistent framework to assess currency undervaluation resulting from government action, recognizing country-specific factors. If it is determined that there is currency undervaluation based on government action on the exchange rate, Commerce will proceed to determine whether such action is countervailable.

In determining whether there has been government action on the exchange rate that undervalues the currency, we do not intend in the normal course to include monetary and related credit policy of an independent central bank or monetary authority.

We invite comments not only on this proposed approach, but also as to whether there are other options under the existing law to examine potential currency-related subsidies.

### **Proposed Modifications**

Commerce proposes to modify 19 CFR 351.502 and 19 CFR 351.503 as indicated below. The modification to 19 CFR 351.502 would clarify that enterprises that primarily buy or sell goods internationally can constitute a group of enterprises for purposes of determining specificity. The modification to 19 CFR 351.503 would add a paragraph explaining how Commerce intends to determine benefit when investigating or reviewing a potential subsidy in the form of currency undervaluation under a unified exchange rate system.

Any analysis of currency countervailability must focus on the above-described legal criteria under the U.S. countervailing duty statute, all of which relate to the fundamental principle that countervailing duties address government interventions in the market that cause

distortions. There are a variety of possible currency-related fact patterns that might satisfy the legal criteria for countervailability, and it is not Commerce's intention to identify or address them all here. That said, one analytical approach is to view currency undervaluation under a unified currency regime as a domestic currency premium. For instance, this occurs when exporting enterprises exchange U.S. dollars for their domestic currency at a state bank or other entity that Commerce determines on the record of the proceeding to be an authority (or a private entity entrusted or directed by an authority) and, in doing so, receive more domestic currency in exchange for each U.S. dollar converted than they would otherwise earn in the absence of the currency undervaluation. The receipt of domestic currency from an authority (or an entity entrusted or directed by an authority) in exchange for U.S. dollars could constitute the financial contribution under section 771(5)(D) of the Act.

In general terms, the currency undervaluation benefit calculation requires an identification of what the currency's value should be, absent the undervaluation. To do this, one method is to employ the concept of an equilibrium "real effective exchange rate" (REER) or its equivalent, consistent with International Monetary Fund (IMF) methodologies. For the purposes of this rule, equilibrium REER is defined as the REER that would lead to an appropriate level for external balance over the medium term. This equilibrium REER or its equivalent would be employed in the following two-step benefit analysis.

Step 1 would involve a threshold determination of the extent of foreign currency undervaluation, on the basis of a comparison of a country's REER and equilibrium REER in the relevant time period. Parties alleging that there is a currency undervaluation subsidy could submit, where possible, objective, third-party, publicly available estimates of the nominal U.S.

dollar rate consistent with the REER needed to achieve external balance. To the extent that a country's equilibrium REER exceeds its REER in the relevant time period, a benefit may exist.

The next step would be to identify the nominal, bilateral U.S. dollar exchange rate consistent with the equilibrium REER that would have prevailed in the relevant time period absent the undervaluation. The difference between (1) this nominal, bilateral U.S. dollar rate that would otherwise have prevailed and (2) the actual average nominal, bilateral U.S. dollar (money or market) rate used for commercial purposes in the relevant time period, could demonstrate the existence of a "benefit" from currency undervaluation.

In assessing the parties' arguments and conducting its analysis, Commerce will timely request that Treasury evaluate any currency undervaluation resulting from government action on the exchange rate. We expect that Treasury will timely provide Commerce with an evaluation and conclusion as to whether and to what extent the government action on the exchange rate has resulted in undervaluation of the currency, and, if Treasury deems appropriate, an evaluation of the benefit arising from such undervaluation. Treasury will use a consistent framework to assess currency undervaluation resulting from government action on the exchange rate, recognizing country-specific factors. Commerce will submit Treasury's evaluation to the record of the administrative proceeding and defer to Treasury's evaluation as to undervaluation in making Commerce's determination as to countervailability, unless Commerce has good reason to disagree with that evaluation, based on the record as a whole, in which case Commerce will provide Treasury an opportunity to review and rebut the contrary reasoning. As with any countervailing duty proceeding, all information presented to or obtained by Commerce during the proceeding will be placed on the administrative record, consistent with section 516A(b)(2)(A)(i) of the Act.

The value of the countervailable benefit to a particular enterprise under investigation or review could be determined by taking into account the amount of U.S. dollars that enterprise converted into domestic currency through an entity determined to be an authority (or entrusted or directed by an authority) during the relevant investigation or review period, the actual exchange rates in effect at the time of conversion, and the nominal dollar rate Commerce determines under this proposed regulatory modification. The benefit could be determined in other ways as well, depending on the particular circumstances.

With respect to the specificity of an undervalued currency under a unified currency regime, an analysis under the proposed regulation could take into consideration a country's balance of payments data and, specifically, the amount of foreign currency supplied by broad categories of entities or activities in that country, *e.g.*, exporters, foreign investors, tourists and recipients of factor income earned abroad. Information, where available, regarding the market supply of foreign currency could provide a reasonable proxy for the amount of U.S. dollars converted into the undervalued domestic currency of the country under investigation.

The final step would be to determine the portion of this total amount that is composed of foreign exchange supplied by enterprises that primarily buy or sell goods internationally. Starting with gross foreign currency supplied by exporters, and deducting the foreign exchange needed by these exporters to purchase any imported inputs used in the production of exported goods, would result in a figure for net foreign exchange supplied by the enterprises in the exporting and importing sector of that country. If enterprises in a country that primarily buy or sell goods internationally collectively constitute a predominant user or account for a disproportionate share of net foreign exchange supply, Commerce could find a currency

undervaluation subsidy to be specific to that group of enterprises within the meaning of section 771(5A)(D)(iii) of the Act.

As noted above, the countervailing duty law addresses government interventions in the market that cause distortions to trade and confer unfair advantages on certain economic actors. The proposed modifications, if adopted, would do just that. When state-owned banks or other entities Commerce finds to be authorities (or private entities entrusted or directed by authorities) provide foreign currency in exchange for U.S. dollars, Commerce may determine that there is a government financial contribution. The specificity test in the statute focuses the countervailing duty remedy only on those government interventions that benefit particular sectors of the economy. With respect to benefit, Commerce's analysis would address, in light of record evidence from third-party sources and Treasury, whether there is a financial contribution on terms more favorable than the market would provide. Commerce intends to use its discretion under the existing statute and regulations, including these proposed modifications, to focus the benefit inquiry on government distortions providing an advantage to exporters, consistent with Commerce's existing practice.

