



C-570-017  
Investigation  
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E&C Office VII: EH

**DATE:** June 11, 2015

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
For Enforcement and Compliance

**FROM:** Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Determination in  
the Countervailing Duty Investigation of Certain Passenger  
Vehicle and Light Truck Tires from the People's Republic of  
China

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## I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain passenger vehicle and light truck tires (passenger tires, or subject merchandise) from the People's Republic of China (PRC), within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act).<sup>1</sup> Below is the complete list of issues in this investigation for which we received comments from interested parties.

### Issues:

Comment 1: Whether GITI Fujian's Input Suppliers are Authorities

Comment 2: Appropriate Benchmark for Inputs at LTAR

Comment 3: Whether Benchmarks for LTAR Inputs Should Exclude International Freight or Inland Freight

Comment 4: Inputs Supplied by Other GITI Companies Should Not be Countervailed

Comment 5: Correct Electricity Rate Selections

Comment 6: Whether to Countervail Government Policy Lending Program

Comment 7: Whether the Export Buyer's Credit Program Was Used by Respondents

Comment 8: Whether to Countervail CKT's Land in the Kunshan ETDZ

Comment 9: Whether to Countervail Assets from the Chengshan Group to Cooper for LTAR

Comment 10: Whether PCT is the Successor-in-Interest to CCT

Comment 11: Adjustments to Cooper's Originally Reported Data

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<sup>1</sup> See also section 701(f) of the Act.

- Comment 12: Whether the Department Should Accept the Minor Corrections Presented by GITI Fujian at Verification
- Comment 13: Whether Loans to GITI Anhui Radial are Export Subsidies
- Comment 14: Correct Sales Denominator for the GITI Companies
- Comment 15: Cash Deposit Rate for Terminated Programs
- Comment 16: Whether to Countervail the VAT Exemptions and Deductions for Central Regions Program
- Comment 17: Whether to Countervail the Key Enterprise Staffing Subsidy, 2013
- Comment 18: Whether to Apply AFA to Subsidies Received by Hualin Tyre
- Comment 19: Whether the Department Should Attribute to GITI Fujian Subsidies Received by GITI Anhui Through 2010 and Subsidies Received by GITI Yinchuan Greatwall Through the POI
- Comment 20: Subsidy Rate for GITI Anhui's Use of the Import Tariff and VAT Exemptions for Imported Equipment Program
- Comment 21: AFA Rate for Yongsheng
- Comment 22: Appropriate Time Periods for Critical Circumstances Analysis
- Comment 23: Whether Seasonality Exists in the Critical Circumstances Data
- Comment 24: Whether Company Specific Data Should be Used in the Department's Critical Circumstances Analysis
- Comment 25: Whether to Modify the Language of the Exclusion on Special Trailer (ST) Tires
- Comment 26: Whether Slingshot Tires Are Included in the Scope

## II. BACKGROUND

### A. Case History

The cooperating mandatory company respondents in this proceeding are GITI Tire (Fujian) Co., Ltd. (GITI Fujian) and its cross-owned affiliates<sup>2</sup> (collectively, GITI companies), and Cooper (Kunshan) Tire Co., Ltd. (CKT) and Cooper Chengshan (Shandong) Tire Co., Ltd. (CCT) (collectively, Cooper). On December 1, 2014, the Department published the *Preliminary Determination* in this proceeding.<sup>3</sup> In the *Preliminary Determination*, we also stated that Shandong Yongsheng Rubber Group Co., Ltd. (Yongsheng), a mandatory respondent, withdrew from the investigation, and thus assigned it a subsidy rate relying on AFA.<sup>4</sup> GITI Fujian

<sup>2</sup> The cross-owned companies identified by GITI Fujian are: GITI Tire (China) Investment Company Ltd. (GITI China); GITI Radial Tire (Anhui) Company Ltd. (GITI Anhui Radial); GITI Tire (Hualin) Company Ltd. (GITI Hualin); GITI Steel Cord (Hubei) Company Ltd. (GITI Steel Cord Hubei); Anhui Prime Cord Fabrics Company Ltd. (Anhui Cord Fabrics); GITI Tire Corporation (GITI Corp.); GITI Tire (Anhui) Company Ltd. (GITI Anhui); GITI Greatwall Tire (Yinchuan) Company Ltd. (GITI Yinchuan Greatwall); GITI Steel Cord (Anhui) Company Ltd. (GITI Steel Cord Anhui); Anhui Prime Cord Weaving Company Ltd.; and, Anhui Prime Cord Twisting Company Ltd.

<sup>3</sup> See *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Affirmative Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 79 FR 71093 (December 1, 2014) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

<sup>4</sup> See PDM at 3 and 21-24.

submitted a ministerial error allegation regarding the calculation of certain sales denominators, and the benefit calculation for one company under the “Government Policy Lending” program on December 1, 2014. Based on these allegations, the Department published an *Amended Preliminary Determination* on December 30, 2014.<sup>5</sup> On February 24, 2015, the Department issued a Post-Preliminary Analysis Memorandum covering new subsidy allegations filed by Petitioner<sup>6</sup> on October 20, 2014.<sup>7</sup>

Between March 2 and March 13, 2015, we conducted verification of the questionnaire responses submitted by the GITI companies, Cooper, and the Government of the PRC (GOC).<sup>8</sup> Interested parties submitted case and rebuttal briefs, including scope briefs, between April 6 and April 27, 2015. We conducted hearings in this case on April 30, 2015<sup>9</sup> (regarding the countervailing duty (CVD) investigation) and on May 14, 2015<sup>10</sup> (regarding the scope of the CVD and antidumping (AD) duty investigations).

## **B. Period of Investigation**

The period of investigation (POI) for which we are measuring subsidies is January 1, 2013, through December 31, 2013.

## **III. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART**

The Department preliminarily found that importers, exporters, and producers did not have reason to believe that a petition was likely to be filed before June 2014, when the petition was filed, and that there was no predictable fluctuation associated with seasonal trends over the prior four-year period.<sup>11</sup> The Department preliminarily determined that critical circumstances existed for Yongsheng and for all other producers or exporters, but not for the GITI companies or Cooper.<sup>12</sup>

Based on the examination of the shipping data placed on the record by the mandatory respondents after the *Preliminary Determination*, as requested by the Department, we are modifying our critical circumstances determination. We have analyzed comments received from

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<sup>5</sup> See *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Amended Affirmative Preliminary Determination*, 79 FR 78398 (December 30, 2014) (*Amended Preliminary Determination*).

<sup>6</sup> Collectively, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC.

<sup>7</sup> See Memorandum, “Post-Preliminary Analysis,” February 24, 2015 (Post-Preliminary Memorandum).

<sup>8</sup> See Memoranda, “Verification of the Questionnaire Responses Submitted by GITI Tire (Fujian) Co., Ltd.,” April 3, 2015 (GITI Fujian’s Verification Report); “Verification of Questionnaire Responses Submitted by Cooper (Kunshan) Tire Co., Ltd. and Cooper Chengshan (Shandong) Tire Co., Ltd.,” April 3, 2015 (Cooper’s Verification Report); and “Verification of the Questionnaire Responses Submitted by the Government of China,” April 3, 2015 (GOC’s Verification Report).

<sup>9</sup> See Transcript of Public Hearing regarding, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from the People’s Republic of China,” May 7, 2015.

<sup>10</sup> See Transcript of Public Hearing regarding, “Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from the People’s Republic of China,” May 21, 2015.

<sup>11</sup> See PDM at 9-10.

<sup>12</sup> *Id.*, at 10-12.

interested parties (*see* Comments 22 and 23), and for this final determination, we examined whether the increase in imports was massive by comparing shipments over the period of June 2014 through November 2014,<sup>13</sup> with the period December 2013 through May 2014.<sup>14</sup>

For this final determination, the Department finds that the increase in imports was greater than 15 percent and was therefore “massive” for the GITI companies, but not for Cooper.<sup>15</sup> We continue to find that the increase was massive for all other producers or exporters. We also find that the GITI companies received subsidies that are inconsistent with the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) (*e.g.*, Export Seller’s Credits).<sup>16</sup> Therefore, we determine that critical circumstances exist for the GITI companies, but not for Cooper.

As discussed in the “Use of Facts Otherwise Available and Adverse Inferences” section below, Yongsheng did not participate in this investigation. Therefore, we are continuing to base our critical circumstances determination for Yongsheng on adverse facts available (AFA), in accordance with section 776(a) and (b) of the Act, and 19 CFR 351.308(c), and find that imports of subject merchandise from Yongsheng were massive over a relatively short period of time and that Yongsheng received subsidies that are inconsistent with the Subsidies Agreement. Comments regarding Yongsheng’s critical circumstances are addressed at Comment 24.

Because we continue to find evidence of the existence of countervailable subsidies that are inconsistent with the Subsidies Agreement, and because we continue to determine that the increase in imports was greater than 15 percent and was therefore “massive” for all other producers or exporters,<sup>17</sup> we find that critical circumstances continue to exist for all other producers or exporters. Comments regarding critical circumstances for all other producers or exporters are addressed at Comments 21 and 24.

#### **IV. SCOPE OF THE INVESTIGATION**

The scope of this investigation is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by this investigation may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol “DOT” on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

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<sup>13</sup> Because the *Preliminary Determination* published on December 1, 2014, we are including in the base period data up to December 1, 2014, *i.e.*, all of November, 2014 shipping data.

<sup>14</sup> *See* Memorandum, “Monthly Shipment Quantity and Value Analysis for Critical Circumstances Final Determination,” June 11, 2015 (Critical Circumstances Memorandum).

<sup>15</sup> *Id.*

<sup>16</sup> *See* section 703(e)(1)(A) of the Act.

<sup>17</sup> *Id.*

Prefix designations:

P - Identifies a tire intended primarily for service on passenger cars

LT- Identifies a tire intended primarily for service on light trucks

Suffix letter designations:

LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service.

All tires with a “P” or “LT” prefix, and all tires with an “LT” suffix in their sidewall markings are covered by this investigation regardless of their intended use.

In addition, all tires that lack a “P” or “LT” prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book*, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope.

Specifically excluded from the scope of this investigation are the following types of tires:

- (1) racing car tires; such tires do not bear the symbol “DOT” on the sidewall and may be marked with “ZR” in size designation;
- (2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book*;
- (3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;
- (4) non-pneumatic tires, such as solid rubber tires;
- (5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:
  - (a) the size designation and load index combination molded on the tire’s sidewall are listed in Table PCT-1B (“T” Type Spare Tires for Temporary Use on Passenger Vehicles) of the *Tire and Rim Association Year Book*,
  - (b) the designation “T” is molded into the tire’s sidewall as part of the size designation, and,
  - (c) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by *Tire and Rim Association Year Book*, and the rated speed is 81 MPH or a “M” rating;
- (6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following conditions:
  - (a) the size designation molded on the tire’s sidewall is listed in the ST sections of the *Tire and Rim Association Year Book*,
  - (b) the designation “ST” is molded into the tire’s sidewall as part of the size designation,

(c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is “For Trailer Service Only” or “For Trailer Use Only”,

(d) the load index molded on the tire’s sidewall meets or exceeds those load indexes listed in the *Tire and Rim Association Year Book* for the relevant ST tire size, and

(e) either

(i) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by *Tire and Rim Association Year Book*, and the rated speed does not exceed 81 MPH or an “M” rating; or

(ii) the tire’s speed rating molded on the sidewall is 87 MPH or an “N” rating, and in either case the tire’s maximum pressure and maximum load limit are molded on the sidewall and either

(1) both exceed the maximum pressure and maximum load limit for any tire of the same size designation in either the passenger car or light truck section of the *Tire and Rim Association Year Book*; or

(2) if the maximum cold inflation pressure molded on the tire is less than any cold inflation pressure listed for that size designation in either the passenger car or light truck section of the *Tire and Rim Association Year Book*, the maximum load limit molded on the tire is higher than the maximum load limit listed at that cold inflation pressure for that size designation in either the passenger car or light truck section of the *Tire and Rim Association Year Book*;

(7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire’s sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the *Tire and Rim Association Year Book*,

(b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is “Not For Highway Service” or “Not for Highway Use”,

(c) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the *Tire and Rim Association Year Book*, and the rated speed does not exceed 55 MPH or a “G” rating, and

(d) the tire features a recognizable off-road tread design.

The products covered by the investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

## V. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM THE PRC

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.<sup>18</sup> In *CFS from the PRC*, the Department found that:

. . . given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.<sup>19</sup>

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.<sup>20</sup> Furthermore, on March 13, 2012, Public Law 112-99 was enacted, which confirms that the Department has authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.<sup>21</sup> The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.<sup>22</sup>

Additionally, for the reasons stated in *CWP from the PRC*, we are using the date of December 11, 2001, the date on which the PRC became a member of the WTO, as the date from which the Department will identify and measure subsidies in the PRC for purposes of this CVD investigation.<sup>23</sup>

## VI. SUBSIDIES VALUATION INFORMATION

### A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.<sup>24</sup> The Department finds the AUL in this proceeding to be 14 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as amended by the Department of Treasury.<sup>25</sup> The Department notified the respondents of the 14-year AUL in our initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

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<sup>18</sup> See *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*), an accompanying Issues and Decision Memorandum (IDM) at Comment 6.

<sup>19</sup> *Id.*

<sup>20</sup> See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and accompanying IDM at Comment 1.

<sup>21</sup> Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

<sup>22</sup> See Public Law 112-99, 126 Stat. 265 §1(b).

<sup>23</sup> See *CWP from the PRC*, and accompanying IDM at Comment 2.

<sup>24</sup> See 19 CFR 351.524(b).

<sup>25</sup> See PDM at 13.

Furthermore, for non-recurring subsidies, we applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, the benefits are expensed to the year of receipt rather than over the AUL.

## **B. Attribution of Subsidies**

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations.<sup>26</sup> While cross-ownership will normally exist where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations, in certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross-ownership.<sup>27</sup> Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The Court of International Trade (CIT) upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.<sup>28</sup>

In the *Preliminary Determination* and the Post-Preliminary Memorandum, the Department preliminarily determined that GITI Fujian and Cooper were cross-owned with a number of their respective affiliates. These companies included producers of subject merchandise or of inputs used in the production of subject merchandise.<sup>29</sup> We received no comments on these determinations and there are no changes otherwise to the record in this investigation with regard to these respondents’ affiliations. Accordingly, we also continue to apply the same attribution methodology described in the *Preliminary Determination* and the Post-Preliminary Memorandum for subsidies provided to certain entities of the GITI companies and Cooper, pursuant to certain subsections under 19 CFR 351.525(b)(6), as applicable.<sup>30</sup>

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<sup>26</sup> See 19 CFR 351.525(b)(6)(vi).

<sup>27</sup> See, *e.g.*, *Countervailing Duties: Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

<sup>28</sup> See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>29</sup> See PDM at 14-16; see also Post-Preliminary Memorandum at 4-6.

<sup>30</sup> *Id.*

## C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Final Analysis Memoranda," prepared for this final determination.<sup>31</sup> As a result of verification, we have revised certain sales values to calculate the subsidy rates in this final determination. Comments regarding minor corrections and corrected sales are addressed at Comment 14.

## VII. BENCHMARKS AND DISCOUNT RATES

### A. Benchmark for Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." To calculate loan benchmarks in the *Preliminary Determination*, we preliminarily followed the methodology first established in *CFS from the PRC* for calculating interest rate benchmarks for preferential loans and directed credit in the PRC.<sup>32</sup> Normally, the Department uses comparable commercial loans reported by the company as a benchmark.<sup>33</sup> However, as explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.<sup>34</sup>

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<sup>31</sup> See Memoranda, "Final Determination Analysis for GITI Tire (Fujian) Company Ltd.," (GITI Fujian Final Analysis Memorandum) and "Final Determination Analysis for Cooper (Kunshan) Tire Co., Ltd.," (Cooper Final Analysis Memorandum), both dated June 11, 2015 (collectively, Final Analysis Memoranda).

<sup>32</sup> See PDM at 16-19; *CFS from the PRC*, and accompanying IDM at Comment 10. See also the Department's November 21, 2014 Memorandum, "Additional Documents for Preliminary Determination," (Additional Documents Memorandum) which includes the Department's Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be 'public bodies' within the context of a countervailing duty investigation," May 18, 2012 (CCP Memorandum); Memorandum to Paul Piquado, Assistant Secretary for Import Administration from Shauna Biby, Christopher Cassel, Timothy Hruby, Office of Policy, Import Administration, "Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China: An Analysis of Public Bodies in the People's Republic of China in Accordance with the WTO Appellate Body's Findings in WTO DS379," May 18, 2012 (Public Body Memorandum); Letter from the GOC, "Response of the Government of the People's Republic of China to the Departments Questionnaire: Certain Crystalline Silicon Photovoltaic Products from the People's Republic Of China," April 21, 2014 (PUBLIC VERSION) (narrative section only); Letter from the GOC, "Response of the Government of the People's Republic of China to the Department's Supplemental Questionnaire: Certain Crystalline Silicon Photovoltaic Products from the People's Republic Of China," July 29, 2014 (PUBLIC VERSION); Memorandum from Justin Neuman to Mark Hoadley, "Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China," October 3, 2014 (PUBLIC VERSION).

<sup>33</sup> See 19 CFR 351.505.

<sup>34</sup> See *CFS from the PRC*, and accompanying IDM at Comment 10.

Because of this, any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department has selected an external market-based benchmark interest rate, consistent with the Department's practice.<sup>35</sup> While parties commented on the Department's decision that the lending market in the PRC is distorted (*see* Comment 6), no party commented on our interest rate benchmark methodology, and we apply this same methodology for this final determination.

Similarly, in the *Preliminary Determination*, the Department preliminarily used, as the discount rate for non-recurring subsidies, the long-term benchmark interest rate which we calculated in accordance with the methodology applied in previous PRC investigations.<sup>36</sup> No party commented on this methodology, and we continue to apply this methodology for this final determination.

## **B. Input Benchmarks**

As we detailed in the *Preliminary Determination*, using AFA, we relied on external benchmarks for determining the benefit from the provision of carbon black, nylon cord, and synthetic rubber and butadiene.<sup>37</sup> We received comments from interested parties regarding this decision (*see* Comment 3), but as discussed below in more detail under "Application of AFA: Input Industries are Distorted," we are continuing to rely on external benchmarks for determining the benefit from the provisions of carbon black, nylon cord, and synthetic rubber and butadiene at less than adequate remuneration (LTAR). Additionally, we continue to find that, given the large percentage of domestic consumption of natural rubber accounted for by imports, it is appropriate to rely on an internal benchmark when determining the benefit from the provision of natural rubber for LTAR.<sup>38</sup>

## **C. Provision of Land-Use Rights for Foreign-Invested Enterprises (FIEs) for LTAR Benchmarks**

19 CFR 351.511(a)(2) sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. 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

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<sup>35</sup> For example, in *Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Lumber from Canada*), and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

<sup>36</sup> *See* PDM at 16-19.

<sup>37</sup> *Id.*, at 19.

<sup>38</sup> *Id.*, at 19-20; *see also Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*OTR Tires Final Determination*), and accompanying IDM at 11.

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 explained in detail in previous investigations, the Department cannot rely on the use of so called “first-tier” and “second-tier” benchmarks to assess the benefits from the provision of land for LTAR in the PRC.<sup>39</sup>

For this investigation, Petitioner submitted the same 2010 Thailand benchmark information, *i.e.*, “Asian Marketview Reports” by CB Richard Ellis (CBRE), that we relied upon in calculating land benchmarks in the CVD investigation of *Solar Cells from the PRC*.<sup>40</sup> We initially selected this information in the *Laminated Woven Sacks* investigation after considering a number of factors, including national income levels, population density, and producers’ perceptions that Thailand is a reasonable alternative to the PRC as a location for Asian production.<sup>41</sup> We find that these benchmarks are suitable for this final determination, adjusted accordingly for inflation, to account for any countervailable land received by the respondent companies during the AUL of this investigation.<sup>42</sup>

While parties commented on the countervailability of land (*see* Comment 8), no parties commented on the benchmark information submitted by Petitioner. Therefore, we rely on this same information for this final determination.

#### **D. Provision of Electricity for LTAR Benchmarks**

In the *Preliminary Determination*, using AFA,<sup>43</sup> we relied on PRC provincial tariff schedules for electricity supplied by the GOC as a benchmark for measuring the benefit from electricity provided to the respondents for LTAR.<sup>44</sup> Interested parties commented on the methodology of the benchmark selection (*see* Comment 5), but, as explained below, we are continuing to rely on the same benchmarks for this final determination.

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<sup>39</sup> *See, e.g., Laminated Woven Sacks From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *Laminated Woven Sacks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Laminated Woven Sacks*).

<sup>40</sup> *See* Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China – Petitioner’s Benchmarks Comments,” October 22, 2014, at exhibit 8; *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*), and accompanying IDM at 6 and Comment 11.

<sup>41</sup> The complete history of our reliance on this benchmark is discussed in *Solar Cells from the PRC* at page 6, Comment 11. In that discussion, we reviewed our analysis from the *Laminated Woven Sacks* investigation and concluded the CBRE data were still a valid land benchmark.

<sup>42</sup> *See* Cooper Final Analysis Memorandum.

<sup>43</sup> *See* PDM at 29-31.

<sup>44</sup> *Id.*, at 35; Letter from the GOC, “Initial Response of the Government of China to the U.S. Department’s Questionnaire Certain Passenger Vehicle and Light Truck Tires from China,” October 14, 2014 (GOC’s Initial QR), at exhibits 19 and 20.

## VIII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, 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 fails to cooperate by not acting to the best of its ability to comply with a request for information. 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 AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.<sup>45</sup> 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.”<sup>46</sup>

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.”<sup>47</sup> The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.<sup>48</sup>

In analyzing whether information has probative value, it is the Department’s practice to examine the reliability and relevance of the information to be used.<sup>49</sup> However, the SAA emphasizes that

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<sup>45</sup> See, e.g., *Certain Frozen Warmwater Shrimp From Ecuador: Final Affirmative Countervailing Duty Determination*, 78 FR 50389 (August 19, 2013), and accompanying IDM, at Section IV, “Use of Facts Otherwise Available and Adverse Inferences”; *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).

<sup>46</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA).

<sup>47</sup> *Id.*, at 870.

<sup>48</sup> *Id.*

<sup>49</sup> See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

the Department need not prove that the selected facts available are the best alternative information.<sup>50</sup>

We have applied our CVD AFA methodology for the determination of certain subsidy rates. Specifically, it is the Department's practice in a CVD investigation to select, as AFA, the highest calculated rate for the same or similar program.<sup>51</sup> When selecting rates, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program at or above *de minimis* in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding rates that are *de minimis*). If no identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated rate for the similar/comparable program. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program in a CVD case involving the same country, but we do not use a rate from a program if the industry in the proceeding cannot use that program.<sup>52</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit.<sup>53</sup> As explained above, in applying the AFA hierarchy, the Department seeks to identify identical program rates calculated for a cooperative respondent in the investigation or, if there are no such rates, from another investigation or administrative review. Alternatively, the Department seeks to identify similar program rates calculated in any proceeding covering imports from the PRC. Actual rates calculated based on actual usage by PRC companies are reliable where they have been calculated in the context of an administrative proceeding. Moreover, under our CVD AFA methodology, we strive to assign AFA rates that are the same in terms of the type of benefit, (*e.g.*, grant to grant, loan to loan, indirect tax to indirect tax) because these rates are relevant to the respondent. Additionally, by selecting the highest rate calculated for a cooperative respondent we arrive at a reasonably accurate estimate of the respondent's actual rate, and a rate that also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated

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<sup>50</sup> See SAA at 869-870.

<sup>51</sup> See, *e.g.*, *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from the PRC*), and accompanying IDM at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

<sup>52</sup> See *Shrimp from the PRC*, and accompanying IDM at 13-14.

<sup>53</sup> See, *e.g.*, *Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination*, 79 FR 61602 (October 14, 2014) and accompanying IDM at Comment 10.

fully.”<sup>54</sup> Finally, the Department will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>55</sup>

As discussed below, due to the failure of the GOC and respondent companies, in part, to respond completely to the Department’s questionnaires concerning the programs at issue, the Department relied on information concerning PRC subsidy programs from other proceedings. In light of the above, the Department corroborated the rates it selected to use as AFA to the extent practicable for this final determination.<sup>56</sup> Because these rates reflect the actual behavior of the GOC with respect to similar subsidy programs, and lacking questionnaire responses or adequate information from the GOC and the respondent companies demonstrating otherwise, the rates calculated for cooperative respondents provide a reasonable AFA rate.

### Application of Facts Available

#### *Subsidies Received by Hualin Tyre*

As discussed below at Comment 18, GITI Fujian did not provide any information regarding subsidies that Hualin Tyre received prior to its acquisition by GITI China. We confirmed the fact that Hualin Tyre did not report any of its pre-acquisition subsidies at verification.<sup>57</sup> The record indicates that only a minority interest in Hualin Tyre was sold to GITI China,<sup>58</sup> and thus, under our change-in-ownership methodology, the transaction does not meet the threshold (of a sale of “all or substantially all” of a company or its assets) for rebutting our baseline presumption that past non-recurring subsidies continue to provide a benefit over time.<sup>59</sup> Therefore, consistent with our practice, we conclude that any pre-sale allocable subsidies to Hualin Tyre continue to benefit the GITI companies throughout the AUL.<sup>60</sup> Because necessary information regarding any subsidies Hualin Tyre may have received in the pre-sale years is not available on the record, we are applying facts available in accordance with section 776(a)(1) of the Act and concluding that Hualin Tyre received the same benefit in the POI from each non-recurring program as any of the other GITI companies that used the program. In this final determination, we are countervailing only one non-recurring program for the GITI companies (Import Tariff and VAT Exemptions for Imported Equipment), as discussed below. Because we have determined that the combined benefit for GITI Fujian and its cross-owned companies under the “Import Tariff and VAT Exemptions for Imported Equipment” program is 9.71 percent, we find that no addition to the rate is required for Hualin Tyre’s usage.

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<sup>54</sup> See SAA at 870.

<sup>55</sup> See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

<sup>56</sup> See, e.g., *Non-Oriented Electrical Steel From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 61606 (October 14, 2014), and accompanying IDM at 7-8.

<sup>57</sup> See GITI Fujian’s Verification Report at 6.

<sup>58</sup> See, e.g., Post-Preliminary Memorandum at 6.

<sup>59</sup> See *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125, 37127 (June 23, 2003). See, also, *Stainless Steel Plate in Coils From Belgium: Final Results of Countervailing Duty Administrative Review*, 74 FR 57627 (November 9, 2009), and accompanying IDM at 2.

<sup>60</sup> See, e.g., *Cut-to-Length Carbon Steel Plate from Belgium: Final Results of Full Sunset Review*, 71 FR 58585 (October 4, 2006), under “3. Privatization of Cockerill,” at 13.

## Application of Adverse Facts Available

### *Non-Cooperating Mandatory Respondents*

In the *Preliminary Determination*, pursuant to sections 776(a)(2)(A)-(C) of the Act, we preliminarily based the CVD rate for Yongsheng on facts otherwise available. Further, we preliminarily determined that the application of AFA was warranted, pursuant to section 776(b) of the Act, because, by not responding to the initial questionnaire, Yongsheng did not cooperate to the best of its ability to comply with the request for information in this investigation.<sup>61</sup> For the final determination, pursuant to sections 776(a)(2)(A)-(C) and 776(b) of the Act, we continue to find that the application of AFA is appropriate and are assigning a rate to Yongsheng based on AFA.

We issued a supplemental questionnaire to the GOC on February 13, 2015, requesting information on Yongsheng's use of the initiated on programs. The GOC did not submit a complete response, and instead stated:

Given resource constraints and the limited time available – including the fact that the Department's questionnaire was issued during the Chinese New Year holiday – it is impractical for the GOC to provide responses within the deadline set by the Department. In addition, in light of the Department's AFA practice and the fact that Yongsheng is no longer participating in this proceeding, the GOC has determined that any effort to investigate and prepare responses with respect to Yongsheng will not benefit those companies still actively participating, consistent with the Department's preliminary results. For these reasons, the GOC has elected to not prepare a response to the Department's questionnaire.<sup>62</sup>

As noted in the *Preliminary Determination*, we took into consideration information the GOC has provided concerning the countervailability (*i.e.*, whether there is a financial contribution and whether the program is specific) of the programs the GOC has identified as being used by Yongsheng.<sup>63</sup> The GOC provided information concerning the countervailability of 17 programs, and despite a second opportunity to provide information on additional programs, the GOC did not provide any further information on these additional programs, as noted above. With respect to these additional programs, we find that the GOC has withheld information that was requested of it and significantly impeded this investigation, within the meaning of sections 776(a)(2)(A) and 776(a)(2)(C) of the Act. We further find that the GOC has failed to cooperate by not acting to the best of its ability by failing to respond to our requests for information regarding these programs. Therefore, we are relying on AFA and finding that, as Petitioner alleged, these programs provide government financial contributions and are specific.

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<sup>61</sup> See PDM at 21-24.

<sup>62</sup> See Letter from the GOC, "Response of the Government of China to the U.S. Department of Commerce's Supplemental Questionnaire Concerning Shandong Yongsheng Rubber Group Co.," March 2, 2015, at 2.

<sup>63</sup> See PDM at 21-24.

As explained below, of the 17 programs for which the GOC provided information, the Department is finding 16 of them to be countervailable in this investigation, and one to be not countervailable (Provision of Water to FIEs for LTAR). We have included all of the programs found countervailable (except those specific to the GITI companies or Cooper, as noted below) in Yongsheng's AFA rate. We have also included programs where there was no benefit in the POI for the GITI companies or Cooper, and programs that were not used by the GITI companies or Cooper in the determination of Yongsheng's AFA rate.<sup>64</sup> We have adjusted the AFA rate assigned to Yongsheng in the *Preliminary Determination* to incorporate rates for the new subsidy allegation programs as outlined in the Post-Preliminary Memorandum, to correct the rates taken from this instant investigation to equal the final determination rates, and to break out certain programs in consideration of interested party comments (*see* Comment 21).

On this basis, we determine the AFA subsidy rate for Yongsheng to be 100.77 percent *ad valorem*.<sup>65</sup>

#### *Export Buyer's Credit from State-Owned Banks Program*

The Department has determined that the use of AFA is warranted in determining the countervailability of this program. As discussed below in Comment 7, the GOC refused to allow the Department to examine or query electronic databases regarding recipients of export buyer's credits. Pursuant to section 776(a)(2)(D) of the Act, when an interested party provides information that cannot be verified, the Department uses facts otherwise available. Further, pursuant to section 776(b) of the Act, we find that the GOC failed to cooperate by not acting to the best of its ability, because it refused to allow the Department to examine the source of information that it placed on the record regarding this issue. Accordingly, an application of AFA is warranted. Relying on AFA, we find, as discussed below under Comment 7, that both the GITI companies and Cooper benefited from this program. We are using an AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in a prior PRC proceeding, as the rate for the GITI companies and Cooper.<sup>66</sup>

#### *Input Producers are "Authorities"*

In the *Preliminary Determination*, based on AFA, we preliminarily found that certain producers of carbon black, nylon cord, and synthetic rubber and butadiene purchased by the GITI

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<sup>64</sup> We also excluded "Preferential Loans to SOEs" program. In its initial questionnaire response, the GOC said Yongsheng did not use this program because it had never been an SOE. *See* GOC's Initial QR at 12. We excluded this program from Yongsheng's AFA rate in the *Preliminary Determination* as well, and received no comments from parties regarding its exclusion. *See* PDM at Appendix.

<sup>65</sup> *See* Attachment for a breakdown of Yongsheng's AFA subsidy rate.

<sup>66</sup> *See New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Review*, 75 FR 64268 (October 19, 2010) (*Off-the-Road Tires from the PRC CVD Review Preliminary Results*), unchanged in the final determination, *New Pneumatic Off-the-Road Tires From the People's Republic of China Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) (*Off-the-Road Tires from the PRC CVD Review*).

companies and Cooper were authorities within the meaning of section 771(5)(B) of the Act.<sup>67</sup> For this final determination, we continue to determine, as AFA, that certain producers of these inputs are authorities, for the reasons described in the *Preliminary Determination*. Arguments from interested parties concerning this determination are discussed below at Comment 1.

### *Input Industries are Distorted*

With regard to information we require to fully examine the provision of carbon black, nylon cord, and synthetic rubber and butadiene for LTAR programs, we found in the *Preliminary Determination* that the information submitted was incomplete and unreliable for our analysis with regard to the input markets in the PRC.<sup>68</sup> Arguments from interested parties concerning this determination are discussed below at Comment 1. For this final determination, with regard to the carbon black, nylon cord, and synthetic rubber and butadiene rubber markets in the PRC, we continue to find that the GOC failed to provide complete data to indicate that the carbon black, nylon cord, and synthetic rubber and butadiene rubber prices from transactions in the PRC provide a viable basis for deriving a benchmark for these input purchases made by respondents during the POI.

Accordingly, the Department must rely on facts otherwise available in accordance with section 776(a)(2)(A) and (C) of the Act. We also find that the GOC failed to cooperate by not acting to the best of its ability, within the meaning of section 776(b) of the Act. For this final determination, we find that the PRC markets for these goods are distorted through the intervention of the GOC. Therefore, we are continuing to resort to world market prices available on the record, which we find to be appropriate benchmarks for these input purchases, for benchmarking respondents' input purchases during the POI, consistent with 19 CFR 351.511(a)(2)(ii). For more information, *see* the Provision of Inputs for LTAR section below and Comment 2.

### *Provision of Electricity for LTAR*

We stated in the *Preliminary Determination* that we relied on AFA in finding that the provision of electricity to the respondents constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, and is specific within the meaning of section 771(5A) of the Act.<sup>69</sup> We also relied on AFA in selecting the benchmark for determining the existence and amount of the benefit.<sup>70</sup> For determining the existence and amount of the benefit under this program in the *Preliminary Determination*, we relied on the usage information reported by the respondents.<sup>71</sup> Because we received no comments on this determination from interested parties, we continue to rely on this information for this final determination and continue to find that this program conferred a countervailable subsidy.

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<sup>67</sup> See PDM at 25-27; *see also* Additional Documents Memorandum at Public Body Memorandum and CCP Memorandum.

<sup>68</sup> See PDM at 27-29.

<sup>69</sup> *Id.*, at 29-31.

<sup>70</sup> *Id.*

<sup>71</sup> See Final Analysis Memoranda.

### *Import Tariff and VAT Exemptions for Use of Imported Equipment*

In its questionnaire response, GITI Anhui, one of the cross-owned GITI companies, reported that it did not use this program.<sup>72</sup> However, in preparing for verification, GITI Anhui discovered that it had used this program during the AUL.<sup>73</sup> GITI Fujian argues that its failure to report the complete usage of this program by its cross-owned affiliates should be considered an “inadvertent error,” as discussed below at Comment 20. The verifiers did not accept GITI Anhui’s offer to submit the missing information at verification because “whether a program was used or not by a company is not ‘minor’ in the view of the Department.”<sup>74</sup> Therefore, we find that necessary information is not available on the record, and that the GITI companies withheld information requested by the Department. In accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act, we determine that the use of facts otherwise available is warranted in calculating the GITI companies’ benefit from this program. Moreover, because the GITI companies failed to provide complete details regarding the usage of this program for GITI Anhui, despite the Department’s request that it do so, we find that the GITI companies failed to act to the best of their ability in providing requested information that was in their possession, and that the application of AFA is warranted, pursuant to section 776(b) of the Act, in determining the benefit. Relying on AFA, we find, as discussed below under Comment 20, that the GITI companies benefited from this program at the rate of 9.71 percent *ad valorem*, the highest rate determined for a similar program in a prior PRC CVD proceeding.<sup>75</sup>

### *GITI Fujian Specific Subsidies, Fixed Asset Investment Subsidies and Tax Awards*

We stated in the Post-Preliminary Memorandum that we relied on AFA in finding that these grants are countervailable subsidies.<sup>76</sup> We continue to find that because the GOC declined to provide information necessary for our analysis of whether these grants are specific,<sup>77</sup> the GOC has withheld information that was requested and has impeded our investigation, within the meaning of sections 776(a)(2)(A) and (C) of the Act. Further, the GOC has not cooperated to the best of its ability in responding to our request for information and, therefore, we find the use of AFA is warranted in determining the specificity of six of the 18 grants the GITI companies reported,<sup>78</sup> as well as the grants under the “Fixed Asset Investment Subsidies” and the “Tax Awards” programs, pursuant to section 776(b) of the Act. Accordingly, relying on AFA, we are finding that the grants under these programs confer a financial contribution and are specific for this final determination.

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<sup>72</sup> See Letter from GITI Fujian, “Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Response to the Original CVD Questionnaire for the Additional Six Cross-owned Affiliates Identified by the Department in the 1st Supplemental Questionnaire,” December 8, 2014 (GITI Fujian’s Additional Companies SQR).

<sup>73</sup> See GITI Fujian’s Verification Report at 17.

<sup>74</sup> *Id.*

<sup>75</sup> See *Off-the-Road Tires from the PRC CVD Review Preliminary Results*, 75 FR at 64275, unchanged in *Off-the-Road Tires from the PRC CVD Review*.

<sup>76</sup> See Post-Preliminary Memorandum at 3-4.

<sup>77</sup> The Department asks for information regarding specificity in the Standard Questions Appendix, which as noted, the GOC did not complete for these programs.

<sup>78</sup> The GOC did not provide any response to the standard questions appendix for these six programs.

### *Export Seller's Credits, Export Credit Guarantees, and Export Credit Insurance Subsidies*

For this final determination, we determine that it is appropriate to apply AFA with respect to the GITI companies' use of these programs during the POI. The Department found at verification that GITI Yinchuan Greatwall exported subject merchandise during the POI, contrary to its questionnaire response that it had made no such exports.<sup>79</sup> Accordingly, we find that necessary information is not available on the record and that the GITI companies withheld information requested by the Department. In accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act, we determine that the use of facts otherwise available is warranted in calculating the subsidy rate for these programs. Moreover, because the GITI companies failed to provide information regarding the use of this program, despite the Department's request that it do so, we find that the GITI companies failed to act to the best of their ability in providing the requested information that was in their possession, and that the application of AFA, pursuant to section 776(b) of the Act, is appropriate in identifying the benefit within the meaning of section 771(5)(E) of the Act. As AFA we find, as discussed in Comment 19, that the GITI companies benefited from the export seller's credit program at the rate of 4.25 percent *ad valorem*,<sup>80</sup> the export credit guarantees program at the rate of 0.19 percent *ad valorem*,<sup>81</sup> and the export credit insurance subsidies program at the rate of 0.05 percent *ad valorem*.<sup>82</sup> Following the AFA hierarchy, we have assigned subsidy rates that are the highest rates determined for similar programs in prior PRC proceedings.

### *Grants Reported Subsequent to the Post-Preliminary Memorandum*

In its response to a question in our initial questionnaire on whether the company respondents received any other subsidies that were not already reported, the GOC stated that it had cooperated with respect to our requests, and that in the absence of allegations and sufficient evidence in respect to "other" subsidies consistent with Article 11.2 and other relevant articles of the SCM Agreement, no reply is required.<sup>83</sup> In their supplemental questionnaire responses, the GITI companies reported numerous additional "government transfers" in addition to those that were alleged in the petition.<sup>84</sup> We requested in the supplemental questionnaire that the GITI companies notify the GOC that they were reporting these additional grants but the GOC did not submit any response regarding these subsidies. During verification preparations, both CKT and

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<sup>79</sup> See GITI Fujian's Verification Report at 7-8.

<sup>80</sup> See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011), and accompanying IDM under "Export Seller's Credit for High- and New-Technology Products."

<sup>81</sup> See *Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (December 31, 2014) (*Aluminum Extrusions 2012*), and accompanying IDM under "Import and Export Credit Insurance Supporting Development Fund for Changzhou."

<sup>82</sup> See *Chlorinated Isocyanurates From the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Chlorinated Isocyanurates*), and accompanying IDM under "Grants for Export Credit Insurance."

<sup>83</sup> See the GOC's Initial QR at 254.

<sup>84</sup> See Letter from GITI Fujian, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Response to 2nd Supplemental Questionnaire - Part II," February 6, 2015, at 2-3 and exhibit 3; see also "Petition for the Imposition of Countervailing Duties on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China," June 3, 2014 (CVD Petition).

CCT discovered several unreported grants in certain sub-ledgers of their charts of accounts, which we accepted as minor corrections.<sup>85</sup>

The Department has the authority pursuant to section 775 of the Act to examine subsidies discovered during the course of an investigation. Because the GOC has not provided information necessary for our analysis of whether these grants are specific, we find, in accordance with sections 776(a)(2)(A) and (C) of the Act, that the GOC has withheld information that was requested and has impeded our investigation. Further, the GOC has not cooperated to the best of its ability in responding to our request for information and therefore, pursuant to section 776(b) of the Act, we find the use of AFA is warranted in determining financial contribution and the specificity of the grants the respondents reported. Accordingly, relying on AFA, we are finding that all grants reported subsequent to the Post-Preliminary Memorandum provide a financial contribution and are specific.<sup>86</sup> Consistent with prior cases, we will use the reported grant amounts to determine if benefits exist for each grant.<sup>87</sup> No party provided comments on these grants.

## **IX. ANALYSIS OF PROGRAMS**

### **A. Programs Determined To Be Countervailable and Used by the GITI Companies and Cooper**

#### **1. Government Policy Lending**

Petitioner alleged that the GOC subsidizes producers of passenger tires through preferential loans at interest rates that are considerably lower than market rates.<sup>88</sup> According to Petitioner, the GOC provides for such preferential lending through the *Tire Industry Policy* of 2010 and certain provincial and local government policies because the tire industry is an “encouraged” industry.<sup>89</sup>

GITI Fujian and Cooper, as well as their cross-owned companies, reported having loans outstanding from state-owned commercial banks (SOCBs) in the PRC during the POI.<sup>90</sup> The Department finds that these loans are countervailable. The information on the record indicates the GOC placed great emphasis on targeting the tire industry, including producers of passenger tires, for development in recent years. For instance, the “Notice of the Ministry of Industry and Information Technology on Issuing the Tire Industry Policy (Gong Chan Ye Zheng Ce {2010}

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<sup>85</sup> See Letter from Cooper, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China/Certification of Service of CKT & CCT Verification Exhibits,” March 17, 2015 (Cooper’s Verification Exhibits), at exhibit 1.

<sup>86</sup> See “Grants Reported Subsequent to the Post-Preliminary Memorandum” section below; see also GITI Fujian Final Analysis Memorandum.

<sup>87</sup> See *Solar Cells from the PRC*, and accompanying IDM at Comment 23.

<sup>88</sup> See PDM at 31-32.