### **Expected Impact of the Proposed Rule**

Like many of Commerce's regulations, the modifications proposed here are an explanation of how Commerce will apply its existing statutory authority. Commerce notes that our proposed analysis for currency is not fundamentally different from the approach we follow for other types of countervailable subsidies we frequently encounter: loosely speaking, we examine whether foreign companies are receiving a financial contribution on terms that are better than what is commercially available, absent government action. The purpose is to provide relief to U.S. workers, farmers, ranchers, and businesses who are injured by unfairly subsidized

imports – in this case, by virtue of subsidies that occur when a foreign producer/exporter exchanges currency and receives a benefit due to currency undervaluation.

It is also important to note that the Act requires Commerce’s determinations in countervailing duty cases be made on the basis of the administrative record. The proceedings are normally adversarial, and accordingly there is often conflicting factual information on the record that might support different determinations by Commerce. Under section 516A(b)(1)(B)(i) of the Act, Commerce may make any determination unless it is unsupported by substantial evidence on the record, or otherwise not in accordance with law (*e.g.*, arbitrary and capricious).

We note all of Commerce’s determinations in countervailing duty cases are made publicly available and are subject to judicial review. Commerce’s decisions are fully explained, including calculations supporting the findings and responses to comments made by the interested parties.

We are including here two alternative approaches to assessing the expected economic impact of the proposed rule, if it were to become final, and we welcome comments on both approaches. Note that the economic analyses included in this document have been prepared solely for purposes of providing the public with the information and analyses required by Executive Order 12866 and are not meant to serve as a predictor of the facts in any potential future cases, nor to indicate the likelihood of any particular future determinations. Examples are provided for illustrative purposes only. All of Commerce’s countervailing duty determinations are based solely on the administrative record of the proceeding at hand, consistent with the Act and Commerce’s regulations.

Economic Impact Assessment - Alternative 1:

The first alternative analysis is based on the estimates of the annual total duties that could be collected if currency-related subsidies are countervailed in future proceedings.

This proposed rule, if it becomes final, would explain how Commerce will apply its statutory authority when examining potential subsidies resulting from undervalued currency. As explained above, in multiple prior cases Commerce has examined subsidy allegations based on a unified currency regime. While Commerce declined to initiate on those currency undervaluation allegations due to insufficient evidence provided by the petitioner, there is nothing in existing law or regulations that would prevent a domestic industry from petitioning Commerce immediately to investigate such a subsidy.

Nonetheless, to inform the public discussion of this proposed regulation, we consider the economic impact of a potential increase in the number of currency subsidy allegations that could potentially result from the public's increased awareness that Commerce would consider initiating countervailing duty investigations of such subsidies. As discussed below, we estimate that the total amount of countervailing duties that might be collected due to countervailing such subsidies could range from \$3.9 million to \$16.6 million annually – or, if certain additional assumptions are made, reflecting an unlikely scenario, up to \$21 million. To be clear, this rule itself will not lead to duties in these estimated amounts. Rather, countervailing duties related to a currency-related subsidy can only be imposed after Commerce has reached an affirmative final determination of subsidization and the U.S. International Trade Commission has reached an affirmative final injury determination. Any subsidy determination in a future countervailing duty (CVD) proceeding in which Commerce applies this rule will be based on the administrative record of that proceeding, consistent with the Act and Commerce's regulations. Commerce welcomes public comment on any likely economic effect of this proposed rule.

As a threshold question, we considered whether the proposed regulation would lead to an increase in the number of CVD petitions filed. The number of petitions filed over the past five years has fluctuated considerably.<sup>2</sup> Yet we are not aware of any evidence that the number of potentially countervailable subsidy programs is responsible for this change, even in part. Rather, a key determinant of whether a petition is filed is whether petitioners believe they can meet the statutory requirements for injury.<sup>3</sup> Furthermore, Commerce estimates that a typical affirmative final determination in a CVD case results in a finding of at least 10 countervailable programs<sup>4</sup> – and in some cases, the number is much higher. From the standpoint of a petitioner who has not yet hired advisors to prepare a petition, the number of potentially countervailable subsidies for a given product from a given country is indefinite. Petitioners’ awareness (as a result of the proposed regulation) that there is one additional subsidy claim that could be brought is unlikely to significantly change their calculus in deciding whether to invest the necessary time and resources to petition for the imposition of a CVD order.

Accordingly, Commerce does not believe that the proposed regulation will affect the number of CVD petitions received.<sup>5</sup> However, Commerce does believe that the proposed regulation is likely to increase the number of CVD allegations in petitions, because petitioners will be aware that Commerce is willing to investigate and potentially countervail currency

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<sup>2</sup> The number of CVD petitions filed each year from FY 2014 through FY 2018 is as follows: 15, 25, 16, 11, 18.

<sup>3</sup> Section 701(a) of the Act.

<sup>4</sup> While this estimate is based on our general experience across all CVD cases and relevant countries, as an independent check we closely reviewed the final determinations in the investigations for all current CVD orders involving South Korea, and calculated that Commerce countervailed 14 programs on average in those investigations. This further confirms that an estimate of 10 programs per case is appropriately viewed as conservative. We further note that the number of subsidies alleged in a given proceeding generally exceeds (often considerably) the number of subsidies ultimately determined to be countervailable and used by the companies under investigation in a proceeding.

<sup>5</sup> Commerce has seldom, if ever, conducted an investigation that included only one or even a handful of alleged subsidies, which further supports the point that the addition of one more potential subsidy allegation, in the form of currency undervaluation, is not likely to be a decisive factor in a U.S. petitioning industry’s decision to file a new petition.

undervaluation subsidies when there is a supported allegation and when the financial contribution, benefit, and specificity requirements are met. Therefore, in the remainder of this section, we consider the following question: what is the value of annual duties likely to be collected if Commerce finds a countervailable currency undervaluation subsidy in a proceeding in which both it and the U.S. International Trade Commission have reached final affirmative determinations?

In theory, there are two possible approaches to answering this question. First, we could attempt to estimate the likely value of annual duties from the magnitude of currency undervaluation shown to exist economy-wide in the past. However, this approach is unworkable, because (consistent with statute) countervailing duty calculations are based on company-specific information which is not possible to estimate in the abstract. Given that the range of possible experience can vary widely between companies, it is essentially a speculative endeavor to identify meaningful, representative averages for each variable.