<sup>89</sup> *Id.*

<sup>90</sup> See Letter from GITI Fujian, “Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Initial Questionnaire Response - GITI Tire (Fujian) Co., Ltd.,” October 6, 2014 (GITI Fujian’s Initial QR), at exhibits 28-32; see also Letter from Cooper, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China/CTRC CVD Questionnaire Response,” October 6, 2014 (Cooper’s Initial QR), at Exhibit A-6.

No.2),” calls specifically for the use of loans in implementing the GOC’s plans for the tire industry: “The works such as investment management, land supply, environment evaluation, energy-saving evaluation, security permission, credit financing and power that are carried out by relevant departments on items including tire industry production construction and technology development should be based on this tire industry policy.”<sup>91</sup> Additionally, the “Catalogue of Chinese High-Technology Products for Export” of 2006 specifically lists “new pneumatic radial tire{s}, of rubber, of a kind used on motor cars (including station wagons and racing cars)” as products encouraged for export.<sup>92</sup>

Certain tire inputs, including synthetic rubber, are also among the “Encouraged Category” of projects listed in the “Catalogue for the Guidance of Foreign Investment Industries (Amended in 2011),”<sup>93</sup> a key component of the “Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment (No. 40 {2005} Guo Fa),” which contains a list of encouraged projects the GOC develops through loans and other forms of assistance, and which the Department relied upon in prior specificity determinations.<sup>94</sup>

The Department has also countervailed this program in a previous investigation.<sup>95</sup> In that investigation, while the subject merchandise was off-the-road tires, the government lending program identified, through a government circular, the production of “meridian tyres” (*i.e.*, radial tires) as a national priority under the GOC 10th Five-Year Plan and states that “we should . . . reasonably direct the contribution of public funds . . . so as to . . . guarantee the realization of the target. . . .”<sup>96</sup> We found that the government lending program targeted “radial tires,” not off-the-road tires specifically.<sup>97</sup> In this current investigation, radial tires are being investigated under the current scope.

Both the GITI companies and Cooper reported having outstanding loans during the POI and, in the *Preliminary Determination*, we preliminarily found that this program conferred a countervailable subsidy.<sup>98</sup> During the verification of the GITI companies and Cooper, the Department reviewed the companies’ outstanding short- and long-term loans, including minor corrections to their previously reported loans.<sup>99</sup>

After considering comments from interested parties concerning the nature of this program (*see* Comment 6), we find that there is a program of preferential policy lending specific to the passenger tire industry within the meaning of section 771(5A)(D)(i) of the Act. We also

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<sup>91</sup> See Letter from the GOC, “Response of the Government of the People’s Republic of China to Part One of the U.S. Department of Commerce’s Supplemental Questionnaire Certain Passenger Vehicle and Light Truck Tires from China,” October 31, 2014 (GOC’s October 31 SQR), at exhibit S2-2.

<sup>92</sup> See GOC’s Initial QR, at exhibit 14.

<sup>93</sup> See, e.g., GOC’s October 31 SQR, at exhibit S2-1 (Production of synthetic rubber).

<sup>94</sup> See GOC’s Initial QR, at exhibit 9; *see also OTR Tires Final Determination*, and accompanying IDM at “Government Policy Lending” section.

<sup>95</sup> See *OTR Tires Final Determination*, and accompanying IDM at 13.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> See PDM at 31-32.

<sup>99</sup> See GITI Fujian’s Verification Report at 10 and Cooper’s Verification Report at 7-9.

continue to find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act because SOCBs are “authorities,” as discussed in more detail below at Comment 6. The loans provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.<sup>100</sup> To calculate the benefit from this program, we used the benchmarks discussed above under the section, “Benchmarks and Discount Rates.” We divided the total benefits for each respondent by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Final Analysis Memoranda.

On this basis, we determine a subsidy rate of 1.31 percent *ad valorem* for the GITI companies and 0.16 percent *ad valorem* for Cooper.

## 2. Export Seller’s Credits from State-Owned Banks

Petitioner maintains that the Export-Import Bank of China (ExIm Bank), as well as other SOCBs, provides support to exporters through a variety of means, including export seller’s credit.<sup>101</sup> The GOC provided the “Interim Rules for the Export Seller’s Credit of Export-Import Bank of China,” which states in Article 4 that “{t}he project loan of the seller’s credit on exports refers to the special policy-based loan issued by the Export-Import Bank of China to the exporters for supporting the export of the complete equipment, ships, airplanes, communications satellites and the spare parts.”<sup>102</sup> As part of the application requirements, enterprises must have “{a}pproval files for the import-export operation right.”<sup>103</sup>

The GITI companies reported using this program during the POI and, in the *Preliminary Determination*, we preliminarily found that this program conferred a countervailable subsidy.<sup>104</sup> During the verification of the GITI companies, the Department reviewed the companies’ outstanding short- and long-term loans.<sup>105</sup>

We find that the loans provided by the China ExIm Bank under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. The receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific under sections 771(5A)(A)-(B) of the Act. However, as discussed above at “Use of Facts Otherwise Available and Adverse Inferences,” we are finding that the GITI companies did not act to the best of their ability in providing information regarding their use of this program, and thus, that AFA is warranted in determining a rate (*i.e.*, the benefit) for this program. We have used the highest rate calculated in a prior PRC CVD proceeding for the GITI companies’ use of this program, as discussed under Comment 13 and 19.

On this basis, we determine a subsidy rate of 4.25 percent *ad valorem* for the GITI companies.

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<sup>100</sup> See section 771(5)(E)(ii) of the Act.

<sup>101</sup> See PDM at 33.

<sup>102</sup> See GOC’s Initial QR, at exhibit 35.

<sup>103</sup> *Id.*

<sup>104</sup> See PDM at 33.

<sup>105</sup> See GITI Fujian’s Verification Report at 11.

### 3. Export Buyer's Credits from State-Owned Banks

Through this program, state-owned banks, such as the China ExIm Bank, provide loans at preferential rates for the purchase of exported goods from the PRC. The Department found that this program was not used by the company respondents in the *Preliminary Determination*.<sup>106</sup> However, the Department was not able to verify the reported non-use of export buyer's credits during verification with the GOC.<sup>107</sup>

As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are determining, relying upon AFA, that both the GITI companies and Cooper used this program during the POI. Our determination regarding the countervailability of this program, our reliance on AFA, and our selection of the appropriate rate to apply to this program are explained in further detail under Comment 7, below.

On this basis, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for the GITI companies, and 10.54 percent *ad valorem* for Cooper.

### 4. Export Credit Insurance Subsidies

Petitioner alleged that tire producers benefited from subsidized export credit insurance provided by China Export & Credit Insurance Corporation (SINOSURE), a government-owned insurance company. Specifically, they argue that export credit insurance for Chinese tire producers and exporters provides a countervailable subsidy under U.S. law where the premium rates charged by the programs are inadequate to cover the programs' long-term costs and losses, and that these subsidies are specific because the insurance is contingent upon export performance.<sup>108</sup>

In its questionnaire responses, Cooper indicated that CCT benefitted from this program during the POI, and the Department found in the *Preliminary Determination* that the program did not confer a measurable benefit during the POI.<sup>109</sup> However, during verification of this program, it became apparent that the "Export Credit Insurance Subsidy" program reported by CCT did not match the program upon which we initiated an investigation. As noted in the verification report:

{t}he program reported by CCT, which was recorded in its financial records as an "export credit insurance premium subsidy," is a grant program, provided by the local government to reimburse CCT for the cost of its export insurance premiums. We reviewed the Department's preliminary analysis of Cooper's grant program subsidies and discovered that the "export credit insurance premium subsidy" was reported in the company's grant worksheets, as well as under the insurance program itself.

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<sup>106</sup> See PDM at 41.

<sup>107</sup> See the GOC's Verification Report at 2-6.

<sup>108</sup> See "Countervailing Duty Initiation Checklist: Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China," July 14, 2014 (CVD Initiation Checklist), at 14; see also PDM at 41-42.

<sup>109</sup> *Id.*

Cooper officials explained that the “export credit insurance premium subsidy” program is managed by the Rongcheng City Finance Bureau. The purpose of the program is to provide assistance to companies making premium payments for export credit insurance. In order to receive benefits, CCT provided proof of insurance and of its payment of the insurance premium to the finance bureau. Upon verification of the documentation provided, the finance bureau then notified CCT of its approval and transferred funds, covering a small portion of the premium, to CCT’s bank account. CCT has received yearly benefits under this grant program since 2011.... Cooper officials stated that the company has never filed a claim under this insurance policy, and we verified that no payments from the export credit insurance company, SINOSURE, were recorded in CCT’s accounting system during the POI.<sup>110</sup>

On this basis, we determine that this program was not used by CCT. Furthermore, we are finding that the benefit CCT initially reported receiving under this program is actually a grant from the local government to reimburse CCT for part of its insurance premium payment. As such, we are countervailing the benefit as a grant to CCT.<sup>111</sup>

As explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are determining, relying upon AFA, that the GITI companies used this program during the POI. Because insurance provided through this program is contingent upon export performance, we determine that the program is specific within the meaning of section 771(5A)(B) of the Act. The Department finds that the export credit insurance provided by SINOSURE constitutes a financial contribution in the form of a direct transfer of funds or a potential transfer of funds within the meaning of section 771(5)(D)(i) of the Act. In addition, we determine that the export credit insurance provided by SINOSURE confers a benefit within the meaning of 19 CFR 351.520(a)(1), because, based on financial statements provided by the GOC, premium rates charged by SINOSURE are inadequate to cover its paid claims and its business expenses for the five year period leading up to and including the POI.<sup>112</sup> Normally, pursuant to 19 CFR 351.520(a)(2), the amount of the benefit is calculated as the difference between the amounts of premiums paid and any payouts on claims under the insurance policy; however, for the reasons noted, we are applying a rate based on AFA. Following the AFA hierarchy, we have assigned

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<sup>110</sup> See Cooper’s Verification Report at 14.

<sup>111</sup> See Cooper Final Analysis Memorandum, as well as below under “Grants Reported Subsequent to the Post-Preliminary Memorandum.”

<sup>112</sup> In its initial questionnaire response, the GOC was asked to provide a chart summarizing SINOSURE’s overall long-term operating costs/losses. The GOC did not provide this chart in response to the Department’s initial questionnaire. However, the GOC provided the annual reports for SINOSURE for the years 2008-2013. Each annual report shows the net premiums earned, net claims paid out, and the operating expenses of the agency over a two-year period, and thus data for the years 2008-2013 are available. These data demonstrate that over the five-year period ending with the POI, the net claims paid out by SINOSURE and its operating expenses exceeded the net premiums earned by SINOSURE in all years except 2010 (*i.e.*, 2008-09 and 2011-13), and that the insurance programs offered by SINOSURE were not profitable as a result of its operations. In addition, the net loss in the years 2008-09 and 2011-13 exceed the gains in 2010 by more than two billion RMB. As such we find that the premiums charged by SINOSURE are inadequate to cover the long-term operating costs and losses of the program within the meaning of 19 CFR 351.520(a)(1). Thus, we continue to determine that this program is countervailable during the POI. See GOC’s Initial QR, at exhibit 37.

subsidy rates that are the highest rates determined for similar programs in prior PRC proceedings.<sup>113</sup>

On this basis, we determine a subsidy rate of 0.05 percent *ad valorem* for the GITI companies.

#### 5. Export Credit Guarantees

Petitioner states that the ExIm Bank and SINOSURE provide export credit guarantees, which permit the banks to lower the rates charged for export financing.<sup>114</sup> SINOSURE was directed to increase its support of products listed in the *Catalogue of Chinese High-Tech Products for Export*, which includes passenger tire producers.<sup>115</sup> Additionally, the export business must be supported by governmental policies to qualify for guarantees, and Petitioner has provided several government policies, including the *Tire Industry Policy*, which supports passenger tire producers.<sup>116</sup> The Department has previously countervailed this program for producers that were listed in the *Catalogue of Chinese High-Tech Products for Export*.<sup>117</sup> In the *Preliminary Determination*, we found this program was not used by either respondent.<sup>118</sup> We continue to find that Cooper did not use this program for this final determination.

As explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are determining, relying upon AFA, that the GITI companies used this program during the POI. Because the guarantees provided through this program are contingent upon export performance, we determine that the program is specific within the meaning of section 771(5A)(B) of the Act. The Department finds that the export insurance provided constitutes a financial contribution in the form of a direct transfer of funds or a potential transfer of funds within the meaning of section 771(5)(D)(i) of the Act. In addition, we determine that the insurance provided by the ExIm Bank and SINOSURE confers a benefit in accordance with section 771(5)(E)(iii) of the Act and 19 CFR 351.506 to the extent that the total amount the recipient pays on a guaranteed loan and the amount the recipient would pay for a comparable commercial loan in the absence of a guarantee. However, for the reasons noted, we are applying a rate based on AFA. Following the AFA hierarchy, we have assigned a subsidy rate that is the highest rate determined for a similar program in a prior PRC proceeding.<sup>119</sup>

On this basis, we determine a subsidy rate of 0.19 percent *ad valorem* for the GITI companies.

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<sup>113</sup> See *Chlorinated Isocyanurates*, and accompanying IDM under “Grants for Export Credit Insurance.”

<sup>114</sup> See CVD Initiation Checklist, at 15-16; see also CVD Petition at exhibit III-49 and exhibit III-60.

<sup>115</sup> See CVD Petition at exhibit III-49 and exhibit III-60.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> See PDM at 41.

<sup>119</sup> See *Aluminum Extrusions 2012*, and accompanying IDM under “Import and Export Credit Insurance Supporting Development Fund for Changzhou.”

## 6. Provision of Inputs for LTAR

### a. Provision of Carbon Black, Nylon Cord, and Synthetic Rubber and Butadiene for LTAR

As discussed in the *Preliminary Determination*, we preliminarily found that, based on AFA, in part, the company respondents received countervailable subsidies under these programs.<sup>120</sup> We have considered the comments from interested parties on the nature of these industries in the PRC, including the GOC's role in the industry, whether to exclude purchases from cross-owned affiliated companies from our analysis, and whether certain input suppliers of GITI Fujian are authorities (*see* Comments 1 and 4). After considering comments from interested parties on these programs, we continue to find, as we did in the *Preliminary Determination*, that these programs confer a countervailable subsidy. We note that, consistent with the *Preliminary Determination*, we continue to find that the GOC provided information indicating several producers of carbon black, nylon cord, and synthetic rubber and butadiene are State Owned Enterprises (SOEs).<sup>121</sup> We understand the GOC's classification of certain companies as SOEs to mean that those companies are majority-owned by the government. As explained in the Public Body Memorandum, majority SOEs in the PRC possess, exercise, or are vested with governmental authority.<sup>122</sup> The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we determine that these entities constitute "authorities" within the meaning of section 771(5)(B) of the Act and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

Additionally, we continue to determine, as AFA, that other producers of the carbon black, nylon cord, and synthetic rubber and butadiene rubber purchased by the GITI companies and Cooper are "authorities" within the meaning of section 771(5)(B) of the Act and,<sup>123</sup> as such, that the provision of these inputs constitutes a financial contribution under section 771(5)(D)(iii) of the Act. We continue to determine that the subsidy is specific because the recipients of carbon black, nylon cord, and synthetic rubber and butadiene for LTAR are limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act.<sup>124</sup> Additionally, relying on AFA, we have determined that the domestic markets for these inputs are distorted through the intervention of the GOC, and we are therefore relying on an external benchmark for determining the benefit from the provision of these inputs at LTAR (*see* Comment 2).

As discussed above under the "Benchmarks and Discount Rates" section, the Department is selecting external benchmark prices for carbon black, nylon cord, and synthetic rubber and

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<sup>120</sup> *See* PDM at 33-35.

<sup>121</sup> *Id.*, at 34.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*, at 16-21. Arguments regarding our determination that these suppliers are "authorities" are further discussed below at Comment 1.

<sup>124</sup> *See* PDM at 34-35.

butadiene, *i.e.*, “tier two” or world market prices, derived from GTA export data (for carbon black and nylon cord) and weekly spot prices from 2014 Reed Business Information Limited, submitted by GITI Fujian (for synthetic rubber and butadiene).<sup>125</sup> The Department adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv) (*see* Comment 3 for an explanation of the delivery charge adjustments).<sup>126</sup> Regarding delivery charges, we included ocean freight and the inland freight charges that would be incurred to deliver carbon black, nylon cord, and synthetic rubber and butadiene to respondents’ production facilities (*see* Comment 11 for a discussion of Cooper’s inland freight). We added import duties as reported by the GOC, and the VAT applicable to imports of carbon black, nylon cord, and synthetic rubber and butadiene into the PRC, also as reported by the GOC.<sup>127</sup> In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for ocean freight and import duties. We compared these monthly benchmark prices to the respondents’ reported purchase prices for individual domestic transactions, including VAT and delivery charges.<sup>128</sup>

Based on this comparison, we determine that carbon black, nylon cord, and synthetic rubber and butadiene were provided for LTAR and that a benefit exists within the meaning of section 771(5)(E)(iv) of the Act for each respondent in the amount of the difference between the benchmark prices and the prices each respondent paid.<sup>129</sup> We divided the total benefits for each respondent by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Final Analysis Memoranda.

On this basis, we determine a subsidy rate of 7.60 percent *ad valorem* for the GITI companies and 8.15 percent *ad valorem* for Cooper for carbon black; 0.02 percent *ad valorem* for the GITI companies and 0.44 percent *ad valorem* for Cooper for nylon cord; and 1.08 percent *ad valorem* for the GITI companies and 0.55 percent *ad valorem* for Cooper for synthetic rubber and butadiene.

b. Provision of Natural Rubber for LTAR

The Department is investigating whether the respondents were provided with natural rubber, an input for passenger tires, for LTAR. As instructed in the Department’s questionnaires, both respondents identified the suppliers and producers from whom they purchased natural rubber during the POI.<sup>130</sup> In the *Preliminary Determination*, we preliminarily found that Cooper, specifically CKT, used, but did not benefit from this program, and that the GITI companies did not use this program. However, in supplemental questionnaire responses received after the *Preliminary Determination*, the GITI companies reported that GITI Yinchuan Greatwall

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<sup>125</sup> *See* Letter from GITI Fujian, “Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Factual Information Related to Suppliers & Supply Chain,” October 22, 2014, at exhibit 5.

<sup>126</sup> *See* Final Analysis Memoranda.

<sup>127</sup> *See* GOC’s Initial QR, at 58, 81, and 104, respectively; *see also* Final Analysis Memoranda for a full explanation of how the benchmarks were adjusted.

<sup>128</sup> *Id.*

<sup>129</sup> *See* 19 CFR 351.511(a).

<sup>130</sup> *See* GITI Fujian’s Initial QR, at 29; *see also* Cooper’s Initial QR, at exhibits A-13 and B-12.

purchased natural rubber during the POI.<sup>131</sup> For this final determination, we continue to find that Cooper did not benefit from this program, and as explained below at Comment 19, we are countervailing GITI Yinchuan Greatwall's POI purchases of natural rubber for LTAR.

In the *Preliminary Determination*, we preliminarily determined that natural rubber producers are “authorities” within the meaning of section 771(5)(B) of the Act and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.<sup>132</sup> Further, we found that a benefit existed to the extent that the price paid for the natural rubber produced by these suppliers was for LTAR under section 771(5)(E)(iv) of the Act, and that the recipients of natural rubber are limited in number, and therefore specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act.<sup>133</sup> We also determined that internal, tier one, benchmarks – specifically, import prices for natural rubber – are appropriate for determining the benefit from the provision of natural rubber at LTAR. No information has been placed on the record since the *Preliminary Determination* to refute these findings, and therefore we continue to find, in accordance with sections 771(5)(B), 771(5)(D)(iii), 771(5)(E)(iv), and 771(5A)(D)(iii)(I) of the Act, that this program confers a countervailable subsidy.

To calculate the benefit, if any, for CKT's and GITI Yinchuan Greatwall's purchases from authorities, we used an average of the price paid by each company for natural rubber imported in the relevant month for the benchmark.<sup>134</sup> 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 have paid if it imported the product, including delivery charges and import duties. The benchmark price was inclusive of VAT, import duty, ocean freight and inland freight, so we made no further adjustments. Next, we compared the benchmark prices to the prices paid by each company for its natural rubber purchases from domestic producers that constitute authorities, and we measured a benefit to the extent that the price paid by each company was less than the benchmark price. Pursuant to 19 CFR 351.525(b)(6)(ii), we divided this difference by the combined total POI sales by respondent producers, exclusive of intercompany sales, as described above in the “Attribution of Subsidies” section.

On this basis, we determine a subsidy rate of 0.43 percent *ad valorem* for the GITI companies, and a subsidy rate of less than 0.005 percent *ad valorem* for Cooper, which we are excluding from Cooper's overall CVD rate.

c. Provision of Electricity for LTAR

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are continuing to base our final determination regarding the GOC's provision of electricity on AFA, in part. The Department preliminarily found in the *Preliminary*

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<sup>131</sup> See GITI Fujian's Additional Companies SQR at 24-25 and exhibit 30.

<sup>132</sup> See PDM at 42-44.

<sup>133</sup> *Id.*, at 43.

<sup>134</sup> See Final Analysis Memoranda.

*Determination* that both company respondents received a countervailable subsidy through the GOC's provision of electricity for LTAR.<sup>135</sup> During verification of the GITI companies and Cooper, the Department reviewed electricity invoices and bills, including the parts of the bills listing various electricity charges that the respondent companies reported as being adjustments to their final bills.<sup>136</sup>

For the final determination, we continue to find that, in not providing certain information requested by the Department, the GOC did not act to the best of its ability. Accordingly, with respect to the provision of electricity in the PRC, we determine that the GOC is providing a financial contribution and that the subsidy is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D)(i) of the Act, respectively. To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the respondent companies' reported consumption volumes and rates paid. For this final determination, we compared the rates paid by the respondent companies to the benchmark rates, which are the highest rates charged in the PRC during the POI. We made separate comparisons by price category (*e.g.*, great industry peak, basic electricity, *etc.*) We multiplied the difference between the benchmark and the price paid by the consumption amount reported for that month and price category. We then calculated the total benefit during the POI for each company by determining the difference between the benchmark prices and prices paid by each company.<sup>137</sup>

After considering comments from interested parties (*see* Comment 5), we are continuing to calculate the electricity benchmark and, in accordance with 19 CFR 351.511(a)(2), we selected the highest rates in the PRC for the user category of the respondents (*e.g.*, "large industrial users") for the non-seasonal general, peak, normal, and valley ranges, as provided in the electricity tariff schedules submitted by the GOC.<sup>138</sup> This benchmark reflects AFA, which we applied as a result of the GOC's failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation.<sup>139</sup> To calculate the subsidy rates, we divided the benefit amount by the appropriate total sales denominator, as discussed in the Final Analysis Memoranda.

On this basis, we determine a subsidy rate of 1.16 percent *ad valorem* for the GITI companies and 0.18 percent *ad valorem* for Cooper.

d. Provision of Land-Use Rights for FIEs for LTAR

Petitioner alleged that respondents benefited from the provision of land-use rights for FIEs for LTAR. Petitioner explained that enterprises with foreign investment that qualify as either a product export enterprise or a technologically advanced enterprise are entitled to caps on the land-use fees that can be charged to them, and certain local governments are authorized to

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<sup>135</sup> See PDM at 35-36.

<sup>136</sup> See GITI Fujian's Verification Report at 13, and Cooper's Verification Report at 11-12.

<sup>137</sup> See Final Analysis Memoranda.

<sup>138</sup> See GOC's Initial QR, at exhibits 19 and 20.

<sup>139</sup> See PDM at 21.

exempt eligible enterprises from payment of such land use fees altogether for limited periods of time.<sup>140</sup> The tire industry falls under the chemical and petrochemical industry in the PRC, and the record evidence indicates that provinces in which foreign-invested tire producers are located maintain their own preferential policies for the provision of land to the chemical industry.<sup>141</sup> CKT operates on land that is physically located in the Kunshan Economic & Technical Development Zone (ETDZ). CKT has acknowledged that it is an FIE, and that its being an FIE was part of its initial investment contract.<sup>142</sup> While the details of this program are proprietary in nature, it is clear from the record that the Kunshan ETDZ made payments to CKT as refunds of CKT's initial payment for land to be used to manufacture and sell products, including passenger tires.<sup>143</sup>

In the *Preliminary Determination*, the Department did not countervail CKT's land because we required more information to determine the countervailability of its land. During verification of CKT's questionnaire responses, we examined the company's records to determine whether all of its land had been reported to the Department and we noted no discrepancies with what the company reported.<sup>144</sup> We also reviewed the net amount CKT paid for the land, including the payment vouchers and bank statements.<sup>145</sup>

Interested parties commented on the countervailability of CKT's land, which we address below in Comment 8. For this final determination, we find that the Kunshan ETDZ's provision of land-use rights constitutes a provision of goods or services, and is a financial contribution under section 771(5)(D)(iii) of the Act. This subsidy is export-contingent and thus specific within the meaning of section 771(5A)(A)-(B) of the Act. To determine the benefit pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we first multiplied the Thailand industrial land benchmarks discussed above under the "Benchmarks and Discount Rates" section above, by the total area of CKT's land in Kunshan ETDZ. We then subtracted the net price actually paid for the land to derive the total unallocated benefit. We next conducted the "0.5 percent test" of 19 CFR 351.524(b)(2) for the year of the relevant land-use agreement by dividing the total unallocated benefit by the appropriate sales denominator. As a result, we found that the benefits were greater than 0.5 percent of relevant sales and that allocation was appropriate for CKT's land found to be countervailable. We allocated the total unallocated benefit amounts across the terms of the land-use agreement, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount attributable to the POI. We divided this amount by the appropriate total sales denominator, as discussed in the "Subsidies Valuation Information" section above.<sup>146</sup>

On this basis, we determine a subsidy rate of 0.59 percent *ad valorem* for Cooper.

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<sup>140</sup> See CVD Petition at exhibit III-120, exhibit III-126, exhibit III-127, exhibit III-128, exhibit III-129, exhibit III-130, exhibit III-131, and exhibit III-132.

<sup>141</sup> *Id.*, at exhibit III-11 and exhibit III-121.

<sup>142</sup> See Cooper's November 3 SQR at S-1 through S-3, and exhibit S-3.

<sup>143</sup> See Cooper's Verification Report at 5.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> See Cooper Final Analysis Memorandum.

## 7. Tax Benefit Programs

### a. Enterprise Income Tax Law, R&D Program

Under Article 30.1 of the Enterprise Income Tax Law of the PRC, which became effective January 1, 2008, companies may deduct R&D expenses incurred in the development of new technologies, products, or processes from their taxable income.<sup>147</sup> Article 95 of the Regulations on the Implementation of Enterprise Income Tax Law of the PRC (Decree 512 of the State Council, 2007) provides that, if eligible research expenditures do not “form part of the intangible assets value,” an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount.<sup>148</sup> Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets’ costs.<sup>149</sup>

Article 4 of the “Circular of the State Administration of Taxation on Printing and Issuing the Administrative Measures for the Pre-tax Deduction of Enterprises’ Expenditures for Research and Development (for Trial Implementation)” (Circular 116) states that enterprises engaged in hi-tech R&D may deduct certain expenditures, as listed in the “Hi-tech Sectors with Primary Support of the State Support and the Guideline of the Latest Key Priority Developmental Areas in the High Technology Industry (2007).”<sup>150</sup>

GITI Fujian’s cross-owned company, GITI Anhui Radial, reported using this program during the POI.<sup>151</sup> In addition, both CKT and CCT reported using this program during the POI.<sup>152</sup> We determined that both companies received a benefit under this program in the *Preliminary Determination*.<sup>153</sup> During verification of the GITI companies’ and Cooper’s questionnaire responses, we reviewed the companies’ income tax returns related to this program.<sup>154</sup>

We continue to find that this program constitutes a countervailable subsidy. This income tax deduction is a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also find that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus, is specific under section 771(5A)(D)(i) of the Act. No party submitted comments relating to this program.

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<sup>147</sup> See GOC’s Initial QR, at exhibits 22 and 23.

<sup>148</sup> *Id.*, at exhibit 23.

<sup>149</sup> *Id.*

<sup>150</sup> See GOC’s Initial QR, at exhibit S2-4.

<sup>151</sup> See GITI Fujian’s Initial QR, at 43 and exhibit 12.

<sup>152</sup> See Cooper’s Initial QR, at III-31 and III-29.

<sup>153</sup> See PDM at 37.

<sup>154</sup> See GITI Fujian’s Verification Report at 14-15, and Cooper’s Verification Report at 12-13.

To calculate the benefit from this program to the GITI companies and Cooper, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).<sup>155</sup> To compute the amount of the tax savings, we calculated the amount of tax each respondent would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator for each respondent, respectively.

On this basis, we determine a subsidy rate of 0.04 percent *ad valorem* for the GITI companies and 0.11 percent *ad valorem* for Cooper.

b. Two Free, Three Half Program for FIEs

Under Article 8 of the FIE Tax Law, an FIE that is “productive” and scheduled to operate for more than ten years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years.<sup>156</sup> According to the GOC, the “Two Free, Three Half” program was terminated effective January 1, 2008, by the Enterprise Income Tax Law, but companies already enjoying the preference were permitted to continue paying taxes at reduced rates for five additional years.<sup>157</sup> GITI Fujian’s cross-owned affiliated company, GITI Anhui Radial, reported paying taxes at a reduced rate under this program during the POI.<sup>158</sup> We determined that the GITI companies received a benefit under this program in the *Preliminary Determination*.<sup>159</sup> During verification of the GITI companies’ questionnaire responses, we reviewed the companies’ income tax returns related to this program.<sup>160</sup>

The Department has previously found the “Two Free, Three Half” program to confer a countervailable subsidy.<sup>161</sup> Consistent with the earlier cases, we continue to determine that the “Two Free, Three Half” income tax exemption/reduction confers a countervailable subsidy for this final determination. The exemption/reduction is a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone by the GOC and it provides a benefit to the recipient within the meaning of 19 CFR 351.509(a)(1) in the amount of the tax savings.<sup>162</sup> We also determine that the exemption/reduction afforded by the program is limited as a matter of law to certain enterprises, *i.e.*, productive FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

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<sup>155</sup> These credits can be for either expensed or capitalized R&D expenditures. If a credit is for capitalized expenditures (*e.g.*, the expenditures were made toward developing an “intangible asset” or patent), however, the 50 percent deduction is amortized across the useful life of the developed asset. Therefore, even credits for capitalized expenditures would be allocated over tax returns filed during a number of years and would thus be recurring. *See, e.g.*, PDM at 37.

<sup>156</sup> *See* PDM at 37-38.

<sup>157</sup> *Id.*

<sup>158</sup> *See* GITI Fujian’s Initial QR, at 48.

<sup>159</sup> *See* PDM at 38.

<sup>160</sup> *See* GITI Fujian’s Verification Report at 14-15.

<sup>161</sup> *See CFS from the PRC*, and accompanying IDM at 11-12.

<sup>162</sup> *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

To calculate the benefit, we treated the tax savings enjoyed by GITI Anhui Radial as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we compared the company's tax rate to the rate it would have paid in the absence of the program. We divided GITI Anhui Radial's tax savings for the return filed during the POI by the appropriate total sales denominator, in accordance with 19 CFR 351.525(b)(6)(ii). As discussed at Comment 15 below, parties requested a finding of a program-wide change for this program, which the Department is granting. Therefore, we will exclude any benefits found under this program during the POI from the cash deposit rate.

On this basis, we determine a subsidy rate of 0.41 percent *ad valorem* for the GITI companies.

#### 8. Import Tariff and VAT Exemptions for Imported Equipment

Circular 37 exempts FIEs and certain domestic enterprises from VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items, in order to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.<sup>163</sup> As of January 1, 2009, the GOC discontinued VAT exemptions under this program, but companies can still receive import duty exemptions.<sup>164</sup> Over the AUL, GITI Fujian, GITI Anhui Radial, GITI Hualin, and GITI Steel Cord each reported receiving VAT and tariff exemptions under this program as FIEs.<sup>165</sup> The Department has previously found VAT and tariff exemptions under this program to confer countervailable subsidies.<sup>166</sup> We preliminarily found this program to be countervailable in the *Preliminary Determination*.<sup>167</sup> Interested parties commented on the use of this program by GITI Anhui at Comment 20, which we have considered in our analysis for the final determination.

As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we are determining, based on AFA, that the GITI companies, as well as Hualin Tyre, used this program during the POI. Consistent with these earlier cases, we determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue foregone by the GOC pursuant to section 771(5)(D)(ii) of the Act. We also continue to determine that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(i) of the Act because the program is limited to certain enterprises, *i.e.*, FIEs and domestic enterprises involved in "encouraged" projects. Relying on AFA, we have determined that the GITI companies received a benefit from this program pursuant to 19 CFR 351.509(a)(1). Our reliance on AFA, and our selection of the appropriate rate to apply to this program are explained in further detail under Comment 20, below.

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<sup>163</sup> See GOC's Initial QR, at 162 and exhibit 26.

<sup>164</sup> *Id.*, at 163 and exhibit 27.

<sup>165</sup> See GITI Fujian's Initial QR, at 56.

<sup>166</sup> See *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying IDM, at VII.D; see also *Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32902 (June 10, 2010) and accompanying IDM, at 25-27.

<sup>167</sup> See PDM at 38-39.

On this basis, we determine a countervailable subsidy rate of 9.71 percent *ad valorem* for the GITI companies.

#### 9. Special Fund for Energy-Saving Technology Reform

The GOC reported that the purpose of this program is to accelerate the application of advanced energy-saving technologies and increase the efficiency in energy utilization.<sup>168</sup> This program was established on July 30, 2009. According to the “Notice concerning organization and application for energy reward project for energy-saving and recycling economy in the year of 2012 by economic and trade commission in Putian City (Pushijingmao Energy {2012} No.57),” this grant is only given to companies that develop projects for “energy-saving and technological transformation, energy-saving and demonstration, recycling economy.”<sup>169</sup> According to Article 14 of the *Tire Industry Policy*, one of the main policy points is to “{v}igorously promote energy conservation and comprehensive utilization of resources. Guide and encourage tire manufacturers to combine informatization and industrialization and carry out technology transformation whose focus is variety increase, quality improvement, energy saving, pollution reduction and safety production.”<sup>170</sup> GITI Fujian, GITI Hualin and Anhui Cord Fabrics reported receiving grants under this program before and during the POI. Cooper reported receiving a grant under this program during the POI.<sup>171</sup> We preliminarily found this program to be countervailable in the *Preliminary Determination*.<sup>172</sup> No party commented on this program.

We continue to determine that these non-recurring grants confer a countervailable subsidy. We determine that the grant received by the respondents under this program constitutes a financial contribution and provides a benefit under sections 771(5)(D)(i) of the Act and 19 CFR 351.504, respectively. Moreover, we find these grants are *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the grant are limited in number.

To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants. In the years that the benefits received by each company under this program did not exceed 0.5 percent of relevant sales in the year of approval, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). The grants that GITI Hualin and Anhui Cord Fabrics received during the POI were less than 0.5 percent of their respective POI sales.<sup>173</sup> Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI.

On this basis, we determine a countervailable subsidy rate of 0.01 percent *ad valorem* for the GITI companies and a countervailable subsidy rate of less than 0.005 percent *ad valorem* for Cooper, which we are excluding from Cooper’s overall CVD rate.

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<sup>168</sup> See GOC’s Initial QR, at 214.

<sup>169</sup> *Id.*, at exhibit 32.

<sup>170</sup> *Id.*, at exhibit 6.

<sup>171</sup> See Cooper’s Initial QR, at III-38.

<sup>172</sup> See PDM at 40-41.

<sup>173</sup> GITI Fujian did not receive this grant in the POI.

## 10. Grants

In the Post-Preliminary Memorandum, we preliminarily countervailed several grants received by the GITI companies and Cooper.<sup>174</sup> Further, both respondents have also reported receiving additional grants that were not previously countervailed in the *Preliminary Determination* or Post-Preliminary Memorandum. The GITI companies reported all the payments they received from the GOC during the entire AUL (including certain payments we preliminarily determined were not countervailable).<sup>175</sup> Cooper reported grants as part of its minor corrections.<sup>176</sup> We address these latter grants under “Grants Reported Subsequent to the Post-Preliminary Memorandum,” below.

### a. GITI Fujian Specific Subsidies

According to Petitioner, GITI Fujian, GITI Hualin, and GITI China reported receiving several awards in their 2011, 2012, and 2013 financial statements. In its December 15, 2014 new subsidy allegation questionnaire response, GITI Fujian completed the requested appendices for each of the 18 alleged new subsidy programs. In the Post-Preliminary Memorandum, we determined that none of the grants received prior to the POI passed the 0.5 percent test; therefore none were allocated to the POI. Regarding the grants received in the POI, for the Electricity Subsidy, the Provincial Fund for International Market, and the Provincial Fund for Import Discount Interest programs, we preliminarily determined a subsidy rate of less than 0.005 percent *ad valorem* for the GITI companies under each program, and therefore excluded them from the overall CVD rate.<sup>177</sup> We also preliminarily determined that five programs – Subsidy for Export Credit Insurance; Financial Subsidy, 2011-2013; Enterprise Development Fund, 2012-2013; Key Enterprise Staffing Subsidy, 2013; and Energy-Saving Technology Improvement Award, 2013 – conferred a countervailable subsidy greater than 0.005 percent *ad valorem*.<sup>178</sup>

As discussed at Comment 19, we are countervailing any subsidies received during the AUL through 2010 by GITI Anhui, and all subsidies received by GITI Yinchuan Greatwall during the AUL through the POI, because 2010 and 2013 were the last years these companies produced subject merchandise, respectively.<sup>179</sup> Parties commented on the countervailability of the Key Enterprise Staffing Subsidy, 2013, which we address at Comment 17. No other party commented on the countervailability of the other four grants (Subsidy for Export Credit Insurance; Financial Subsidy, 2011-2013; Enterprise Development Fund, 2012-2013; and

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<sup>174</sup> See Post-Preliminary Memorandum.

<sup>175</sup> See Letter from GITI Fujian, “Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Factual Information to Rebut, Clarify, or Correct Factual Information Submitted in Petitioner’s Submission Dated December 18, 2014,” January 5, 2015; see also Post-Preliminary Memorandum at 12.

<sup>176</sup> See Cooper’s Verification Exhibits.

<sup>177</sup> See Post-Preliminary Memorandum at 7.

<sup>178</sup> *Id.*, at 7-10.

<sup>179</sup> In the Post-Preliminary Memorandum, we did not countervail any subsidies received after 2008 by GITI Anhui and GITI Yinchuan Greatwall, the last year these companies reported producing subject merchandise. During verification, the Department discovered that GITI Anhui produced subject merchandise through 2010, and GIIT Yinchuan Greatwall produced subject merchandise through the POI. See Comment 19.

Energy-Saving Technology Improvement Award, 2013), which we are continuing to countervail in this final determination.<sup>180</sup>

We have continued to treat these grants as non-recurring subsidies, pursuant to 19 CFR 351.524(c), and applied the “0.5 percent test” to each one, individually, to determine whether each one should be allocated to the POI. We divided the entire amount of each potential subsidy by the appropriate sales denominator. If the rate calculated for any particular potential subsidy was less than 0.5 percent *ad valorem*, it was expensed in the particular year in which the benefit was received, in accordance with 19 CFR 351.524(b)(2). None of the grants received prior to the POI passed the 0.5 percent test; therefore none have been allocated to the POI.<sup>181</sup>

Following the same methodology used for grants received prior to the POI, we continue to find that none of the grants received during the POI passed the 0.5 percent test and, therefore, all such grants were expensed to the POI.<sup>182</sup>

On this basis, we determine a countervailable subsidy rate of 0.19 percent *ad valorem* for the GITI companies for these five grant programs.

b. Fixed Asset Investment Subsidies

According to GITI Fujian, GITI Anhui and GITI Anhui Radial provided information to the GOC on the investment costs each incurred to elevate the production technology.<sup>183</sup> The GOC then assessed the applications and made a decision to grant assistance to the companies.<sup>184</sup> GITI Fujian states that these grants, which the companies received in 2013, are tied to the capital assets of the company.<sup>185</sup> In the Post-Preliminary Memorandum we preliminarily determined, based in part on AFA, that the grants received by the respondents through the tax awards program confer countervailable subsidies.<sup>186</sup> No parties commented on our *Preliminary Determination* regarding this program. For this final determination, we continue to rely on AFA with respect to this program and find that the grants provide both a financial contribution pursuant to section 771(5)(D)(i) of the Act, and are specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. The grants provide benefits in the amount of the grants provided, pursuant to 19 CFR 351.504(a). We divided the POI benefit from each subsidy by the appropriate sales denominator to determine the subsidy rate.

On this basis, we determine a countervailable subsidy rate of 0.02 percent *ad valorem* for the GITI companies.

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<sup>180</sup> See Post-Preliminary Memorandum for a discussion of how each grant meets the element of a subsidy.

<sup>181</sup> See Memorandum, “Post Preliminary Determination Analysis for GITI Tire (Fujian) Company Ltd.,” February 24, 2015 (Post Preliminary Analysis Memorandum).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> See Post-Preliminary Memorandum at 10.

c. Tax Awards

GITI Fujian reported that local tax authorities occasionally award large tax payers with tax awards “in recognition of their contribution to the authorities” tax revenue.<sup>187</sup> GITI Fujian, GITI China, GITI Anhui Radial, and GITI Steel Cord Hubei all reported receiving tax awards between 2001 and 2013.<sup>188</sup>

In the Post-Preliminary Memorandum we preliminarily determined that the grants received by the respondents through the tax awards program confer countervailable subsidies. No parties commented on our *Preliminary Determination* regarding this program. For this final determination, we continue to find that the grants provide a financial contribution pursuant to section 771(5)(D)(i) of the Act and provide benefits in the amount of the grants provided, pursuant to 19 CFR 351.504(a). We also continue to find, relying on AFA, that grants from this program are specific within the meaning of section 771(5A)(D)(iii)(IV) of the Act.

Pursuant to 19 CFR 351.524(c) the Department normally treats grants as non-recurring subsidies. As such, the Department applied the “0.5 percent test” of 19 CFR 351.524(b)(2) to each grant, individually, to determine whether it should be allocated. None of the grants received during the POI passed the 0.5 percent test and, therefore, all such grants were attributed to the POI. In addition, none of the grants received prior to the POI passed the 0.5 percent test and, thus, all were expensed to the years of receipt prior to the POI. For the grants expensed to the POI, we calculated the subsidy from each grant separately by dividing the entire amount of the grant by the appropriate sales denominator for the POI. We then summed the subsidy rates to arrive at GITI Fujian’s subsidy rate.<sup>189</sup>

On this basis, we determine a countervailable subsidy rate of 0.04 percent *ad valorem* for the GITI companies.

d. Grants Reported Subsequent to the Post-Preliminary Memorandum

During the course of this investigation, the Department discovered through examination of submitted financial statements that both respondents had received numerous grants from provincial and local governments that were not part of any of the other programs included in this investigation. The GITI companies and Cooper also submitted lists of grants they had received that were not reported elsewhere in their questionnaire responses. As noted above under “Application of Adverse Facts Available – Grants Reported Subsequent to the Post-Preliminary Memorandum,” the Department has determined that all these grants confer countervailable subsidies to the respondents. Using AFA, we are finding all grant programs provide financial contributions pursuant to section 771(5)(D)(i) of the Act and are specific within the meaning of section 771(5A)(D)(i) of the Act.