To illustrate this point with a simplified calculation: Assume as an example two hypothetical producers/exporters of subject merchandise in a country are under investigation by Commerce, each with markedly different profiles. Company A is an integrated producer that imports few inputs and sells a relatively large share of its finished product within its domestic market, though also exports some to the United States. Company B is a Foreign Invested Enterprise in the country under investigation that is part of a global supply chain. It imports key inputs (in U.S. dollars) and re-exports a large portion of its finished product to the United States. Assume the REER differential for the country's domestic currency unit (DCU) is 10 percent. Also, assume two scenarios for each company: one where the bilateral nominal exchange rate is undervalued by 5 percent (scenarios A<sub>1</sub> and B<sub>1</sub>) and one where it is undervalued by 10 percent

(scenarios A<sub>2</sub> and B<sub>2</sub>). Finally, assume that neither company receives the currency subsidy benefit indirectly, and that the current nominal exchange rate is 1 U.S. dollar per DCU 1.05.

Table 1. Hypothetical Currency-Related CVD Rate Calculations

	Domestic Sales (DCUs)	US\$ Rate Gap	US Sales (US\$)	Tot. Sales (DCU)	Share of US\$ Holdings Exchanged	Amount DCUs Actually Received	Amt. DCUs at Target US\$ Rate	Benefit (DCUs)	Currency Subsidy CVD Rate
Company A <sub>1</sub>	1,000,000	5%	500,000	1,525,000	80%	420,000	400,000	20,000	1.31%
Company A <sub>2</sub>	1,000,000	10%	500,000	1,525,000	80%	420,000	381,818	38,182	2.50%
Company B <sub>1</sub>	250,000	5%	500,000	775,000	20%	105,000	100,000	5,000	0.65%
Company B <sub>2</sub>	250,000	10%	500,000	775,000	20%	105,000	95,455	9,545	1.23%

Note that under Commerce’s CVD methodology, in calculating a company-specific CVD rate for a given domestic (*i.e.*, non-export-contingent) subsidy, Commerce will normally use the company’s total worldwide sales (including domestic sales and sales to third countries) of domestically manufactured products as the denominator. All other things equal, the result of using total sales as the denominator compared to using, *e.g.*, just export sales (as Commerce does for export-contingent subsidies) is generally to reduce the CVD rate for that subsidy. The magnitude of that reduction will depend on the particular company’s ratio of export to total sales, among other things. Accordingly, in the event of an affirmative finding of a countervailable subsidy in a future proceeding under the proposed regulation – which sets out a framework for analyzing currency undervaluation as a domestic subsidy – the higher the worldwide sales of the subsidy recipient, the lower the CVD rate that Commerce would assign to that subsidy recipient, all else equal.

The examples presented above, while hypothetical, serve to illustrate that company-specific valuations of a subsidy benefit from currency undervaluation can vary significantly depending on the assumptions for at least three key variables: (i) the extent to which the nominal

bilateral U.S. dollar rate falls below the level consistent with the equilibrium REER value; (ii) the extent to which the company converted U.S. dollars into domestic currency during the relevant time period; and (iii) the value of the company's total sales (of all products, to all markets). The larger (or smaller) the divergence in the nominal bilateral (in (i) above), the larger (or smaller) is the subsidy benefit in absolute terms, all else equal; and (ii) the larger (or smaller) the amount of U.S. dollars converted into domestic currency (in (ii) above), the larger (or smaller) is the benefit, all else equal. However, this tells us nothing about how large or small the countervailing duty rate is since this rate is equal to the benefit in U.S. dollars divided by the U.S. dollar value of the company's total sales (*i.e.*, the ratio of the two variables). Since there is no necessary correlation or relationship between the total sales variable and the other two variables, or between the benefit amount and the sales amount of the ratio that defines the countervailing duty rate, neither the currency undervaluation variable nor the U.S. dollar conversion variable alone gives any indication of the ultimate countervailing duty rate for currency undervaluation. Thus, in the case of a large currency undervaluation, the countervailing duty rate can nevertheless be zero; and in the case of a small currency undervaluation, the countervailing duty rate can be large. For this reason, as stated above, we cannot estimate the likely value of annual duties from the magnitude of currency undervaluation shown to exist economy-wide in the past.

The second possible approach, presented below, is to base our estimate on aggregated historical data for the value of CVDs deposited – which we assume to be a function of the number of subsidy allegations made to Commerce. This aggregated historical data serves as the

baseline for our impact analysis. According to data from Customs and Border Protection,<sup>6</sup> the average annual amount of total duties deposited under CVD orders over the last five fiscal years (FY 2014-18) was \$527 million. The average annual value of imports subject to CVD during that timeframe was \$4.22 billion. Thus, an average total CVD rate of roughly 12 percent was deposited on every dollar of imports subject to CVD.<sup>7</sup>

As noted above, Commerce estimates that a typical CVD case involves at least 10 countervailable programs.<sup>8</sup> Thus, we have calculated a conservatively high average 1.2 percent CVD rate for each subsidy program found to be countervailable in a typical case.<sup>9</sup> There is no reason to think that this figure would be different for currency-related subsidies.<sup>10</sup>

As of the drafting of this notice, there are 116 CVD orders in effect. While Commerce does not believe that implementation of this currency undervaluation methodology will result in an increase in CVD investigations (as discussed above), for purposes of illustration we assume hypothetically that the proposed regulation would result in an additional two CVD orders per year that would not have otherwise existed absent the adoption of this methodology, which

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<sup>6</sup> Customs and Border Protection collects data on the total value of U.S imports from all countries subject to countervailing duty orders during a given period, as well as the value of duties deposited by importers pursuant to those CVD orders during that period. Concerns regarding the protection of proprietary information prevent us from making public that information, except in the most aggregated form that we have provided here.

<sup>7</sup> During that 5-year time frame, the average total CVD rate on an annual basis ranged from a low of 8.5 percent to a high of 15.2 percent.

<sup>8</sup> Commerce does not calculate this statistic in the ordinary course of our work. This estimate of at least 10 countervailable programs on average is based on an internal review of the determinations in several of the hundreds of CVD investigations and administrative reviews that Commerce has conducted in recent years.