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<sup>187</sup> See GITI Fujian’s initial QR at 71.

<sup>188</sup> *Id.*

<sup>189</sup> See Post Preliminary Analysis Memorandum.

The Department finds that all these grants provide benefits in the amount of the grants provided, pursuant to 19 CFR 351.504(a). The Department is treating these grants as non-recurring subsidies, pursuant to 19 CFR 351.524(c). As such, the Department applied the “0.5 percent test” of 19 CFR 351.524(b) to each grant, individually, to determine whether it should be allocated. None of the grants received during the POI passed the 0.5 percent test and, therefore, all such grants were attributed to the POI. None of the grants received prior to the POI passed the 0.5 percent test, and all have been expensed to the year they were received. We calculated the subsidy from each grant separately by dividing the entire amount of the grant by the appropriate sales figure for the POI. If the subsidy rate calculated for any particular grant was less than 0.005 percent *ad valorem*, that grant was determined to have no impact on the overall subsidy rate, and was therefore disregarded. We summed all the subsidy rates arising from the remaining grants, and rounded to the nearest one-hundredth of one percent.<sup>190</sup> For a complete list of each of these grants for each respondent, *see* the Final Analysis Memoranda.

On this basis, we determine a subsidy rate of 0.15 percent *ad valorem* for the GITI companies and 0.01 percent *ad valorem* for Cooper.

**B. Programs Determined To Be Not Used by, or to Not Confer a Measurable Benefit, During the POI to the GITI Companies and Cooper**

11. Preferential Loans to SOEs
12. Discounted Loans for Export-Oriented Enterprises
13. Provision of Land-Use Rights to Passenger Tire Producers for LTAR
14. Provision of Land-Use Rights for SOEs for LTAR
15. Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR
16. Tax Benefit Programs
  - a. Income Tax Reductions for HNTES
  - b. Income Tax Reduction for Advanced-Technology FIEs
  - c. Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs
  - d. Income Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment
17. VAT Refunds on FIE Purchases of Chinese-Made Equipment

We found in the *Preliminary Determination* that no benefit from these programs was allocable to the POI.<sup>191</sup> No parties provided comments regarding these programs; we continue to find that these programs provide no POI benefits.

18. VAT Refunds for Domestic Firms on Purchases of Chinese-Made Equipment

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<sup>190</sup> *See* Final Analysis Memoranda.

<sup>191</sup> *See* PDM at 45.

## 19. VAT Exemptions and Deductions for Central Regions

The GOC states that eligibility for this program is extended to normal VAT tax payers that mainly participate in the equipment manufacturing industry, petrochemical industry, metallurgy industry, auto manufacturing industry, agricultural product processing industry, electric power industry, mining industry, and high and new tech industry.<sup>192</sup> The purpose of this program is to promote the development of the central region of the PRC. The GOC also identified location as a requirement for the program, which covers 26 cities in six provinces in the central region of the PRC.<sup>193</sup> GITI Anhui Radial, GITI Anhui Cord Fabrics, GITI Steel Cord Hubei and GITI Anhui reported receiving VAT credits on purchases of equipment under this program over the AUL.<sup>194</sup> We preliminarily found this program to be countervailable in the *Preliminary Determination*.<sup>195</sup> Parties commented on whether this program met the definition of a countervailable subsidy (*see* Comment 16).

After considering comments from interested parties, for this final determination, we continue to determine that VAT exemptions granted to selected industries in the central region of the PRC confer a countervailable subsidy. The exemptions are a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone by the GOC, and they provide a benefit to the recipient within the meaning of 19 CFR 351.509(a)(1) in the amount of the VAT exemption.<sup>196</sup> Further, we find these exemptions to be limited to enterprises or industries in designated geographical regions within the PRC and, therefore, the subsidy is specific under section 771(5A)(D)(iv) of the Act.

Since this indirect tax is provided for, or tied to, the capital structure or capital assets of a firm, as reported by the respondent, the Department treated this tax as a non-recurring benefit and allocated the benefit to the firms over the AUL.<sup>197</sup> To calculate a benefit under this program, for the years in which the rebate amount was less than 0.5 percent of the relevant sales figure, we expensed the rebates in the year of receipt, consistent with 19 CFR 351.524(b)(2). For those years in which the VAT rebates were greater than or equal to 0.5 percent, we allocated the rebate amount over the AUL. We used the discount rates described above in the “Benchmarks and Discount Rates” section to calculate the amount of the benefit allocable to the POI.

On this basis, we determine a countervailable subsidy rate of less than 0.005 percent *ad valorem* for the GITI companies, which we are excluding from the GITI companies’ overall CVD rate.

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<sup>192</sup> See GOC’s Initial QR, at 188 and exhibit 30.

<sup>193</sup> *Id.*

<sup>194</sup> See GITI Fujian’s Initial QR, at 62. VAT credits do not automatically provide benefits to recipients. VAT systems are designed to offset the VAT a producer pays to its suppliers through the VAT it collects from its customers; thus, the producer’s ultimate VAT burden may be reduced to zero. Certain systems, however, such as the GOC’s during the time in question, do not allow VAT paid for purchases of capital equipment to be offset through VAT collected from customers. As the “consumer” of equipment, the producer was ultimately responsible for the VAT incurred and could not pass the burden forward to its customer. Thus credits for VAT paid on equipment provide benefits.

<sup>195</sup> See PDM at 39-40.

<sup>196</sup> See section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

<sup>197</sup> See 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

## 20. Grant Programs

- a. State Key Technology Renovation Project Fund Program
- b. Famous Brands Program

We found in the *Preliminary Determination* and the Post-Preliminary Memorandum that no benefit from these programs was allocable to the POI.<sup>198</sup> No parties provided comments regarding these programs; we continue to find that these programs provide no POI benefits.

- c. The Clean Production Technology Fund
- d. Export Interest Subsidy Funds for Enterprises Located in Guangdong and Zhejiang Provinces
- e. Funds for “Outward Expansion” of Industries in Guangdong Province
- f. Provincial International Market Development Fund Grant

We calculated a subsidy rate of less than 0.005 percent *ad valorem* for the GITI companies in the *Preliminary Determination*, and excluded the program rate from the overall CVD rate.<sup>199</sup> No parties provided comments regarding these programs; we continue to exclude this subsidy rate from the GITI companies’ overall subsidy rate.

- g. Provincial Import Discount Loan Subsidy

We found in the *Preliminary Determination* that no benefit from this program was allocable to the POI.<sup>200</sup> No parties provided comments regarding this program; we continue to find that this program provides no POI benefits.

- 21. Subsidies for Companies Located in the Hefei Economic and Technology Development Zone
- 22. Anhui Province Subsidies for FIEs
- 23. Hefei Municipal Export Promotion Policies
- 24. Cooper-Specific Subsidies
- 25. Subsidies for Companies Located in the Kunshan Economic and Technological Development Zone
- 26. Weihai Municipality Subsidies for the Automobile and Tire Industries
- 27. Subsidies for Companies Located in the Rongcheng Economic Development Zone

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<sup>198</sup> *Id.*

<sup>199</sup> *Id.*, at 46-47.

<sup>200</sup> *Id.*, at 47.

## C. Programs Determined to Be Not Countervailable

### Provision of Water for LTAR

We found in the *Preliminary Determination* that this program was not countervailable.<sup>201</sup> No parties provided comments regarding this program; therefore, we continue to find that this program is not countervailable.

## X. ANALYSIS OF COMMENTS

### Comment 1: Whether GITI Fujian's Input Suppliers are Authorities

#### *GITI Fujian's Comments:*

- Any input purchases from suppliers that the record shows are private entities, *i.e.*, not the Chinese government or a Chinese SOE, should not be countervailed.
- GITI Fujian has submitted on the record ownership and political affiliation information with respect to its suppliers and producers, including, for each supplier: enterprises category, ownership structure and political affiliation of the board of directors and the senior management.
- GITI Fujian cooperated to the best of its ability, and should not be penalized with the GOC's lack of participation leading to a broad AFA decision that all the GITI companies' suppliers are authorities.
- This information demonstrates that the input suppliers and producers are neither controlled by the government through ownership or by a Chinese Communist Party (CCP) member:
  - nine companies are wholly foreign owned companies, with no state ownership;
  - 15 companies are joint ventures, among which 13 were majority owned by foreign investors and no, or a minority, of board members or senior managers that were members of the CCP;
  - For one of these 15 companies, five out of nine board directors were members of the CCP; and
  - An additional 17 companies were wholly or majority owned by individuals, thus excluding any possibility of state control through ownership.
- Chinese law would not allow a CCP member to cause a company to provide a subsidy to another Chinese entity.
- Petitioner only argued that 26 of GITI Fujian's non-SOE suppliers during the POI are government authorities. Accordingly, the other 45 input suppliers for which the GITI companies submitted relevant information should not be considered government authorities, and input purchases from these suppliers should not be countervailed.
- GITI Fujian cooperated to the best of its ability, and AFA should only be applied to the GOC, which was the party that failed to cooperate with respect to the "authorities" issue.

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<sup>201</sup> *Id.*, at 48.

*Petitioner's Rebuttal Comments:*

- Because the GOC did not provide complete responses to the Department's questionnaires, the Department found, as AFA, that domestic producers of carbon black, nylon cord, synthetic rubber and butadiene, and natural rubber were authorities.
- The Department has repeatedly determined that the GOC is in the best position to provide complete information regarding the role of the GOC and CCP in the ownership and management of the input producers and their owners. Because the GOC also failed to provide complete information regarding the role of the GOC and CCP in the ownership and management of these input suppliers, the Department should continue to find all the input providers are authorities.
- Petitioner's deficiency comments regarding the GITI companies' submission of factual information on input suppliers did not foreclose any argument that the GITI companies' other input suppliers are also SOEs or otherwise qualify as government authorities. Petitioner has consistently maintained that the Department should determine that all domestic input producers from whom respondents purchased inputs are government authorities.
- The Petition details how each of the four input industries are subject to specific government industrial plans. Producers of these inputs should therefore be deemed government authorities capable of conferring a countervailable benefit.

**Department's Position:** The Department is continuing to find, in accordance with section 771(5)(B) of the Act, that all of GITI Fujian's input suppliers (except as noted in Comment 4 below) are "authorities."<sup>202</sup> As described above, the GOC reported certain input suppliers to be "SOEs," and we find that those entities possess, exercise or are vested with governmental authority. Therefore, they are authorities. GITI Fujian has challenged our preliminary treatment of other input suppliers, and we address those here.

As explained in the *Preliminary Determination*, we sought information from the GOC regarding the specific companies that produced carbon black, nylon cord, synthetic rubber and butadiene, and natural rubber that the respondents purchased during the POI that would allow us to do a complete analysis of whether the input producers are "authorities" within the meaning of section 771(5)(B) of the Act.<sup>203</sup> We also explicitly sought information regarding the role that CCP officials may have played in any of the input suppliers' operations.<sup>204</sup> To the extent that the owners, managers, or directors of a producer are CCP officials or are otherwise influenced by certain entities, the Department inquired into the means by which the GOC may exercise control over company operations and other CCP-related information.<sup>205</sup> The Department has explained to the GOC its understanding of the CCP's involvement in the PRC's economic and political structure in prior PRC CVD proceedings,<sup>206</sup> and has explained why it considers the information

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<sup>202</sup> As discussed under "Provision of Carbon Black, Nylon Cord and Synthetic Rubber and Butadiene for LTAR," above, we have treated input providers as "authorities" if the GOC identified them as being an SOE.

<sup>203</sup> See Letter from the Department, "Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Countervailing Duty Questionnaire," August 14, 2014 (CVD Initial QR), at section II-9 to II-18, section III-13 to III-17, and section II, "Input Producer Appendix."

<sup>204</sup> See PDM at 26-27.

<sup>205</sup> See, e.g., GOC's Initial QR at 43-54.

<sup>206</sup> See, e.g., *Solar Cells from the PRC*, and accompanying IDM at Comment 6.

regarding the CCP's involvement in the PRC's economic and political structure to be relevant.<sup>207</sup> We found in the *Preliminary Determination*, that certain producers identified by the GOC as "SOEs" are "authorities," and relying on AFA, that the remaining PRC producers of carbon black, nylon cord, synthetic rubber and butadiene, and natural rubber are "authorities" within the meaning of section 771(5)(B) of the Act, because the GOC failed to provide all requested information in the input producer appendix and failed to report whether board members, owners or senior managers were government or CCP officials.<sup>208</sup>

GITI Fujian compiled a chart that provided the following for each of the producers of its raw material inputs: (1) "enterprises category" (*i.e.*, whether the producer is an SOE, FIE, *etc.*); (2) ownership structure; and (3) political affiliation of the board of directors and the senior management. It argues that the Department should use this information to determine whether its suppliers are authorities. However, the Department has consistently maintained in PRC proceedings that the GOC is in the best position to provide complete information about the role of the GOC and CCP in the ownership and management of the input producers.<sup>209</sup> While the Department acknowledges that GITI Fujian did provide certain details regarding these producers,<sup>210</sup> our request for this information was directed specifically at the GOC because, as made clear in the Public Body Memorandum, an assessment of whether an entity is an authority must rely primarily on information that only the GOC can provide.<sup>211</sup> The GOC was given multiple opportunities to provide this information,<sup>212</sup> but failed to do so.

Moreover, GITI Fujian revealed at verification that it had queried a database maintained by the GOC to ascertain whether the producers were SOEs.<sup>213</sup> The existence of this database, which the verifiers did not examine, indicates that the GOC did have the ability to provide ownership information to the Department, including the extent of state-ownership of the input providers. The GOC never provided information from this database, and, consequently, we never verified such information with the GOC, the custodian of this database. The Department was unable to verify GITI Fujian's input supplier chart because it was unable to examine the source of the information (the GOC database). Accordingly the record does not support GITI Fujian's claim that its input suppliers chart was verified, but does indicate that the GOC failed to act to the best of its abilities by not providing details from databases it clearly maintained and could access.

GITI Fujian also claims that Petitioner agreed that 45 input suppliers for which the GITI companies submitted relevant information are not authorities and that the Department should not

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<sup>207</sup> *Id.*

<sup>208</sup> See PDM at 26-27.

<sup>209</sup> See, e.g., *Solar Cells from the PRC*, and accompanying IDM at Comment 6.

<sup>210</sup> For each producer, GITI Fujian provided some (mainly business licenses) but not all of the necessary information that was requested in the Input Producers Appendix.

<sup>211</sup> *Id.*; see also Additional Documents Memorandum at Public Body Memorandum at 37-38; see also *Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) (*Tetrafluoroethane from the PRC*), and accompanying IDM at Comment 3.

<sup>212</sup> See, e.g., GOC's Initial QR, GOC's October 31 SQR.

<sup>213</sup> See GITI Fujian's Verification Report at 12-13.

countervail the GITI companies purchases from these 45 input suppliers during the POI.<sup>214</sup> However, this claim takes Petitioner's statements out of context. In Petitioner's deficiency comments on GITI Fujian's input supplier chart,<sup>215</sup> Petitioner noted that *at least 26* of the input suppliers were SOEs, which neither GITI Fujian nor the GOC has challenged. Petitioner had a limited ability to comment on the remaining producers given that the GOC had not provided sufficient information regarding the ownership of those producers. Hence, while Petitioner was silent with regard to certain producers in GITI Fujian's chart, it was not indicating agreement with GITI Fujian's conclusions regarding the remaining companies.<sup>216</sup>

Lastly, GITI Fujian states that the Department cannot apply AFA to the GITI companies without a finding that the GITI companies themselves have not cooperated to the best of their abilities. However, the Court of Appeals for the Federal Circuit (CAFC) unequivocally upheld the Department's authority to apply AFA to a non-cooperating party even if doing so subjected a cooperating party to collateral effects.<sup>217</sup> In *Fine Furniture*, the Court addressed this issue directly, stating as follows:

Commerce in this case did not choose the adverse rate to punish the cooperating plaintiff, but rather to provide a remedy for the government of China's failure to cooperate.... Although it is unfortunate that cooperating respondents may be subject to collateral effects due to the adverse inferences applied when a government fails to respond to Commerce's questions, this result is not contrary to the statute or its purposes, nor is it inconsistent with this court's precedent.<sup>218</sup>

Thus, in selecting from among the facts available with regard to government involvement in the operations of the input producers, the Department's application of an adverse inference was warranted under section 776(b) of the Act and in accordance with the CAFC's interpretations of that section of the statute. Consequently, we determine that the input producers for which the GOC failed to provide complete ownership information and/or complete information pertaining to the involvement of government or CCP officials are meaningfully controlled by the government such that they possess, exercise or are vested with governmental authority. Therefore, these producers are "authorities" within the meaning of section 771(5)(B) of the Act,

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<sup>214</sup> See Letter from GITI Fujian, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Case Brief of GITI Tire (Fujian) Co., Ltd.," April 17, 2015 (GITI Fujian Case Brief) at 9.

<sup>215</sup> See Letter from GITI Fujian, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China- Petitioner's Comments on GITI's Factual Information Related to Suppliers & Supply Chain," November 3, 2014.

<sup>216</sup> Indeed, Petitioner has reiterated its claim throughout this proceeding that all domestic input producers should be deemed "authorities," given the GOC's failure to provide complete information. See, e.g., Letter from Petitioner, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China- Petitioner's Pre-Preliminary Comments," November 10, 2014; see also Letter from Petitioner, "Rebuttal Brief on Behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC," April 27, 2015 (Petitioner's Rebuttal Brief), at 30.

<sup>217</sup> See *Fine Furniture (Shanghai) Limited v. United States*, 748 F.3d 1365 (Fed. Cir. 2014) (*Fine Furniture*).

<sup>218</sup> *Id.*, at 1373; see also *KYD, Inc. v. United States*, 607 F.3d 760, 768 (CAFC 2010) (recognizing that importers must bear the liability of an AFA rate assigned to an uncooperative exporter and so may also be subject to collateral affects).

and the goods provided by them are financial contributions within the meaning of section 771(5)(D)(iii) of the Act.

## **Comment 2: Appropriate Benchmarks for Inputs for LTAR**

### *Cooper's Comments:*

- There is no evidence to support the Department's determination that the PRC carbon black market is distorted. Simply by reviewing the volume and value of companies that are state-owned or controlled does not provide evidence that there is distortion within the PRC carbon black market.
- The (tier two) world market prices used as benchmark created a distortion. Such data includes primarily higher cost carbon black sourced from oil feedstock rather than lower cost carbon black sourced from coal feedstock that is used in the PRC. Coke tar is readily available and inexpensive in the PRC because their coke ovens are young and abundant as coke is needed for the rapidly expanding steel production, while 92 percent of world-wide carbon black production capacity is for oil-based carbon black with known higher production costs and thereby higher prices than the PRC's coke tar.
- The appropriate carbon black benchmark should be either actual transactions from the PRC carbon black market (*i.e.*, the prices Cooper actually paid for its carbon black from those producers the GOC identified as private parties), or exports of carbon black from the PRC because use of such domestic pricing substantially reduces the distortion from the use of the GTA data.

### *GOC's Comments:*

- The Appellate Body has found that "evidence relating to government ownership of SOEs and their respective market shares does not, in and of itself, provide a sufficient basis for concluding that in-country prices are distorted."<sup>219</sup> This is in essence, the same as the "substantial evidence" standard applied by U.S. law.
- Government ownership alone is insufficient to support a conclusion that in-country benchmarks are distorted.
- The Department should either select reasonable and available in-country benchmarks that are on the record, or if it feels no such benchmarks are on the record, it should find no benefit with respect to any of the LTAR programs.

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<sup>219</sup> See Appellate Body Report, *United States - Countervailing Measures on Certain Products from China*, WT/DS437/AB/R (18 December 2014) (WTO/DS437) at para. 4.62.

*Petitioner's Rebuttal Comments:*

- The Department determined to use external benchmarks as AFA because the GOC failed to cooperate to the best of its ability and provide complete responses to the Department's questionnaires. The GOC failed to provide information about the volume and value of domestic production of companies that are directly or indirectly owned or managed by the government or SOEs and failed to provide values of domestic production or consumption.
- The information on the record indicates that the GOC's involvement in these markets creates a price distortion in these markets. Neither the GOC nor mandatory respondents have presented any evidence that contradicts this substantial evidence.
- Cooper did not provide alternative external benchmark data, which it should have done if it believed the world market prices on the record were inappropriate due to differences in product types.

*API's<sup>220</sup> Rebuttal Comments:*

- The Department should agree with the GOC that domestic PRC benchmarks can be used for certain inputs.

**Department's Position:** For this final determination, we are continuing to rely on external benchmarks to determine the benefit from carbon black, nylon cord, and synthetic rubber and butadiene for LTAR.

The GOC's reliance on *WTO/DS437* to argue for in-country benchmarks is misplaced. *WTO/DS437* does not apply to this investigation. The CAFC has held that WTO reports are without effect under U.S. law "unless and until such ruling has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA).<sup>221</sup> Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.<sup>222</sup> As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.<sup>223</sup> As the Department has previously explained, "the Department has issued no new determination and the United States has adopted no change to its methodology pursuant to the URAA's statutory procedure" with respect to this issue.<sup>224</sup> We continue to reject this argument because this fact has not changed.

As stated in the *Preliminary Determination*, we have decided to use external benchmarks in light of the GOC's failure to provide information that record evidence indicates to be in its possession concerning the production of a wide variety of inputs by companies in which the state maintains an ownership and management interest.<sup>225</sup> We determined that the GOC withheld information

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<sup>220</sup> The company's complete name is American Pacific Industries Inc.

<sup>221</sup> See *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-49 (CAFC 2005).

<sup>222</sup> See, e.g., 19 U.S.C. §3533, 3538.

<sup>223</sup> See, e.g., 19 U.S.C. §3538 (implementation of WTO reports is discretionary).

<sup>224</sup> See *53-Foot Domestic Dry Containers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 21209 (April 17, 2015) (*Containers*), and accompanying IDM at 50.

<sup>225</sup> See PDM at 28-29.

and did not cooperate to the best of its ability by failing to provide information we requested concerning the extent of the state's involvement in the production of synthetic rubber, carbon black, and nylon cord. Therefore, we concluded that the use of facts available was warranted pursuant to section 776(a)(2)(A) of the Act, and the application of AFA was warranted pursuant to section 776(b) of the Act. Accordingly, as AFA, we preliminarily determined that the domestic markets for these inputs were distorted by government intervention and resorted to external benchmarks for measuring the benefit from the provision of these inputs at LTAR.<sup>226</sup>

Despite an additional opportunity after the *Preliminary Determination*,<sup>227</sup> the GOC provided no further information regarding the input markets in the PRC or the extent of government ownership that would detract from our preliminary decision that the input markets are distorted. Because the GOC failed to act to the best of its ability, in accordance with section 776(b) of the Act, the Department continues to find that AFA is warranted and determines that the input markets are distorted for this final determination.<sup>228</sup> Therefore, consistent with the Department's precedent for these same inputs,<sup>229</sup> we continue to use external benchmarks for determining the benefit from the provision of these inputs for LTAR.

Cooper contends that there is no evidence that the market for carbon black is distorted in any way that would override the regulatory preference for actual PRC transactions.<sup>230</sup> Cooper's arguments regarding our choice of benchmark data are unavailing, considering that Cooper itself has provided very limited benchmark information on the record. According to Department regulations, parties have until 30 days before the scheduled date of the preliminary determination to file factual information to measure the adequacy of remuneration.<sup>231</sup> Cooper timely submitted benchmark information for natural rubber only.<sup>232</sup> If Cooper believed the world market prices on the record were inappropriate due to differences in product types, it could have submitted alternative data for the Department to consider, which it did not do.

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<sup>226</sup> *Id.* at 29.

<sup>227</sup> See Letter to the GOC, "Supplemental Questionnaire for the Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China," January 9, 2015, at 2-4.

<sup>228</sup> See "Use of Facts Otherwise Available and Adverse Inferences" section above.

<sup>229</sup> See, e.g., *Off-the-Road Tires from the PRC CVD Review Preliminary Results*, at 17 and 24-26; unchanged in the final review, *Off-the-Road Tires from the PRC CVD Review*.

<sup>230</sup> See Letter from Cooper, "Case Brief of Respondents Cooper Tire & Rubber Company, Cooper (Kunshan) Tire Co., Ltd., and Cooper Chengshan Shandong Tire Co., Ltd.," April 17, 2015 (Cooper Case Brief), at 6.

<sup>231</sup> See 19 CFR 351.301(c)(3)(i).

<sup>232</sup> See Letter from Cooper, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China/CVD Benchmark Data For Natural Rubber," October 22, 2014.

### **Comment 3: Whether Benchmarks for LTAR Inputs Should Exclude International Freight or Inland Freight**

#### *GITI Fujian's Comments:*

- The Department only countervailed raw materials purchased locally, for which the GITI companies did not pay international freight, inland freight, nor import tax. These expenses should not be included in the benchmark prices.
- The benchmark prices used for the LTAR inputs include these expenses, and therefore do not reflect the prevailing market conditions under which the actual purchases of the GITI companies took place. This is contrary to section 771(5)(E) of the Act, which explains that the Department shall determine the adequacy of remuneration in relation to prevailing market conditions, and 19 CFR 351.511, which explains that the Department will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question.
- The Appellate Body has stated that “countervailing measures may be used only for the purpose of offsetting a subsidy bestowed upon a product, provided that it causes injury to the domestic industry producing the like product. They must not be used to offset difference in comparative advantages between countries.”<sup>233</sup>
- The PRC has an abundant local supply of carbon black such that it provides a comparative advantage to PRC passenger tire producers, thus freeing them from the expenses associated with importing carbon black from foreign markets. The Department’s decision eliminated the comparative advantage enjoyed by the PRC tire producers.

#### *Petitioner's Rebuttal Comments:*

- 19 CFR 351.511(a)(2)(iv) requires the world market price to be adjusted to include delivery charges and import duties in order derive a delivered price that reflects “the price that a firm actually paid or would pay if it imported the product.”
- The charges for ocean freight, inland freight and import duties used by the Department were based on rates from the PRC market and relate directly to the prevailing market conditions faced by respondents.
- The Department is not required to implement an unrelated Appellate Body decision in this investigation; such an action would contravene the implementation framework dictated by U.S. law. Instead, the Department is bound by its regulations.

**Department's Position:** We are continuing to incorporate international and inland freight values in our external benchmark prices. According to 19 CFR 351.511(a)(2)(iv), world market prices must be adjusted to include delivery charges and import duties in order to arrive at a delivered price “to reflect the price that a firm actually paid or would pay if it imported the product.”<sup>234</sup> The courts have upheld our application of these adjustments as lawful and in

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<sup>233</sup> See Appellate Body Report, *Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R (17 February 2004) at para. 109.

<sup>234</sup> See 19 CFR 351.511(a)(2)(iv).

compliance with our regulations.<sup>235</sup> Because the Department determined that it was appropriate to use world prices as the benchmark for these inputs, we must adjust such prices as required by our regulations. We are calculating a delivered price that includes freight and import duties, which would be the price the companies would pay if they imported the inputs in question. Whether or not the respondent companies actually imported the inputs and paid international freight is not relevant for purposes of determining an appropriate benchmark. However, consistent with section 771(5)(E) of the Act, the Department does consider the prevailing market conditions in this analysis. Accordingly, we have used market ocean freight charges from Maersk Line, actual inland freight rates reported by respondents, and actual PRC import duties for the specific inputs we are examining to compute benchmark prices.<sup>236</sup> The charges thus reflect prices and rates in the PRC market, and they therefore relate directly to prevailing market conditions in the PRC.

GITI Fujian's arguments regarding "comparative advantage" lack any support in our regulations. 19 CFR 351.511(a)(2)(iv) does not provide for the adjustment of the world market price to take into account price differences purportedly attributable to differences in resource endowments inside and outside the subject country or to "comparative advantages." The concept of "comparative advantage" among nations is highly theoretical and not susceptible to meaningful measurement at the level of prices for the purposes of a CVD investigation.

#### **Comment 4: Inputs Supplied by Other GITI Companies Should Not be Countervailed**

*GITI Fujian's Comments:*

- The Department should not countervail nylon cord that was produced and supplied by Anhui Cord Fabrics to its affiliates. The Department countervailed such inputs in the *Preliminary Determination*, contrary to the agency's practice not to countervail inputs supplied by affiliated companies.
- Any raw materials supplied by another cross-owned reporting company should not be countervailed.

**Department's Position:** We agree with GITI Fujian that, consistent with our finding that Anhui Cord Fabrics is a cross-owned affiliated company of GITI Fujian,<sup>237</sup> we should not countervail the inputs supplied by any of the companies which we have found to be cross-owned with GITI Fujian. It is the Department's practice to exclude inter-company sales from its benefit calculations.<sup>238</sup> Therefore, for the final determination, we have removed from the benefit calculation purchases of inputs produced by any of GITI Fujian's cross-owned affiliated companies.

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<sup>235</sup> See *Beijing Tiahai Indus. Co. v. United States*, 52 F. Supp. 3d 1351, 1372-75 (CIT 2015); *Zhaoqing New Zhongya Aluminum Co., Ltd v. United States*, 929 F. Supp. 2d 1324, 1327 (CIT 2013).

<sup>236</sup> See Final Analysis Memoranda.

<sup>237</sup> See PDM at 15.

<sup>238</sup> See *Tetrafluoroethane from the PRC*, and accompanying IDM at Comment 18.

## Comment 5: Correct Electricity Rate Selections

### *GITI Fujian's Comments:*

- As AFA, the Department applied as a benchmark rate category prices reported in different provincial schedules, which is contrary to the facts of this investigation.
- 19 CFR 351.511 provides that the Department will normally use actual prices to determine the adequacy of remuneration for government provision of goods or services. Section 771(5)(E) of the Act requires the adequacy of remuneration be determined in relation to prevailing market conditions.
- It is unreasonable for the Department to request that the GOC establish the correlation between the cost factors of electricity in provinces where respondents are located, and the approved electricity rate schedules.
- The provincial rate schedules provided by the GOC establish prices for different categories of user within the province, and some specify a base fee as well as peak and valley hours. The Department did not explain the source of the hour category price listed in its electricity benchmark price calculation worksheet.
- The regulations require the Department to use actual prices, which exist only on a provincial-schedule basis. No provincial schedule provides for the combination of the rates that the Department has decided that the respondents should have paid.

### *Petitioner's Rebuttal Comments:*

- The information requested by the Department from the GOC to explain the correlation between the cost factors of electricity generation in the provinces where the mandatory respondents are located and the electricity rate schedules that the NDRC approved for those provinces was a reasonable request. The Department properly applied AFA based on the GOC's failure to provide such information.
- Consistent with its practice, in the *Preliminary Determination*, the Department selected the highest electricity rates on the record as AFA, including the highest prices for valley, normal and peak hours, lighting, and base fee price, from different provinces. The Department should continue to follow this methodology for the final determination.

**Department's Position:** For this final determination, we continue to use the highest electricity rates in each respective rate category as our benchmark and to compare these rates to those the respondents paid during the POI (thereby using the actual usage information supplied by the respondent companies in our analysis), as we did in the *Preliminary Determination*.<sup>239</sup>

As noted above, we are applying facts available to this program because the GOC did not provide a complete response to the Department's August 14, 2014 questionnaire regarding this program.<sup>240</sup> Specifically, we requested that the GOC provide the original provincial price proposals because the requested proposals were part of the GOC's electricity price adjustment

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<sup>239</sup> See PDM at 31.

<sup>240</sup> See GOC's Initial QR at 139.

process, and the documents were necessary for the Department’s analysis of this program.<sup>241</sup> In response, the GOC did not explain how cost elements in the price proposals led to retail price increases, but stated, without any supporting documents or providing the relevant laws and regulations referenced, that “the {National Development and Reform Commission (NDRC)} should...hold a series of conferences to solicit the opinions from all parties concerned. In these conferences, the impact of rising coal prices on the business operations of the power enterprises, the security of the power supply under such circumstances, and the matters in promoting energy conservation were researched, analyzed, and discussed.”<sup>242</sup>

Consequently, in the *Preliminary Determination*, we determined that the GOC withheld necessary information that was requested of it, and thus, we relied on facts available pursuant to section 776(a)(2)(A) of the Act.<sup>243</sup> Moreover, we preliminarily determined that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. The GOC did not adequately answer the questionnaire, nor did the GOC ask for additional time to gather and provide such information. Consequently, we relied on an adverse inference in selecting among the facts available pursuant to section 776(b) of the Act. In applying AFA, we found that the GOC’s provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, and was specific within the meaning of section 771(5A)(D)(i) of the Act. We also relied on AFA in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we selected are derived from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories for each respondent.

Accordingly, we compared the highest, non-specific electricity rates for the appropriate user categories to the respondents’ electricity prices.<sup>244</sup> The Department’s practice is to use the highest transmitter capacity rate (*i.e.*, Basic Electricity Tariff and/or Maximum Demand Tariff), and highest electricity rates on record (*i.e.*, tiered or consolidated rates dependent on the respondent’s user category), as a basis for comparison for this program.<sup>245</sup> Moreover, we relied on the highest rates for both the transmitter capacity and electricity rates, regardless of province, as a benchmark for comparison.<sup>246</sup> Consequently, in accordance with our practice, we continue to use the highest electricity rates in each respective tariff category as our benchmark, comparing

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<sup>241</sup> See, e.g., *Certain Magnesia Carbon Bricks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying IDM at Comment 8 (quoting the GOC as reporting that these price proposals “are part of the price setting process within China for electricity”); see also PDM at 29-31.

<sup>242</sup> See GOC’s Initial QR, at 141-142.

<sup>243</sup> See PDM at 31.

<sup>244</sup> See, e.g., *Hardwood and Decorative Plywood from the People’s Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013) (*Hardwood Plywood*) and accompanying IDM at “Provision of Electricity for LTAR,”; see also *Drill Pipe From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe*), and accompanying IDM at “Provision of Electricity for LTAR.”

<sup>245</sup> *Id.*; see also *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010), and accompanying IDM at “Provision of Electricity.”

<sup>246</sup> *Id.*

these rates to those the respondents paid during the POI, thereby considering the actual usage information supplied by the respondent companies in our analysis, with AFA relating solely to the GOC's continued failure to provide sufficient answers to the Department's Electricity Appendix.<sup>247</sup>

We disagree with GITI Fujian's argument that the Department is required to use actual prices, which only exist on a provincial-schedule basis. Our regulations do not require the selection of rates from one province only. We are required only to use actual prices, which we have done by selecting rates from actual rate schedules. We have followed our normal practice (explained above), which is consistent with our regulations and our AFA hierarchy in this investigation.<sup>248</sup>

Moreover, because we are not estimating what respondents actually paid for electricity or what they would have paid if they were located in another province with a higher rate schedule, it is not relevant for purposes of our analysis whether any province actually charges the combination of rates selected by the Department as AFA. Rather, we selected the highest transmitter capacity rate and the highest electricity rates on the record as AFA because the GOC failed to provide information the Department requested concerning the derivation of prices. Had the GOC provided adequate information concerning the derivation of electricity rates, the Department would have relied on such information. GITI Fujian's comments are based on the same flawed premise as its arguments regarding the inclusion of freight and import duties in the benchmarks used for carbon black, nylon cord, and synthetic and butadiene rubber addressed above in response to Comment 3. In both instances, it argues incorrectly that the Department must estimate its actual costs (which we already know based on record evidence) rather than what its costs would be absent the GOC's distorting role in the market in question.

#### **Comment 6: Whether to Countervail Government Policy Lending Program**

##### *GOC's Comments:*

- The Department's conclusion that the PRC lending market is distorted was based on an outdated finding, and without further critical investigation of the current situation, does not provide the substantial evidence necessary to sustain a result.
- The Appellate Body has explained that incorporating by reference findings from one determination into another determination will normally not suffice as a reasoned and adequate explanation.<sup>249</sup>
- Reliance on prior findings without further investigation does not provide the substantial evidence necessary to sustain a result.

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<sup>247</sup> See, e.g., *Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review*; 2011, 79 FR 45178 (August 4, 2014), and accompanying IDM at Comment 3.

<sup>248</sup> See *Chlorinated Isocyanurates*, and accompanying IDM at Comment 1; *Hardwood Plywood* and accompanying IDM at "Provision of Electricity for LTAR;" see also *Drill Pipe* at "Provision of Electricity for LTAR."

<sup>249</sup> See Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R at paras. 352 and 354 (March 11, 2011) (*DS379 ABR*).

- The Department should either select reasonable and available in-country benchmarks that are on the record, or if it feels no such benchmarks are on the record, it should find no benefit with respect to this program.

*GITI Fujian's Comments:*

- None of the outstanding financing reported by the GITI companies was granted under this program.
- The Department should reverse its finding that loans to the GITI companies were from an “authority” because the basis for such a finding, an eight-year old memorandum, fails the substantial evidence standard.
- The Department did not conduct new or updated analysis on whether PRC banks are still state-owned or still qualify as authorities.
- If the Department continues to countervail GITI companies’ loans, it should only countervail loans from the “Big Four” state banks – the Bank of China, the China Construction Bank, the Industrial and Commercial Bank of China, and the Agricultural Bank of China – as the record does not support a finding that any other banks or lending institutions are authorities.
- In prior cases the Department has inappropriately deemed all banks in the PRC to be government authorities.
- The *Tire Industry Policy* or other GOC statements were not cited in any of the GITI companies’ loan applications. Loans from SOCBs were therefore not specific, and should not be countervailed.
- For loans where the interest rate paid is greater than the benchmark interest rate, the Department should not “zero” the credit from the loan benefit calculations.

*Petitioner's Rebuttal Comments:*

- The Department correctly identified the PRC banks that provided loans to GITI Fujian as government authorities.
- The respondents failed to provide any factual information indicating that conditions in the PRC’s banking sector during the POI had changed to such a degree that the Department should depart from its prior determinations and rely on internal lending benchmarks in this investigation.
- The Department should continue to follow its practice of considering domestic banks, including those other than the “Big Four,” to be government authorities whose loans provide a financial contribution, as supported by record information. Neither the GOC nor GITI Fujian submitted any updated factual information regarding the ownership or operations of PRC banks to contradict the Department’s prior findings.
- The Department correctly identified CCT’s lenders as government authorities.
- The Department’s practice does not require that respondents cite government policies or statement in their loan applications to be found to benefit from policy lending. The Department finds that lending from Chinese banks constitutes policy lending where the industry is listed in certain GOC policies and catalogues that direct the use of loans to promote targeted industries. Record evidence shows that the GOC directs the use of loans to promote the passenger tire industry.
- The Department should continue to rely on external benchmarks to measure the benefit conferred by subsidized loans.

- The Appellate Body decision cited by the GOC is unrelated to this investigation and should not be implemented by the Department outside of the statutory framework for implementing WTO decisions dictated by Congress.
- The GOC’s allegation that the Department did not investigate the conditions in China’s banking sector during the period of investigation is not correct. The GOC failed to provide any information regarding the state of China’s banking sector in 2013 aside from the People’s Bank of China Annual Report, despite a specific request from the Department for such information. The GOC had the opportunity to submit any new factual information that might have supported reliance on an internal benchmark for subsidized loans by the regulatory deadline for such information but did not do so. Without such information on the record, the Department must continue to rely on the best information available, which is compiled in prior determinations and placed on this record.
- GITI Fujian’s request for an offset for its loans that did not provide a subsidy benefit should not be granted because it is an impermissible offset under the Department’s practice and statute. Permissible offsets are provided in section 771(6) of the Act, and offsetting the benefit calculated with a negative benefit is not one of them.

**Department’s Position:** We continue to find that lending from SOCBs – beyond just the “Big Four” banks – constitutes a financial contribution, pursuant to sections 771(5)(B) and 771(5)(D)(i) of the Act, that the PRC lending market is distorted, and that external benchmarks should be used to determine any benefits from this program. Additionally, we continue to find that loans provided to the respondents are specific within the meaning of section 771(5A)(D)(i) of the Act, and we continue to find that it is inappropriate to offset positive benefits provided by any loans with any “negative” benefit from loans that do not provide a benefit, consistent with our practice.

GITI Fujian and the GOC argue that the Department’s determinations regarding distortion in the lending market are no longer probative to this current investigation,<sup>250</sup> and that the Department is required to conduct an updated analysis and make determinations based on the current situation. However, as the Department has previously noted,<sup>251</sup> if parties believe the Department’s determinations regarding the lending industry in the PRC are based on incorrect or outdated information, they have the opportunity to submit additional information to correct that information. In this proceeding, as in prior proceedings in which the GOC and company respondents have made this same argument, they provided no such information, despite the opportunity to do so. The record, therefore, contains no evidence that contradicts our findings in *CFS from the PRC* that the PRC’s banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the financial system and the government’s use of banks to effectuate policy objectives. Because the Department is continuing to find that the policy lending market is

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<sup>250</sup> See GITI Fujian Case Brief at 22, and GOC Case Brief at 8.

<sup>251</sup> See, e.g., *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Photovoltaic Products From the PRC*), and accompanying IDM at Comment 9.

distorted, we are also continuing to rely on external benchmarks to determine the benefit from this program.

Likewise, we continue to find, consistent with our determination in *CFS from the PRC* regarding the PRC's banking sector, that state-owned or controlled banks outside the "Big Four" SOCBs are "authorities" within the meaning of section 771(5)(B) of the Act.<sup>252</sup> The Department has repeatedly affirmed these findings in proceedings following *CFS from the PRC*. In *OCTG from the PRC*, for example, we noted that:

{T}he GOC has failed to provide evidence that the government has divested itself of ownership in Chinese banks. The GOC has failed to address the issue of real risk assessment within the Chinese banking sector. The GOC has failed to address interest rate and deposit rate ceilings and floors set by the government. The GOC has failed to address both *de jure* and *de facto* reforms within the Chinese banking sector. The GOC has failed to address the elimination of policy based lending within the Chinese banking sector. Therefore, the GOC has failed to provide the information that would warrant a reconsideration of the Department's determination in {the *CFS from the PRC* investigation}.<sup>253</sup>

In a more recent investigation, *Aluminum Extrusions from the PRC*, we also noted that the banking system continues to be affected by the legacy of government policy objectives, which continue to undermine the ability of the "Big Four" and the rest of the domestic banking sector to act on a commercial basis, and allows continued government involvement in the allocation of credit in pursuit of those objectives.<sup>254</sup>

GITI Fujian argues that this program is not specific because none of its loan applications make any mention of the *Tire Industry Policy* or other GOC statements regarding the passenger tire industry. However, this conclusion does not follow the Department's practice of determining whether a program is specific. The Department finds that policy lending is specific to an industry when the industry is listed in certain GOC policies and catalogues (such as the *Tire Industry Policy*) that direct the use of loans to promote targeted industries.<sup>255</sup> Petitioner has submitted numerous GOC policies, plans and catalogues demonstrating the use of loans to promote the passenger tire industry.<sup>256</sup> Because the record shows that the GOC is directing loans to the passenger tire industry, we continue to find this program is specific, regardless of whether the GITI companies' actual loan documents mention a specific policy, because the GITI companies are part of the passenger tire industry.