<sup>9</sup> Alternatively, taking the highest average annual total CVD rate in the last five years of 15.2 percent, as noted above, and dividing by 10 programs, results in a very conservatively-high program-specific CVD rate of 1.52 percent. Conversely, taking the lowest average annual total CVD rate in the last five years of 8.5 percent and dividing by 10 programs results in a lower-end program-specific CVD rate of 0.85 percent.

<sup>10</sup> As discussed below, the fact that currency undervaluation subsidies may be perceived to be available to a variety of industries and enterprises throughout a particular country's economy does not distinguish them from other subsidies that Commerce already countervails today. Furthermore, the larger the relevant sales of a given company, the lower the applicable CVD rate (all else equal). Thus, the magnitude of currency undervaluation based on Step 1 or Step 2 of the benefit analysis is not in and of itself a predictor of the likely CVD rates that Commerce would impose if it were to countervail currency subsidies.

equals a roughly two percent increase in the number of existing orders.<sup>11</sup> Therefore, as a corollary, we assume that the average value of imports subject to CVD increases two percent from \$4.22 billion to \$4.3 billion. To be clear, Commerce is not aware of any precedent for new petitions as the result of the public's increased awareness that a type of subsidy is potentially countervailable. Therefore, in our view, a two percent increase in the number of petitions due solely to the public's increased awareness that currency undervaluation subsidies are potentially countervailable represents an outlier scenario.

We currently have information in the public domain from two sources (IMF and Peterson Institute for International Economics) regarding whether countries' exchange rates were undervalued during 2017.<sup>12</sup> For some countries the two sources agree, but for other countries one source finds there is undervaluation and the other source finds there is not; moreover, the lists of countries assessed by the two sources are not identical. Additionally, these two sources are not making a judgment about whether the undervaluation is a result of government action on the exchange rate, which would be part of the evaluation and conclusion provided by Treasury in the proposed rule. Commerce has not made any decision as to how we will treat instances where our information sources disagree over undervaluation for a given country. This will depend upon the record evidence, including any analysis provided by Treasury, and interested parties' arguments in a given proceeding.

However, hypothetically, if Commerce were to find that a currency is undervalued because at least one of the two sources' point estimates indicates undervaluation (the "more conservative" scenario, in that it results in a higher estimate of economic significance), then the

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<sup>11</sup> From FY 2014 through FY 2018, the number of CVD orders imposed is as follows: 6, 9, 16, 11, 18.

<sup>12</sup> Any future finding of undervaluation will of course be based on data for the relevant period of investigation or review covered by the CVD proceeding, data permitting.

data show that roughly 32 percent of total imports subject to CVDs are from countries with undervalued currencies.<sup>13</sup> As an alternative hypothetical, if Commerce were to find that a currency is undervalued because both sources (and in the case of IMF, the entire reported range) support such a determination (the “less conservative” scenario), then only 7.6 percent of total imports subject to CVDs are from a country (in fact, only one country—Korea) with an undervalued currency.<sup>14</sup>

Under the more conservative scenario: 32 percent \* \$4.30 billion = \$1.38 billion in average annual imports that are covered by CVD orders and are from countries with undervalued currencies. Next, \$1.38 billion \* 1.2 percent CVD rate calculated for a currency subsidy = \$16.6 million in total annual duties collected for countervailing currency undervaluation subsidies.<sup>15</sup>

Under the less conservative scenario: 7.6 percent \* \$4.30 billion = \$327 million in average annual imports that are covered under CVD orders and are from countries with undervalued currencies. Next, \$327 million \* 1.2 percent CVD rate calculated for a currency subsidy = \$3.9 million in total annual duties collected for currency undervaluation subsidies.

Although Commerce believes that the assumptions underlying the two scenarios above are the most reasonable based on past CVD practice, other assumptions would lead to

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<sup>13</sup> In FY 2018, countervailing duties were deposited on various products imported from 19 countries. For 12 of these 19 countries, at least one of the two sources (IMF or Peterson Institute for International Economics) deemed the domestic currency undervalued during 2017. Based on information from Customs and Border Protection, the total value of imports from these 12 countries with potentially undervalued currencies equaled roughly 32 percent of the total value of imports from all 19 countries.

<sup>14</sup> To be clear, in this estimate we are only considering “step 1” of the benefit analysis. Step 2 of the benefit test, the financial contribution test, the specificity test, and the U.S. International Trade Commission’s injury test would reduce the candidate countries for CVDs targeting currency undervaluation even further. This is another reason that Commerce’s estimates of economic significance are conservatively high.

<sup>15</sup> Relying instead on the very conservative (high) average program rate of 1.52 percent, noted above, results in the following calculation: \$1.38 billion \* 1.52 percent CVD rate calculated for a currency subsidy = \$21 million in total annual duties collected for countervailing currency undervaluation subsidies. Conversely, relying on the low rate of 0.85 percent results in the following calculation: \$1.38 billion \* 0.85 percent CVD rate calculated for a currency subsidy = \$11.7 million in total annual duties collected for countervailing currency undervaluation subsidies.

significantly higher estimates of economic impact. For example, if the total value of imports subject to countervailing duties is assumed to be double the historical average (*i.e.*, \$8.44 billion); the share of all imports from undervalued countries is assumed to be 50 percent (rather than the maximum of 32 percent suggested by the relevant data sources we have cited from PIIIE and IMF), and the average CVD rate for currency undervaluation is assumed to be double the historical average for other subsidies (*i.e.*, 2.4 percent rather than 1.2 percent); then the calculation of economic impact would be as follows: \$8.44 billion \* 50% \* 2.4 percent = \$101.3 million.

Commerce notes that there is no evidence that CVDs – which are imposed only on very specific products from a particular country (*e.g.*, certain carbon and alloy cut-to-length steel plate from the Republic of Korea) – deter trade with the country more generally. Commerce currently has 58 CVD orders on China, the most for any single country, and each CVD order typically involves multiple subsidy programs (of which currency undervaluation would be only one). Yet U.S. imports from China have continued to rise significantly over the last several years to \$540 billion in 2018 (up from \$440 billion in 2013). Similarly, Commerce currently has 19 CVD orders on imports from India (again, with each order typically encompassing multiple subsidy programs), and yet total U.S imports from India have continued to rise significantly over the last several years to \$54 billion in 2018 (up from \$42 billion in 2013). Commerce has a total of 116 CVD orders in place, but the value of imports impacted by those orders equates to just 0.3 percent of all imports into the United States in FY 2018.