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<sup>252</sup> See *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC*), and accompanying IDM at Comment 7, citing *Coated Paper from the PRC*, and accompanying IDM at Comment 10.

<sup>253</sup> See *Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*OCTG from the PRC*), and accompanying IDM at Comment 20; see also *Photovoltaic Products From the PRC*, and accompanying IDM at Comment 9.

<sup>254</sup> See, e.g., *Aluminum Extrusions from the PRC*, and accompanying IDM at Comment 7.

<sup>255</sup> See, e.g., *Tetrafluoroethane from the PRC*, and accompanying IDM at 23-25.

<sup>256</sup> See Petitioner's Rebuttal Brief, at 53-54.

GITI Fujian also argues that the Department penalizes the company where a payment larger than the benchmark interest amount was made by not applying a credit for an overpayment as an offset. In a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked by “negative benefits” from other transactions.<sup>257</sup> As such, GITI Fujian is seeking an impermissible offset – a credit for transactions that did not provide a subsidy benefit.

Finally, regarding the GOC’s statements concerning *DS379 ABR*, we note that the Appellate Body in that dispute affirmed the Department’s reliance on our findings from *CFS Paper from the PRC* in the subsequent investigation of off-the-road tires from the PRC without additional investigation.<sup>258</sup> While the Appellate Body also noted possible “temporal” constraints on the use of findings from one proceeding in another, the GOC and respondents have provided no information concerning whether the nature and role of SOCBs in China have changed and thus they have provided no indication to the Department of whether our previous findings need to be reconsidered for use in this investigation.

#### **Comment 7: Whether the Export Buyer’s Credit Program Was Used by Respondents**

##### *GOC’s Comments:*

- ExIm Bank officials established that contracts are executed with importers, not any subsequent purchasing entity in the United States (affiliated or unaffiliated), and that the importer is the party responsible for repaying the loan.
- Record evidence demonstrates that none of the U.S. customers and/or importers of the respondents in this investigation utilized the program at issue.
- The Department should continue to find the Export Buyer’s Credit program not used.

##### *Petitioner’s Comments:*

- The GOC failed to provide requested information about this program and failed to allow the Department to verify record information about use of this program by refusing to permit the Department to query the ExIm Bank’s databases and records.
- Necessary information is missing from the record, the GOC failed to provide requested information at verification, the GOC has impeded the proceeding, and the GOC and respondents have provided information regarding use of this program that could not be verified.
- The GOC also failed to act to the best of its ability and provide the requested information about this program.
- By refusing to provide all the requested information, the Department could not verify the use of this program. The Department has previously determined that the only way to verify use of this program is to examine the government’s books and records. The heavily redacted search results offered by ExIm Bank officials during verification would have been insufficient to verify non-use, and the Department properly declined to accept

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<sup>257</sup> See *Drill Pipe From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2011, 78 FR 47275 (August 5, 2013), and accompanying IDM at Comment 3.

<sup>258</sup> See *DS379 ABR* at para. 354.

them. The only evidence the GOC provided of non-use is its own narrative and verbal assertions.

- Non-use cannot be verified with the exporters. Further, respondents' submissions are insufficient to establish non-use.
- The Department should apply total AFA on this program, conclude that the program is countervailable, and apply the highest calculated rate for a similar program to all respondents, as done in prior investigations.

*API's Rebuttal Comments:*

- The GOC is correct that no respondent used the export buyer's credit program.

*GOC's Rebuttal Comments:*

- The Department has a complete and verified record with respect to non-use of this program for all respondents.
- Although the GITI companies did not provide a list of unaffiliated customers to the GOC from which the ExIm Bank could perform searches, the record indicates that a list of unaffiliated customers is irrelevant. Contracts are executed with importers, not any subsequent purchasing authority.
- The GOC provided sufficient responses in its questionnaire responses regarding this program for the Department to determine it was not used by respondents.
- The Department was able to conduct an in-depth verification of this program, including the scope of the program, and confirmation that the respondents could demonstrate non-use, even by importers. The need for redaction was only in relation to screenshots of the information that verifiers wanted to take as verification exhibits.
- Verification at the company respondents revealed no use of this program.
- If the Department decides to apply AFA, it should use the rate calculated for the Export Seller's Credit in the *Preliminary Determination*, and not the rate calculated in past cases for an uncreditworthy respondent, which cannot be corroborated.

*Cooper's Rebuttal Comments:*

- Cooper did not use the Export Buyer's Credit program, as stated in its questionnaire responses, and confirmed during verification.
- Because Cooper exported all the subject merchandise from the PRC during the POI to its related U.S. company that was the only U.S. importer of record for these exports, Cooper has the knowledge to state whether it or its related companies received these credits.

*GITI Fujian's Rebuttal Comments:*

- The record establishes that the GITI companies did not use or benefit from the Export Buyer's Credit program. Financial documents from GITI USA, the only U.S. customer of the GITI companies, support that it did not receive financing from any PRC bank.
- The GOC's consistent response throughout this investigation was that none of the U.S. customers of any mandatory respondent used this program during the POI.
- The GOC's questionnaire responses indicate that the GOC did not limit its response to this program only to the China ExIm Bank.
- The Department verified that only importers are eligible to receive financing under this program.

- Deficiencies related solely to the ExIm Bank’s electronic database and redaction of confidential search results does not alter the fact that the ExIm Bank provided a response, as verified by the Department, that borrowers must be importers having a direct relationship to the Chinese exporter.
- The Department verified that GITI USA was the GITI companies’ only U.S. customer, and the GITI companies submitted sufficient, verifiable evidence establishing non-use of the program.
- The AFA rate suggested by Petitioner cannot be corroborated with the record of this proceeding. If the Department decides to assign an AFA rate to this program, it should use the rate calculated for GITI Fujian under the Export Seller’s Credit program in this instant investigation.

*Petitioner’s Rebuttal Comments:*

- The GOC did not act to the best of its ability and failed to provide requested information on this program such that total AFA is warranted.
- The Department should not rely on the GOC’s unverified statements that exporters would be aware of use and that export buyer’s credits are only provided to importers. The GOC did not provide any documentation requested in the verification agenda. The GOC did not allow the Department to query the ExIm Bank’s electronic system to confirm whether any of the U.S. customers of the respondents received buyer’s credits that were outstanding during the POI.
- Consistent with past cases, the Department should continue to find that non-use of this program can only be verified at the GOC and not through the respondents.
- The Department properly declined to accept printouts of queries from ExIm Bank officials.

**Department’s Position:** The Department determines that the use of AFA pursuant to section 776(b) of the Act is warranted and, on that basis, finds that this program has been used by the company respondents. In prior proceedings in which we have examined this program, we have determined that it is the ExIm Bank that provides loans to the customers of Chinese producers under this program.<sup>259</sup> Accordingly, we have found that, because the GOC is the lender, it is the primary entity that possesses the supporting records that the Department needs to verify the accuracy of the respondents’ claimed non-use of the program.<sup>260</sup> In notifying the GOC that we intended to verify non-use at the ExIm Bank, our verification outline stated that we would need to review application and approval documents, among other records, and that we would need to query relevant electronic databases if relevant records were maintained electronically. We clearly stated the purpose of such procedures was to ensure the accuracy of the GOC’s response to the Department’s questions that none of the respondents, or their customers, had received

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<sup>259</sup> See *Utility Scale Wind Towers From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012), and accompanying IDM at Comment 7.

<sup>260</sup> See, e.g., *Photovoltaic Products From the PRC*, and accompanying IDM at Comment 16; *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid from the PRC 2012*), and accompanying IDM at Comment 6.

export buyer's credits.<sup>261</sup> The GOC did not indicate prior to, or at the outset of, verification that it had any concerns with this plan.

As detailed in our verification report of the GOC at ExIm Bank, officials refused our request at verification to query the ExIm Bank's databases to confirm that the company respondents and their customers did not receive export buyer's credits, asserting that such information was confidential and access to the bank's files was not possible.<sup>262</sup> On this point, we note that the Department's standard verification protocols are to test, and to confirm, whether information submitted in questionnaire responses are complete and accurate. Indeed, with respect to this program, our verification agenda stated that, "{i}f records are maintained electronically, we will need to check through data queries whether any of the U.S. customers of the respondents received buyer's credits that were outstanding during the POR."<sup>263</sup> However, as explained in the GOC verification report, ExIm Bank officials did not permit the Department's verifiers to trace back through the database redacted information that the GOC represented as having been derived from the database, thereby preventing the proper completion of verification procedures.

We continue to find that the Department's ability to determine claimed non-use by the respondents (and their customers) hinges on the ability to examine usage records in the possession of the GOC.<sup>264</sup> As explained in *Photovoltaic Products From the PRC*, with programs such as export buyer's credits, proper verification requires a comprehensive examination of the government's books and records for the most probative information and documentation of the program – such as loan applications, bank approval letters, and loan agreements – which will allow a fuller understanding of the overall application process and how the funds are distributed.<sup>265</sup> In the absence of such information, the Department had no basis to verify non-use at the company level, despite the assertions of the GOC, the GITI companies, and Cooper.<sup>266</sup>

The GOC and the respondents cannot now insist that we should make our decision based on evidence compiled from incomplete sources. Absent a well-documented understanding of how an exporter would be involved in the application of its customer for an export buyer's credit and what records the exporter might retain, we would have no way of knowing whether the records we review at a company verification necessarily include any applications or compliance records that an exporter might have from its participation in the provision of export credits to its buyers.<sup>267</sup>

Furthermore, while the GOC, the GITI companies and Cooper cite to *Chlorinated Isocyanurates* to argue that the Department should undertake onsite verification of non-use of the program at the respondents' U.S. customers, *Chlorinated Isocyanurates* is inapposite for two reasons. First,

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<sup>261</sup> See Letter to the GOC, "Verification Agenda for the Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China," February 26, 2015.

<sup>262</sup> See GOC's Verification Report at 5.

<sup>263</sup> *Id.*

<sup>264</sup> See, e.g., *Photovoltaic Products From the PRC*, and accompanying IDM at Comment 16; *Citric Acid from the PRC 2012*, and accompanying IDM at Comment 6.

<sup>265</sup> See *Photovoltaic Products From the PRC*, and accompanying IDM at Comment 16.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

unlike in that investigation, Cooper did not provide any probative documents indicating non-use by unaffiliated U.S. customers, or customers of affiliated importers (*i.e.*, the ultimate users of the products in the United States), such as affidavits or certifications indicating non-use of this program. Second, while the GITI companies provided affidavits claiming non-use from nearly all of their cross-owned companies, the Department discovered only during verification that GITI Yinchuan Greatwall did in fact export subject merchandise during the POI, which left no opportunity to verify GITI Yinchuan Greatwall's earlier response that it did not use this program because it did not export subject merchandise during the POI.<sup>268</sup> In short, in *Chlorinated Isocyanurates* the Department had affidavits from all customers indicating non-use; here, we do not.

Because information submitted by the GOC, the GITI companies, and Cooper related to the use of this program could not be verified, the Department is declining to consider such information, in accordance with section 782(e) of the Act and that, therefore, the use of the facts available is warranted under sections 776(a)(1), (2)(C) and (2)(D) of the Act. We further find, in accordance with section 776(b) of the Act, that by not providing the requested information at verification, the GOC failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information, and thus that the use of AFA is warranted.

The Department has an established practice for selecting AFA rates for programs for which no verified usage information was provided.<sup>269</sup> According to that practice,<sup>270</sup> for programs other than those involving income tax exemptions and reductions, we will apply the highest calculated rate for the identical program in the same proceeding if another responding company used the identical program. If no other company used the identical program within the proceeding, we will use the rate from the identical program in another CVD proceeding involving the country under investigation, unless the rate is *de minimis*. If there is no identical program match in any CVD proceeding involving the country under investigation, we will use the highest rate calculated for a similar program in another CVD proceeding involving the same country. Because the Department has not calculated a rate for the Export Buyer's Credits program in this investigation, and has not calculated a rate for this program in another CVD PRC proceeding, we are using the highest rate calculated for a similar program in another CVD PRC proceeding. Consistent with *Photovoltaic Products From the PRC*, we are applying an AFA rate of 10.54 percent.<sup>271</sup>

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 corroborate that information, to the extent practicable. To corroborate secondary information, the Department will examine the reliability and relevance of the information to be used, but need

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<sup>268</sup> See GITI Fujian's Additional Companies SQR at 14, and GITI Fujian's Verification Report at 8.

<sup>269</sup> When the AFA determination applies solely to the financial contribution and specificity prongs of the countervailability determination, the Department may still calculate a rate using information supplied by the company respondents.

<sup>270</sup> See, e.g., *Galvanized Steel Wire From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012), and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences."

<sup>271</sup> See *Photovoltaic Products From the PRC*, and accompanying IDM at Comment 16.

not prove that the selected facts available are the best alternative information.<sup>272</sup> In this case, the preferential policy lending rate of 10.54 percent is an appropriate rate to apply because it is a rate calculated in a CVD PRC final determination for a similar program based on the treatment of the benefit. Because the available record information regarding this subsidy could not be verified, the rate calculated in another proceeding provides the most reliable and relevant information about the government's practices regarding these kinds of programs. Many factors go into the calculation of a rate in any proceeding. For lending programs these may include, among other things, the size of the loan, the interest rate on the loan, the term of the loan, the benchmark interest rate selected, and the size of the company's sales. When selecting an AFA rate, the Department must rely on the facts otherwise available about the impact of such factors in the case at hand given the unverified record evidence regarding the program. In the absence of verified information to control for a comparison of such factors between another case and the case at hand, the Department corroborated the rate selected to the extent practicable, *i.e.*, by relying on a rate calculated for a similar program in a prior proceeding pertaining to the PRC.<sup>273</sup>

Finally, we note that it would not be appropriate to rely on the rate calculated for export seller's credits, as suggested by GITI Fujian. As explained above, based on our findings at verification, we have determined to use AFA in determining the rate for GITI Fujian for export seller's credits. Thus, there is no "calculated" rate for export seller's credits to consider as an AFA rate for export buyer's credits.

#### **Comment 8: Whether to Countervail CKT's Land in the Kunshan ETDZ**

##### *Petitioner's Comments:*

- The record establishes that the land CKT purchased in the Kunshan ETDZ was provided at LTAR and thus provides a financial contribution under section 771(5)(D)(iii) of the Act because it constitutes a provision of goods or services, and a benefit under section 771(5)(E)(iv) of the Act.
- This land provided to CKT was specific under: section 771(5A)(D)(iv) of the Act because it was limited to entities located within a designated geographical region of the jurisdiction providing the land; under section 771(5A)(D)(i) of the Act because it is limited by law to a group of enterprises or industries, *i.e.*, FIE's; and under section 771(5A)(D)(i) of the Act because it is limited by law to a group of industries.

##### *Cooper's Rebuttal Comments:*

- The record does not support Petitioner's claim that land in the PRC market is distorted such that the Department should use of an external benchmark.
- The provision of land to CKT was not contingent upon export performance. While CKT was required to export all its production of tires for five years, the land grant was for 50 years, the majority of which CKT was not required to export any tires.
- The Department should begin any calculation with the full land payment in 2004 and adjust for the periodic receipt of payments.

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<sup>272</sup> See SAA at 869-870.

<sup>273</sup> We are relying on a rate of 10.54 percent calculated for this program in *Off-the-Road Tires from the PRC CVD Review*.

**Department’s Position:** We are countervailing the land CKT received under the “Provision of Land-Use Rights for FIEs for LTAR” program. In the *Preliminary Determination* we preliminary concluded that neither respondent had used this program.<sup>274</sup> Cooper agrees that it entered into an investment contract with the Kunshan EDTZ in 2004, and that it received refunds from the Kunshan EDTZ for its initial payment for land. Indeed, Cooper does not raise any objections to the Department treating its land refunds as a countervailable subsidy.<sup>275</sup> Cooper only argues that there is no factual basis on the record for the Department to use an external benchmark to determine if a benefit exists from its refund on land-use rights, and that the Department therefore should use actual private party transactions in the PRC as benchmark prices. Cooper is incorrect. Petitioner submitted information detailing the land market in the PRC,<sup>276</sup> including the underlying data the Department previously used in other proceedings to determine that the land market in the PRC is distorted.<sup>277</sup> In the *Laminated Woven Sacks* investigation, we also addressed the GOC’s arguments regarding the use of external benchmark prices from Thailand.<sup>278</sup> As discussed elsewhere in this memorandum, in the context of the provision of inputs for LTAR and government policy lending, external benchmarks are consistent with the Act and appropriate when significant government intervention has distorted internal prices in the industry or sector at issue. In the *Laminated Woven Sacks* investigation, we concluded that intervention by the GOC in the PRC’s land market distorted prices for both primary (state-to-private party) and secondary (private-to-private) real estate transactions.<sup>279</sup> There is no information on the record of this investigation that calls into question our prior determination that the PRC’s land market is distorted. Accordingly, we are continuing to rely on an external benchmark to value land-use rights in the PRC.<sup>280</sup>

Cooper also argues that the provision of the land was not contingent on its contractual commitment to export all of its tire production for five years. However, this statement is contrary to the facts laid out in its contract with the Kunshan EDTZ, which included a requirement that all tires produced be exported for five years from the first year of production.<sup>281</sup> The fact that this requirement did not extend to the full 50-year term of the contract is immaterial, as the export contingency was tied to the *acquisition* of the land-use right. We therefore find that Cooper’s acquisition of land export-contingent and thus specific within the meaning of section 771(5A)(A)-(B) of the Act.

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<sup>274</sup> See PDM at 44.

<sup>275</sup> See Letter from Cooper, “Rebuttal Brief of Respondents Cooper Tire & Rubber Company, Cooper (Kunshan) Tire Co., Ltd., and Cooper Chengshan Shandong Tire Co., Ltd.,” April 27, 2015 (Cooper Rebuttal Brief), at 7-8.

<sup>276</sup> See Petitioner Benchmark Comments at Exhibit 6, attachment 3.

<sup>277</sup> *Id.*

<sup>278</sup> See *Laminated Woven Sacks*, and accompanying IDM at Comment 11 (noting that the Department’s “established practice” is to use “out-of-country benchmarks where actual transaction prices are significantly distorted because of government involvement in the market”).

<sup>279</sup> *Id.*, and accompanying IDM at Comment 10.

<sup>280</sup> See “Benchmarks and Discount Rates” above for details on the benchmark selected.

<sup>281</sup> See Cooper Rebuttal Brief at 8.

## **Comment 9: Whether to Countervail Assets from the Chengshan Group to Cooper for LTAR**

### *Petitioner's Comments:*

- The Department should determine that the assets the Chengshan Group (CSG) provided to CCT for LTAR are a countervailable subsidy and include them in Cooper's final subsidy margin.

### *Cooper's Rebuttal Comments:*

- CSG is not a government authority. Petitioner failed to identify any evidence that the GOC exercises any meaningful control over CSG beyond a few articles which Cooper has already shown contain errors.
- The record shows that the contribution of land, buildings, and the sale of truck and tire equipment and other assets were for fair market value.
- If the Department finds CSG to be a government authority, the Department should conclude that the assets sold by CSG were not provided at LTAR.

**Department's Position:** The record evidence does not support Petitioner's claim that CSG is an "authority," within the meaning of section 771(5)(B) of the Act. Therefore we are not countervailing assets from the Chengshan Group to Cooper for LTAR.

Over the course of this investigation, Petitioner has submitted numerous articles and printouts of websites claiming that CSG is an authority.<sup>282</sup> However, this evidence is not conclusive as Cooper has provided its own evidence in several instances indicating these sources later corrected themselves, or Cooper itself has rebutted the details of these third party sources using information obtained from CSG.<sup>283</sup> Cooper has submitted a list of shareholders, and other information, demonstrating that the company is not an authority.<sup>284</sup> In the Department's view, Petitioner has not provided convincing evidence demonstrating that elements of the GOC are actually exercising meaningful control over CSG such that CSG possesses, exercises or is vested with governmental authority. As such, consistent with the Post-Preliminary Memorandum, we find the record in this instant investigation does not demonstrate that CSG is an authority.<sup>285</sup>

Consequently, we find that any goods or services provided by CSG as part of its investment in CCT and Cooper Chengshan (Shandong) Passenger Tire Co., Ltd. do not constitute a governmental financial contribution within the meaning of section 771(5)(D) of the Act and, thus, do not constitute a countervailable subsidy as defined by section 771(5) of the Act.

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<sup>282</sup> See Letter from Petitioner, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China-Petitioner's Comments and Rebuttal and Clarifying Factual Information to Cooper's First Supplemental Questionnaire Response," November 5, 2014.