It is important to underscore four additional points in this context. First, the fact that currency undervaluation subsidies may be perceived to be available to a variety of industries and enterprises throughout a particular country's economy does not distinguish them from other

subsidies that Commerce already countervails today. For example, Commerce has often countervailed the provision of electricity for less than adequate remuneration in CVD proceedings involving imports from China. This is largely a reflection of the fact that this program is frequently included among the countervailable subsidies alleged in CVD petitions submitted from petitioning U.S. industries, which in turn reflects the fact that most foreign industries that have been involved in U.S. CVD proceedings use electricity in their production processes. The fact that Commerce has frequently found electricity subsidies in prior China CVD cases has not led to new CVD petitions being filed by U.S. industries that would not otherwise be filed. Land, policy lending, and export buyers credits, which Commerce frequently countervails, similarly illustrate this point.

Moreover, while it may seem that the total aggregate value of these types of government supports across all recipients could be relatively large, given the various enterprises and industries to which they may be available, there is no basis to presume a relatively large economy-wide value translates into a larger CVD rate for the program for a given company. This is because, as explained above, the CVD rate for domestic subsidies is generally determined on a company-specific basis, taking into account the amount of subsidy received by a particular producer/exporter of subject merchandise, and the total worldwide sales of the company for relevant products (*i.e.*, those products that benefit from the subsidy, which may be a broader category than the subject merchandise).

Likewise, assuming *arguendo* that the benefit from a currency undervaluation subsidy in a given country is large in the aggregate, Commerce does not believe that that is a sufficient basis to presume that a company-specific CVD rate calculated for currency undervaluation will likely be larger than the program rates for any other subsidies that company receives. For

example, in *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016), the Government of Korea reported in its public submissions that the Korean Development Bank (a Korean government policy bank) provided close to \$14 billion in loans in 2014 to Korean companies under its “Short-Term Discounted Loans for Export Receivables” program. However, despite the considerable size of the program in the aggregate, we calculated a company-specific rate for that subsidy program of less than 0.01 percent for one of two Korean respondent companies in that CVD proceeding. The second respondent company in the investigation reported not using the program at all, and therefore received no rate for that program.<sup>16</sup> That said, we invite the public to comment on this issue. Similarly, the aggregate value of the Government of India’s “Merchandise Exports from India Scheme” was reportedly close to \$2 billion (Rs 12,746 in Crore) during India’s 2016-17 budget year.<sup>17</sup> And yet, in a CVD investigation of that subsidy program involving Indian producers of cold-drawn mechanical tubing during that period, Commerce determined that the company-specific program rate for that subsidy was only 0.12 percent for one of the companies under investigation, and 1.48 percent for another company. See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Countervailing Duty Determination*, 82 FR 58172 (December 11, 2017).

Second, the products that are subject to countervailing duty (and antidumping duty) investigations are typically defined very narrowly by the petitioners. This is due, at least in part, to the relationship between the scope of Commerce’s investigations and the U.S. International

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<sup>16</sup> To the extent information on aggregate subsidy amounts is on the record of Commerce’s CVD proceedings, it is often “business proprietary information” and therefore is not subject to public disclosure.

<sup>17</sup> “Statement of Revenue Impact under the Central Tax System,” Receipts Budget 2018-2019 (available online at: <https://www.indiabudget.gov.in/ub2018-19/rec/annex7.pdf>).

Trade Commission's definition of the domestic like product.<sup>18</sup> This will not change if Commerce begins to countervail currency undervaluation subsidies.

Third, as noted above, Commerce estimates that a typical CVD case involves 10 countervailable subsidy programs. Furthermore, based on anecdotal evidence, it can cost private parties more than one million dollars in legal and other fees to petition for the imposition of CVDs on a particular product from a particular country. Accordingly, to the extent that the proposed regulation would change CVD practice, it is likelier to lead to one additional CVD allegation in petitions that would otherwise have been submitted – not an increase in the overall number of CVD petitions.

Fourth, Commerce again notes that the proposed rule simply explains that companies that primarily buy or sell goods internationally can comprise a “group” of enterprises for specificity purposes. This is consistent with what Commerce has done in other situations. For example, in *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), Commerce explained in Comment 14 of the Decision Memorandum that foreign invested enterprises (FIEs) constitute a “group” of enterprises, notwithstanding the fact that they may operate in a variety of industries. Likewise, in a 2010 policy bulletin, available at <https://enforcement.trade.gov/policy/PB-10.1.pdf>, Commerce explained that state-owned enterprises (SOEs) can constitute a “group” of enterprises. Treating FIEs or SOEs as a group for purposes of the specificity analysis has not led to a discernable increase in the number of CVD investigations. Accordingly, we do not believe

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<sup>18</sup> In many cases, a narrow definition of the scope and the domestic like product is beneficial to the petitioning U.S. domestic industry, because this may increase the likelihood of an affirmative injury finding. As the Court of Appeals for the Federal Circuit stated in *Allegheny Ludlum Corp. v. United States*, 287 F.2d 1365, 1370-71 (Fed. Cir. 2002), “Any actual effect of the imported goods on the narrower domestic like product market may be effectively submerged, and lost, upon the inclusion of data from a larger set of domestic products.”

that the specificity provision in this proposed regulation will lead to a discernable increase in the number of CVD investigations.

All of this information confirms that the proposed regulation is unlikely to dramatically change the total volume of imports subject to CVDs. Rather, it may lead to an uptick in total CVD rates if and only if Commerce determines that there are currency undervaluation subsidies in countries during the relevant time periods. This supports the estimates of economic impact provided above, ranging from approximately \$4 million to less than \$17 million.

In sum, based on the reasoning provided above, Commerce is of the view that regulatory guidance on how it will treat subsidy allegations regarding currency undervaluation is no different from existing regulations, for example, addressing the treatment of loans by state-owned banks (19 CFR 351.505), equity infusions (19 CFR 351.507), or exemptions for prior-stage cumulative indirect taxes (19 CFR 351.518).

#### Economic Impact Assessment – Alternative 2:

During interagency discussions, an alternative approach to assessing the economic significance of the rule emerged. This alternative approach attempts to determine the likely economic impact of the proposed regulation, based on the overall magnitude of currency-related subsidies provided to all economic actors, regardless of their company-specific features and their engagement (or lack thereof) in unfair trade that injures a domestic industry.

As discussed in more detail above, Commerce frequently countervails the provision of electricity for less than adequate remuneration in its CVD proceedings involving imports from China; this analysis will use extrapolations from this past experience as a means of exploring the

potential impact of currency-related subsidies.<sup>19</sup> This analysis begins by estimating the electricity portion of Chinese imports' overall subsidy rate, which along with the Chinese portion of worldwide countervailable imports yields an estimate of the countervailing duties associated with Chinese electricity subsidies. The result is then extrapolated, proportionate to estimates of the total relevant subsidies, from the electricity context to currency.

Table 2 reports electricity-associated and total subsidy rates for a random sample of the approximately 35 Chinese countervailable subsidies for which final affirmative determinations were published in the *Federal Register* between 2014 and 2018.<sup>20</sup> Also reported are import values associated with the relevant products, which will be used to calculate an import-weighted average of the electricity portion of overall countervailing duties.

Table 2. Sample of Chinese Subsidy Rates and Total Import Values, 2014 to 2018

	Subsidy Rate (%), Electricity	Subsidy Rate (%), Total	Pre-Order Imports (\$ million) <sup>k</sup>
Calcium Hypochlorite <sup>a</sup>	5.34	65.85	8.1
Tool Chests and Cabinets <sup>b</sup>	0.41	14.03	230
Stainless Steel Sheet and Strip <sup>c</sup>	5.62	75.6	312
Cast Iron Soil Pipe Fittings <sup>d</sup>	3.44	34.87	13.2
Hardwood Plywood <sup>e</sup>	0.61	22.98	464 <sup>l</sup>
Large Diameter Welded Pipe <sup>f</sup>	20.06	198.49	29.2
Melamine <sup>g</sup>	20.06	154.0	14.5
Cold-Rolled Steel Flat Products <sup>h</sup>	20.06	256.54	280 <sup>j</sup>

<sup>a</sup> <https://enforcement.trade.gov/frn/summary/prc/2014-29368-1.pdf>;  
<https://www.federalregister.gov/documents/2014/12/15/2014-29368/calcium-hypochlorite-from-the-peoples-republic-of-china-final-affirmative-countervailing-duty>  
<sup>b</sup> <https://enforcement.trade.gov/frn/summary/prc/2017-25768-1.pdf>;  
<https://www.federalregister.gov/documents/2017/11/29/2017-25768/certain-tool-chests-and-cabinets-from-the-peoples-republic-of-china-final-affirmative-countervailing>  
<sup>c</sup> <https://enforcement.trade.gov/frn/summary/prc/2017-02577-1.pdf>;  
<https://www.federalregister.gov/documents/2017/02/08/2017-02577/countervailing-duty-investigation-of->

<sup>19</sup> As discussed below, the fact that currency undervaluation subsidies may be perceived to be available to a variety of industries and enterprises throughout a particular country's economy does not distinguish them from other subsidies that Commerce already countervails today. Furthermore, the larger the relevant sales of a given company, the lower the applicable CVD rate (all else equal). Thus, the magnitude of currency undervaluation based on Step 1 or Step 2 of the benefit analysis is not in and of itself a predictor of the likely CVD rates that Commerce would impose if it were to countervail currency subsidies.

<sup>20</sup> This sampling approach introduces uncertainty. It is anticipated that a more comprehensive examination of the data (without sampling) may be possible for the analysis of any final rule resulting from this proposal.

stainless-steel-sheet-and-strip-from-the-peoples-republic-of-china  
<sup>d</sup> <https://enforcement.trade.gov/frn/summary/prc/2018-14827-1.pdf>;  
<https://www.federalregister.gov/documents/2018/07/11/2018-14827/cast-iron-soil-pipe-fittings-from-the-peoples-republic-of-china-final-affirmative-countervailing>  
<sup>e</sup> <https://enforcement.trade.gov/frn/summary/prc/2017-24864-1.pdf>;  
<https://www.federalregister.gov/documents/2017/11/16/2017-24864/countervailing-duty-investigation-of-certain-hardwood-plywood-products-from-the-peoples-republic-of-china>  
<sup>f</sup> <https://enforcement.trade.gov/frn/summary/prc/2018-13567-1.pdf>;  
<https://www.federalregister.gov/documents/2018/11/14/2018-24805/countervailing-duty-investigation-of-large-diameter-welded-pipe-from-the-peoples-republic-of-china>  
<sup>g</sup> <https://enforcement.trade.gov/frn/summary/prc/2015-09004-1.pdf>;  
<https://www.federalregister.gov/documents/2015/11/06/2015-28351/melamine-from-the-peoples-republic-of-china-final-affirmative-countervailing-duty-determination>  
<sup>h</sup> <https://enforcement.trade.gov/frn/summary/prc/2016-12183-1.pdf>;  
<https://www.federalregister.gov/documents/2016/05/24/2016-12183/certain-cold-rolled-steel-flat-products-from-the-peoples-republic-of-china-final-affirmative>  
<sup>i</sup> Chinese imports are assumed to be 65 percent of the \$715.7 million combined total across five countries.  
<sup>j</sup> Chinese imports are assumed to be 65 percent of the \$431.5 million combined total across two countries.  
<sup>k</sup> The pre-order import levels listed in the cited fact sheets will not necessarily equal the imports that occur in future years when CVDs are imposed.

The average, weighted by import value, of the electricity portion of the overall subsidy rate is 5.25 percent.<sup>21</sup> The Customs and Border Protection data cited above indicate that 17 percent of countervailable imports are from China. This, in turn, yields an estimate that \$4.7 million (=5.25 percent x 17 percent x \$527 million) in annual countervailing duties are associated with Chinese electricity subsidies.

Industrial and commercial users in China reportedly received between \$7.2 billion and \$13.6 billion in annual electricity subsidies in recent years.<sup>22,23</sup> It is unclear how much of that total went to export manufacturing, but given the steel industry’s prominence as a recipient of electricity subsidies (per Haley and Haley, 2013), steel trade data are used to develop an estimate

<sup>21</sup> The result would be 3.7 percent if it were calculated by dividing the estimated electricity-related subsidies by the estimated total subsidies. This approach is not emphasized because it would require somewhat greater confidence in the import data, which has the limitations noted in the Table 2 footnotes.

<sup>22</sup> Stocking, Andrew and Terry Dinan. “China’s Growing Energy Demand: Implications for the United States.” Congressional Budget Office Working Paper 2015-05. June 2015. [https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/workingpaper/50216-China\\_1.pdf](https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/workingpaper/50216-China_1.pdf).

<sup>23</sup> Lelyveld, Michael. “China Faulted for Cutting Power Prices.” Radio Free Asia, March 18, 2019, [https://www.rfa.org/english/commentaries/energy\\_watch/china-faulted-for-cutting-power-prices-03182019111315.html](https://www.rfa.org/english/commentaries/energy_watch/china-faulted-for-cutting-power-prices-03182019111315.html).

of the portion of such subsidies that are associated with exports to the United States.<sup>24</sup> In 2018, China exported 66.9 million metric tons of steel, including 734.8 thousand metric tons to the U.S.<sup>25</sup> Total Chinese steel production was 928.3 million metric tons.<sup>26</sup> Exports to the U.S. thus represented 0.08 percent ( $=0.7348 \text{ million} / 928.3 \text{ million}$ ) of Chinese steel production.<sup>27</sup> If 0.08 percent of Chinese electricity subsidies are associated with steel that is ultimately exported to the United States, then the amount of the associated subsidy would range from approximately \$6 million ( $=0.08 \text{ percent} \times \$7.2 \text{ billion}$ ) to \$11 million ( $=0.08 \text{ percent} \times \$13.6 \text{ billion}$ ). The resulting estimates of the ratio of countervailing duty to underlying subsidy would range from 42.8 percent ( $=\$4.7 \text{ million} / \$11 \text{ million}$ ) to 78.4 percent ( $=\$4.7 \text{ million} / \$6 \text{ million}$ ).

The IMF reports 3.0 percent undervaluation of Chinese currency on average in 2017.<sup>28</sup> With U.S. imports from China valued at \$540 billion, the associated subsidy would be approximately \$16 billion ( $=3.0 \text{ percent} \times \$540 \text{ billion}$ ). However, this estimate does not account for behavior change (which could include changes in import-export activity, subsidy activity, or both). Toward that end, it is noted that Table 3 reports data on pre-order countervailable imports from China and the rest of the world for which final affirmative determinations were made between November 2018 and April 2019. The Chinese portion

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<sup>24</sup> Haley, Usha C.V. and George T. Haley. "How Chinese Subsidies Changed the World." Harvard Business Review, April 25, 2013, available at <https://hbr.org/2013/04/how-chinese-subsidies-changed>.

<sup>25</sup> <https://www.trade.gov/steel/countries/pdfs/exports-china.pdf>

<sup>26</sup> <https://www.worldsteel.org/en/dam/jcr:dcd93336-2756-486e-aa7f-64f6be8e6b1e/2018%2520global%2520crude%2520steel%2520production.pdf>

<sup>27</sup> Uncertainty is introduced into this analysis by a limited ability to account for the possibility that the U.S. imports steel that is of relatively high value per ton.

<sup>28</sup> The IMF reports an uncertainty range from 13 percent undervaluation to 7 percent overvaluation; see the "Staff-Assessed REER Gap" columns of Table 2 of the External Sector Report 2018, available at <https://www.imf.org/en/Publications/ESR/Issues/2018/07/19/2018-external-sector-report>. The Peterson Institute for International Economics (PIIE), another major third-party source of information on currency valuation, only reports a point estimate, which presently indicates that Chinese currency is overvalued; see the "Change in REER (percent) Change in Simulation" column of Table 2 of PIIE's report, available at <https://piie.com/system/files/documents/pb17-31.pdf>.

consists of 65 percent of the total. As noted previously, CBP data indicate that 17 percent of (post-order) countervailable imports are from China, thus potentially indicating that behavior change, especially in the Chinese context, can reduce CVD collection by nearly three-quarters.<sup>29</sup> For this reason, the \$16 billion subsidy estimate is reduced to \$4 billion.

Table 3. Pre-Order Countervailable Imports, Final Determinations from November 2018 to April 2019

	Pre-Order Countervailable Imports from China (\$ million)	Pre-Order Countervailable Imports from the Rest of the World (\$ million)
Large Diameter Welded Pipe <sup>a</sup>	29.2	294.7
Common Alloy Aluminum Sheet <sup>b</sup>	897.9	0
Rubber Bands <sup>c</sup>	4.9	0
Plastic Decorative Ribbon <sup>d</sup>	22.5	0
Large Diameter Welded Pipe <sup>e</sup>	0	398.8
Cast Iron Soil Pipe <sup>f</sup>	11.5	0
Rubber Bands <sup>g</sup>	0	12.1
Steel Wheels <sup>h</sup>	388	0
Laminated Woven Sacks <sup>i</sup>	0	21.1
Glycine <sup>j</sup>	1.1	6.7

<sup>a</sup> <https://enforcement.trade.gov/download/factsheets/factsheet-multiple-large-diameter-welded-pipe-ad-cvd-final-110718.pdf>  
<sup>b</sup> <https://enforcement.trade.gov/download/factsheets/factsheet-prc-alloy-aluminum-sheet-ad-cvd-final-110718.pdf>  
<sup>c</sup> <https://enforcement.trade.gov/download/factsheets/factsheet-prc-rubber-bands-ad-cvd-final-111418.pdf>  
<sup>d</sup> <https://enforcement.trade.gov/download/factsheets/factsheet-prc-plastic-decorative-ribbon-ad-cvd-final-122118.pdf>  
<sup>e</sup> <https://enforcement.trade.gov/download/factsheets/factsheet-multiple-large-diameter-welded-pipe-ad-cvd-final-022119.pdf>  
<sup>f</sup> <https://enforcement.trade.gov/download/factsheets/factsheet-prc-cast-iron-soil-pipe-ad-cvd-final-022519.pdf>  
<sup>g</sup> <https://enforcement.trade.gov/download/factsheets/factsheet-thailand-rubber-bands-ad-cvd-final-030119.pdf>  
<sup>h</sup> <https://enforcement.trade.gov/download/factsheets/factsheet-prc-steel-wheels-ad-cvd-final-032219.pdf>  
<sup>i</sup> <https://enforcement.trade.gov/download/factsheets/factsheet-vietnam-laminated-woven-sacks-ad-cvd-final-040519.pdf>  
<sup>j</sup> <https://enforcement.trade.gov/download/factsheets/factsheet-multiple-glycine-ad-cvd-final-042519.pdf>

Multiplying the \$4 billion estimate by the 42.8- or 78.4-percent CVD-to-subsidy ratios calculated in the electricity context yields an estimated range of between \$1.71 billion and \$3.14

<sup>29</sup> Moreover, U.S. imports of cold-rolled steel from Vietnam rose by nearly \$200 million subsequent to the imposition, in 2015, of anti-dumping charges on Chinese cold-rolled steel products (see <https://www.commerce.gov/news/press-releases/2018/05/us-department-commerce-issues-affirmative-final-circumvention-rulings>). If it is assumed that nearly all of this increase consisted of Chinese steel funneled through Vietnam and that pre-order U.S.-bound Chinese exports of cold-rolled steel were \$280 million (as shown in Table 2), then this provides further evidence of behavior change reducing duty collection by over 70 percent.

billion in new countervailing duties collected on Chinese imports.<sup>30</sup> This estimation approach extrapolates from electricity subsidies to a new policy context involving currency undervaluation. A key assumption underlying this analysis is that, despite being different types of subsidies, the patterns of injury findings and company-specific features are such that the ratio of CVDs ultimately collected to subsidies provided (where subsidy is defined in its general, rather than legal, sense) would be similar in the currency context to what has been historically experienced with regard to electricity. Public comments are welcome on the appropriateness of this extrapolation and as regards evidence or methodological suggestions that would allow for refinement of the analytic approach.

In sum, based on the reasoning provided above, Commerce is of the view that regulatory guidance on how it will treat subsidy allegations regarding currency undervaluation is no different from existing regulations, for example, addressing the treatment of issues such as electricity subsidies in the extended example, loans by state-owned banks (19 CFR 351.505), equity infusions (19 CFR 351.507), or exemptions for prior-stage cumulative indirect taxes (19 CFR 351.518). Nevertheless, the topic of currency undervaluation often garners wider attention, and we recognize that some argue that any action to address currency exchange practices will impact currency markets. These impacts are inherently indirect and unpredictable, and would not necessarily be a factor in the decision making of the agency to pursue individual cases of subsidy allegations that necessarily flow from the statutory criteria, as clarified in this proposed rulemaking. Nevertheless, if that were to turn out to be true, the indirect economic impact of this rule could potentially be greater than the historically based estimates summarized in this section. This is an area of uncertainty in this analysis and accordingly, we welcome comments on

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<sup>30</sup> This outcome would, in turn, lead to increased prices for U.S. consumers of the relevant imported goods.

whether this proposed rule addressing the “benefit” and “specificity” elements of the countervailing duty law will have such an impact.

## **Classifications**

### *Executive Order 12866*

For the reasons described above regarding the potential economic impacts of this rule, and because of the potential, depending on the flow of additional activity in this area, for this rule to have a relatively concentrated effect on specific markets, OMB has determined that this proposed rule is economically significant for purposes of Executive Order 12866.

### *Executive Order 13771*

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. The designation of any final rule that results from this proposal, as an EO 13771 regulatory or deregulatory action, will be informed by feedback received during the public comment period.

### *Paperwork Reduction Act*

This proposed rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

### *Congressional Review Act*

This proposed rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.) and will, if finalized, be transmitted to the Congress and to the Comptroller General for review in accordance with such provisions.

### *Executive Order 13132*

This proposed rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

*Regulatory Flexibility Act*

The Chief Counsel for Regulation for the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small business entities. A summary of the need for, objectives of and legal basis for this rule is provided in the preamble and is not repeated here. The factual basis for this certification is as follows.

The entities upon which this rulemaking could have an impact include foreign governments, foreign exporters and producers, some of whom are affiliated with U.S. companies, and U.S. importers. Commerce currently does not have information on the number of directly-impacted entities that would be considered small under the Small Business Administration's size standards for small businesses in the relevant industries. However, some of the affected entities may be considered small entities under the appropriate industry size standards. Additionally, although this proposed rule may indirectly impact small entities that are parties to individual countervailing duty proceedings, we do not expect that it will have a significant economic impact on any such entities.

The proposed action is merely a promulgation of the rules and standards Commerce will apply in analyzing a potential subsidy resulting from currency undervaluation. Any direct burden resulting from this proposed rule will fall on foreign governments and foreign exporters, which may be required to report information regarding a potential currency subsidy to

Commerce. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small business entities, as that term is defined in the Regulatory Flexibility Act. For this reason, an Initial Regulatory Flexibility Analysis is not required, and one has not been prepared.

We recognize that action subsequent to this rule could also result in indirect burdens to U.S. importers, which may be required to pay increased duties as a result of determinations made in individual CVD proceedings that include allegations of specific currency undervaluation. However, because even the products and industries that will be the subject of such case-by-case determinations cannot be known in advance, it is impossible to determine the number of small entities that might be impacted by subsequent CVD proceedings that may involve allegations of the sort that are the subject of this rule and so may be affected by this rule.

Commerce invites comment on this certification.

#### **List of Subjects in 19 CFR Part 351**

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Dated: May 23, 2019. Jeffrey I. Kessler,  
Assistant Secretary  
for Enforcement and Compliance.

For the reasons stated, 19 CFR part 351 is proposed to be amended as follows:

#### **PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES**

1. The authority citation for 19 CFR part 351 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

2. In § 351.502, redesignate paragraphs (c) through (f) as paragraphs (d) through (g), and add paragraph (c) to read as follows:

**§ 351.502 Specificity of domestic subsidies.**

\* \* \* \* \*

(c) *Traded goods sector.* In determining whether a subsidy is being provided to a “group” of enterprises or industries within the meaning of section 771(5A)(D) of the Act, the Secretary may consider enterprises that primarily buy or sell goods internationally to comprise such a group.

\* \* \* \* \*

3. In § 351.503, add paragraph (b)(3) to read as follows:

**§ 351.503 Benefit.**

\* \* \* \* \*

(b) \* \* \*

(3) *Special rule for currency undervaluation.* In determining whether a benefit is conferred when a firm exchanges United States dollars for the domestic currency of a country under a unified exchange rate system, the Secretary normally will consider a benefit to be conferred when the domestic currency of the country is undervalued in relation to the United States dollar. In applying this rule, the Secretary will request that the Secretary of the Treasury provide Treasury’s evaluation and conclusion as to whether the currency of a country is undervalued as a result of government action on the exchange rate and the extent of any such undervaluation.

\* \* \* \* \*