<sup>283</sup> See, e.g., Cooper's November 3 SQR at S-1 through S-3, see Letter from Cooper, "Cooper Second Supplemental Questionnaire Response," January 27, 2015 (Cooper's January 27 SQR), at 6-11 and Exhibit SQR-7.

<sup>284</sup> *Id.*

<sup>285</sup> See Post-Preliminary Memorandum at 6.

## Comment 10: Whether PCT is the Successor-in-Interest to CCT

### *Cooper's Comments:*

- Verified record evidence confirms that CCT is now wholly-owned by CSG and is operating as Prinx Chengshan (Shandong) Tire Company Ltd. (PCT).
- Cooper reported that most of the management remains the same, and that production facilities, supplier relationships, and customer base all remain the same (including CTRC as a customer). PCT's resulting operation is not materially dissimilar to that of the former CCT, such that with respect to the production and sale of the subject tires, PCT operates as the same business entity as the former CCT.
- The Department should find that PCT is the successor-in-interest to CCT. Accordingly, PCT should be assigned CCT's subsidy rate.

### *Petitioner's Rebuttal Comments:*

- There is no factual basis in the context of this investigation for the Department to make any determination that PCT is the successor-in-interest to CCT or to set a rate for PCT going forward after its 2014 acquisition of CCT.
- In the CVD context, the Department analyzes changes that could affect the nature and extent of the respondent's subsidization. The Department has identified criteria that must be analyzed in a successor-in-interest inquiry in the CVD context and identified the information that a party seeking a successor-in-interest finding should provide.<sup>286</sup>

**Department's Position:** We are finding that there is insufficient information on the record of this investigation for the Department to make a successor-in-interest determination as requested by CCT with regard to PCT.

To determine whether a company is a successor-in-interest to another, the Department will assess:

{W}hether the respondent is the same subsidized entity as the predecessor for CVD purposes, with reference to one or more of the following objective criteria: (1) Continuity in the cross-owned or consolidated respondent company's financial assets and liabilities; (2) continuity in its production and commercial activities; and (3) continuity in the level of the government's involvement in the respondent's operations or financial structure (*e.g.*, government ownership or control, the provision of inputs, loans, equity).<sup>287</sup>

The Department has also required that the party seeking a successor-in-interest finding should provide:

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<sup>286</sup> See *Certain Pasta From Turkey: Preliminary Results of Countervailing Duty Changed Circumstances Review*, 74 FR 47225, 47228 (September 15, 2009); adopted and unchanged in *Certain Pasta From Turkey: Final Results of Countervailing Duty Changed Circumstances Review*, 74 FR 54022 (October 21, 2009); upheld by *Marsan Gida Sanayi ve Ticaret A.S. v. United States*, Ct. No. 09-00483, Slip Op. 11-20 (CIT February 16, 2011).

<sup>287</sup> *Id.*

{I}nformation sufficient to clearly identify and explain any significant changes in the respondent's operations, ownership, or corporate or legal structure during the {period examined}. At a minimum, the request should include a full narrative with supporting documentation regarding any changes ... as well as complete information addressing the three objective criteria.... The supporting information should also include, where available, the translated financial statements on a consolidated basis for the respondent for the years of and immediately prior to any changes....<sup>288</sup>

There are only two statements regarding PCT on this record, neither of which are supported by any sort of documentation. The first statement, provided in Cooper's second supplemental questionnaire response, stated that,

While PCT changed certain management personnel previously selected by CTRC, most of the management remains the same. The production facilities, supplier relationships, and customer base all remain the same (including CTRC as a customer). Consequently, PCT's resulting operation is not materially dissimilar to that of the former CCT, such that with respect to the production and sale of the subject tires PCT operates as the same business entity as the former CCT.<sup>289</sup>

The second statement, from the verification report, notes that "CCT is now wholly-owned by CSG and is operating as 'Prinx Chengshan (Shandong) Tire Company Ltd. {PCT}.'"<sup>290</sup> Setting aside the validity of these statements, Cooper has not provided information addressing any of the specific objective criteria or a narrative explaining such information. Without the requisite information on the record of this investigation, there is no basis for Cooper's successor-in-interest claim.

### **Comment 11: Adjustments to Cooper's Originally Reported Data**

#### *Cooper's Comments:*

- Cooper incorrectly excluded VAT from its purchases of carbon black with terms of delivered. The Department should recalculate Cooper's carbon black LTAR using the minor correction data, which include the correct amount of VAT paid for each purchase, as verified by the Department. The Department verified the corrected list of purchases and confirmed that CCT did pay VAT on all purchases regardless of sales terms.
- The inland freight value used in the *Preliminary Determination* included ocean freight and thus was overstated. Using supporting documentation, Cooper demonstrated at verification the correct amount it paid for inland freight. The Department should use this verified amount for Cooper's final subsidy rate calculation.
- The Department should not countervail any of Cooper's loans that were not from Chinese policy banks or SOCB's.

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<sup>288</sup> *Id.*

<sup>289</sup> See Cooper's January 27 SQR, at Attachment 1.

<sup>290</sup> See Cooper's Verification Report at 5.

*Petitioner's Rebuttal Comments:*

- Cooper's inland freight adjustment does not meet the criteria for a minor correction, and should not be accepted as such by the Department.
- This error is significant and was not corrected by Cooper at the earliest possible opportunity.
- All of Cooper's loans the Department countervailed in the *Preliminary Determination* were provided by government authorities, and should continue to be countervailed.

**Department's Position:** For this final determination, we are using Cooper's minor corrections to determine its final subsidy rate.<sup>291</sup>

In the *Preliminary Determination*, Cooper provided freight invoices for two months of the POI. We determined that these invoices were the best source on the record to value Cooper's inland freight.<sup>292</sup> At verification, Cooper reported corrections regarding the VAT amount it paid on certain purchases and informed the Department that the inland freight value selected by the Department actually included ocean freight. The Department reviewed the list of changes provided by Cooper and verified several of the changes. As stated in the verification report, the Department accepted these changes as minor corrections. This was consistent with certain situations in prior cases where the Department found that the parties adequately explained the changes and we accepted the reason for why the information was not provided earlier; in those instances, we have accepted such changes as minor corrections, even over Petitioner's objections.<sup>293</sup> More importantly, we have verified the information provided and found no discrepancies.<sup>294</sup> Therefore, we are using the verified amounts of inland freight to calculate the inland freight value for Cooper.

Lastly, consistent with the Department's practice, we are only countervailing loans that are from Chinese policy banks and SOCBs.<sup>295</sup> Therefore, any loans that were not provided by an "authority" to CCT will not be countervailed, as discussed in further detail in Cooper's Final Analysis Memorandum.

**Comment 12: Whether the Department Should Accept the Minor Corrections Presented by GITI Fujian at Verification**

*GITI Fujian's Comments:*

- The Department should use the minor corrections presented by the GITI companies at verification in calculating final CVD margins for the company.

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<sup>291</sup> See Cooper Final Analysis Memorandum.

<sup>292</sup> See Memorandum, "Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Determination Analysis Memorandum for Cooper Kunshan Tire Co., Ltd.," November 21, 2014 (Cooper Preliminary Analysis Memorandum).

<sup>293</sup> See, e.g., *Certain Oil Country Tubular Goods From Ukraine: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 79 FR 41969 (July 18, 2014), and accompanying IDM at Issue 5.

<sup>294</sup> See Cooper Verification Report at 10.

<sup>295</sup> See, e.g., *Photovoltaic Products From the PRC*.

**Department’s Position:** At verification, the Department indicated to GITI Fujian that it was accepting the minor corrections presented by the company, and that they should be filed on the record of the investigation.<sup>296</sup> GITI Fujian filed the minor corrections presented at verification in a timely manner on March 6, 2015,<sup>297</sup> and as such they form a part of the record in this investigation, which the Department will use for the final determination.

### **Comment 13: Whether Loans to GITI Anhui Radial are Export Subsidies**

#### *Petitioner’s Comments:*

- The Department should find that loans from China’s ExIm Bank to GITI Anhui are countervailable subsidies.
- There is no record evidence to rebut the GOC’s statement that the loans from the ExIm Bank to GITI Anhui were export seller’s credits. The Department should find that these loans are export seller’s credits, and add them to the GITI companies’ subsidy rate for the export seller’s credit program.

**Department’s Position:** The GOC stated that GITI Anhui Radial received export seller’s credits from the China ExIm Bank.<sup>298</sup> The Department requested clarification from GITI Anhui Radial since the company had not initially report these loans under the export seller’s credit program, but instead had reported them under the government policy lending program,<sup>299</sup> which is how we treated these loans in the *Preliminary Determination*.<sup>300</sup> While GITI Anhui Radial claims that these loans were not contingent on the export of tires, it has not placed any supporting evidence on the record.<sup>301</sup> As discussed above at “Use of Facts Otherwise Available and Adverse Inferences,” we are finding that the GITI companies did not act to the best of their ability, and thus, that AFA is warranted pursuant to section 776(b) of the Act in determining a rate for export seller’s credit. We find that the loans provided by the China ExIm Bank under this program (Export Seller’s Credits) constitute financial contributions under section 771(5)(D)(i) of the Act,<sup>302</sup> and that the loans are specific under section 771(5A)(B) of the Act because they are tied to actual or anticipated exportation or export earnings. Based on AFA, we have already applied to the GITI companies the highest rate calculated for this program in a prior PRC CVD proceeding. Thus, reclassifying these GITI Anhui Radial loans as “export seller’s credits” has no effect on the GITI companies’ overall rate for the export seller’s credits program.

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<sup>296</sup> See GITI Fujian’s Verification Report.

<sup>297</sup> See Letter from GITI Fujian, “Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Minor Corrections - GITI Tire (Fujian) Co., Ltd.,” March 6, 2015.

<sup>298</sup> See GOC’s Initial QR at 23.

<sup>299</sup> See Letter from GITI Fujian, “Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Response to First Supplemental Questionnaire - Part II,” December 8, 2014, at 12.

<sup>300</sup> See PDM at 31-32.

<sup>301</sup> *Id.*

<sup>302</sup> See “Export Seller’s Credits from State-Owned Banks” section above.

## Comment 14: Correct Sales Denominator for the GITI Companies

### *Petitioner's Comments:*

- In the *Amended Preliminary Determination*, the Department incorrectly calculated a sales denominator for the GITI companies, which it should correct.

**Department's Position:** To be consistent with our calculations of the sales denominators for the GITI companies, for the final determination, we are changing the sales denominator to correct the error Petitioner noted.<sup>303</sup> Due to the proprietary nature of the Department's sales denominator analysis, a detailed discussion on how each company's sales denominator was calculated can be found in GITI Fujian's Final Analysis Memorandum.

## Comment 15: Cash Deposit Rate for Terminated Programs

### *GOC's Comments:*

- The record supports a finding that the "Two Free, Three Half" tax program meets the Department's definition of a terminated program.
- The Department should determine a program wide change has occurred and apply a zero cash deposit rate with respect to the "Two Free, Three Half" program.

### *GITI Fujian's Comments:*

- Record evidence shows that a program-wide change occurred for the "Two Free, Three Half" program."
- No residual benefits continued to be bestowed after the *Preliminary Determination*, and there has been no replacement substitute program.

### *API's Rebuttal Comments:*

- The GOC is correct that the "Two Free, Three Half" program confers no prospective benefits.

### *Petitioner's Rebuttal Comments:*

- The Department should follow its prior determinations and continue to find that an adjustment to the cash deposit rate is not warranted for this terminated program because it has residual benefits in the POI. The GOC and GITI Fujian cite no new factual or legal justifications for treating this program differently here.

**Department's Position:** For this final determination, we are making a program-wide change determination based on our finding that the "Two Free, Three Half" program has been terminated as of January 1, 2014. The Department makes a program-wide change determination when we find pursuant to 19 CFR 351.526(a)(1) that subsequent to the POI, but before the preliminary determination, a "program-wide" change as defined under 19 CFR 351.526(b) has occurred and the Department is able to measure the change in the amount of the subsidy

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<sup>303</sup> See GITI Fujian Final Analysis Memorandum.

provided as required under 19 CFR 351.526(a)(2).<sup>304</sup> At verification, we reviewed with GOC officials the terms of the *Notice of the State Council on the Implementation of the Transitional Preferential Policies in Respect of the Enterprise Income Tax (Transitional Policies)*, which stipulated that the transitional period for phasing out benefits under the program, which had been provided for under the Enterprise Income Tax Law, would terminate completely as of December 31, 2012.<sup>305</sup> Based on our understanding of the terms of the *Transitional Policies*, we find that no substitute program was created when this program was terminated, and, because this was a national program, the local governments did not have the authority to create a substitute program or continue using this program at the local level.<sup>306</sup> Given that income tax for 2012 was payable in 2013, the last year benefits under this program could be claimed was 2013. Therefore, we find that no residual benefits remained under the program beyond December 31, 2013. Furthermore, the change in the amount of countervailable subsidies provided under this program is measurable. Accordingly, pursuant to 19 CFR 351.526(d), we are adjusting the cash deposit rates for GITI Fujian, Yongsheng, and all others, specifically by excluding from the required cash deposit the rates calculated in the POI under this program.

#### **Comment 16: Whether to Countervail the VAT Exemptions and Deductions for Central Regions Program**

##### *GITI Fujian's Comments:*

- Under this program, there is no financial contribution because the program does not constitute revenue forgone, as no revenue was otherwise due. The measure that the PRC was introducing under this program was simply to eliminate an extra tax burden, rather than to forego tax revenue.
- This program is not specific. Although the measure was initially limited to the central region and certain industries, it is intended to be implemented generally available nationwide. Eighteen months after it was applied to the central regions, it was expanded to other parts of the PRC.
- A reduced VAT payable reduced the company's acquisition costs of fixed assets; thus the value of depreciation used to calculate the cost of production and would increase the company's income tax payable for profitable companies.

##### *Petitioner's Rebuttal Comments:*

- The Department has determined in prior proceedings that this program is a countervailable subsidy; this program continues to meet all elements of a subsidy in this investigation.
- GITI Fujian's argument that reduced VAT payable increases the income tax payable for profitable companies is contrary to 19 CFR 351.503(e). The Department should continue to follow this provision, which states the Department will not consider the tax consequences of the benefit when calculating the amount of the benefit.

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<sup>304</sup> See 19 CFR 351.526(a).

<sup>305</sup> See GOC's Verification Report at 7-8. The *Transitional Policies* mandated that any new entrants into the "Two Free, Three Half" program were required to calculate the five-year benefit schedule from 2008, thereby effectively designating 2012 as the final year for the tax benefits under the program.

<sup>306</sup> *Id.*

**Department’s Position:** We are continuing to countervail this program for the final determination, but find that it confers no benefit in the POI. Consistent with prior cases, we determine that this program meets all the elements of a subsidy.<sup>307</sup> As the Department has previously found, the exemptions under this program provide a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone by the GOC that is otherwise due.<sup>308</sup> As GITI Fujian itself has stated, this measure “may have reduced the amount of output VAT a tax authority may collect....”<sup>309</sup> Moreover, although this program was eventually expanded throughout the PRC, the program under investigation was limited to certain regions and, thus, specific under section 771(5A)(D)(iv) of the Act. With regard to GITI Fujian’s request to account for the additional income tax burden it purportedly incurs because of the exemption, the Department’s regulations instruct us to disregard any such effects, stating that when “calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit.”<sup>310</sup>

### **Comment 17: Whether to Countervail the Key Enterprise Staffing Subsidy, 2013**

#### *GITI Fujian’s Comments:*

- The funds received under this grant are given to the company, who is then obligated to “channel the fund to the employees.” There is no benefit to the company; instead the benefit goes to the company’s employees.
- This grant is not a subsidy because it is not a payment to the company.

#### *Petitioner’s Rebuttal Comments:*

- Because the company received the grant, the fact that the funds were ultimately forwarded to employees does not affect whether this subsidy is countervailable.
- In the absence of the subsidy, the company apparently would have had to pay the salaries or wages on its own or would have had to lay off the employees and pay their unemployment benefits on its own.

**Department’s Position:** We are continuing to countervail this grant for the final determination because the record demonstrates that GITI Anhui Radial received the grant. The grant subsidized the salaries or wages to employees and was provided “in exchange for the employers’ commitment not to lay off employees.”<sup>311</sup> A grant is a direct transfer of funds, and therefore is a financial contribution, within the meaning of section 771(5)(D)(i) of the Act. It confers a benefit within the meaning of 19 CFR 351.504. It therefore meets the definition of a subsidy.

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<sup>307</sup> See *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010), and accompanying IDM at 29-30.

<sup>308</sup> *Id.*

<sup>309</sup> See GITI Fujian Case Brief at 27.

<sup>310</sup> See 19 CFR 351.305(e).

<sup>311</sup> See GITI Fujian Case Brief at 9 (citing to Letter from GITI Fujian, “Passenger Vehicle and Light Truck Tires from the People’s Republic of China: New Subsidy Allegations Questionnaire Response - GITI Tire (Fujian) Co., Ltd.,” December 15, 2014, at 51).

## Comment 18: Whether to Apply AFA to Subsidies Received by Hualin Tyre

### *Petitioner's Comments:*

- The GITI companies never reported the subsidies received by Hualin Tyre prior to its acquisition by GITI China in 2003, which warrants the application of AFA.
- The GITI companies have failed to overcome the Department's presumption that non-recurring benefits continue to accrue to a firm even after a change in ownership.
- The Department should assign the highest subsidy margin to each non-recurring subsidy program under investigation, and assign those margins to the GITI companies as Hualin Tyre's successor company.

### *GITI Fujian' Rebuttal Comments:*

- The GITI companies disclosed their acquisition of shares in Hualin Tyre as early as August 2014, but took the position that Hualin Tyre is not cross-owned with GITI Fujian and thus did not provide a questionnaire response for the company.
- If the GITI companies' response with respect to Hualin Tyre was insufficient, the Department should have pointed out the deficiency and requested supplemental information.
- Neither the Department nor Petitioner requested that the GITI companies report subsidies received prior to the transfer of ownership.
- Record evidence demonstrates that the transfer of Hualin Tyre assets in exchange for GITI obtaining an ownership interest in Hualin Tyre, and the assets swap arrangements, were conducted at arm's length and for fair market value; any subsidies would have been extinguished as part of the assets swap arrangement.
- The transactions were between two private parties and were not a privatization. The GITI companies acquired ownership in Hualin Tyre in a court-administered auction. The SOE that owned part of Hualin Tyre did not have an opportunity or ability to influence the terms of the transaction.

**Department's Position:** For this final determination, we are relying on the facts available to determine subsidies received by Hualin Tyre prior to its acquisition by GITI China in 2003, pursuant to section 776(a)(1) of the Act, because necessary information is not available on the record. In a supplemental questionnaire response, a detailed description of Hualin Tyre's acquisition and asset swap agreement with GITI China and GITI Corp. was provided.<sup>312</sup> GITI Fujian reported all subsidies received by GITI Corp./Hualin Tyre after Hualin Tyre was acquired by GITI China (*i.e.*, 2003 through the POI).

The Department did not ask for, and GITI Fujian did not provide, information regarding any subsidies Hualin Tyre may have received prior to its acquisition by GITI China. Because this issue arose late in the proceeding, we lack sufficient record information to fully assess the implications of the 2003 acquisition, if any. Nevertheless, as explained earlier, the available record evidence indicates that the transaction does not meet the threshold of a sale of "all or

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<sup>312</sup> See Letter from GITI Fujian, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Response to 2nd Supplemental Questionnaire - Part I," January 30, 2015 (GITI Fujian's January 30 SQR), at 5-6.

substantially all of a company or its assets” for rebutting our baseline presumption that past non-recurring subsidies continue to provide a benefit over time,<sup>313</sup> and GITI Fujian has not provided adequate information to rebut this presumption.<sup>314</sup> To address the lack of information regarding any subsidies Hualin Tyre may have received in the pre-sale years, for the final determination we are finding, based on the facts available, that Hualin Tyre received the same benefit in the POI from each non-recurring program as any other of the GITI companies that used the program. We are only countervailing one non-recurring program for the GITI companies (*i.e.*, Import Tariff and VAT Exemptions for Imported Equipment Program), for which, as discussed at Comment 20, we are already applying an AFA rate. Therefore, Hualin Tyre’s presumed use of the program requires no additional adjustment to the subsidy rate being applied to the GITI companies for that program.

**Comment 19: Whether the Department Should Attribute to GITI Fujian Subsidies Received by GITI Anhui Through 2010 and Subsidies Received by GITI Yinchuan Greatwall Through the POI**

*Petitioner’s Comments:*

- At verification the Department discovered that GITI Anhui produced subject merchandise through 2010 and GITI Yinchuan Greatwall produced and exported subject merchandise through the POI, despite the GITI companies’ claims that the two companies only produced subject merchandise through 2008.
- The GITI companies had multiple opportunities to provide complete and correct information about their cross-owned affiliates in their questionnaire responses but failed to do so.
- The Department should attribute to the GITI companies the benefit from any subsidies received by GITI Anhui through 2010 and from any subsidies to GITI Yinchuan Greatwall through the POI, and should ensure that all such inputs to the GITI companies that actually produced subject merchandise are included in its calculations.
- The Department should apply AFA to countervail certain export subsidy programs for which GITI Yinchuan Greatwall failed to provide any information based solely on its incorrect claim that it did not export subject merchandise during the POI.

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<sup>313</sup> See *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125, 37127 (June 23, 2003).

<sup>314</sup> See CVD Initial QR at III-3 (under “D – Former Owners/Changes in Ownership,” where the Department requests that respondents notify us about predecessors and change-in-ownerships, to which GITI Fujian responded “{t}here were no such companies that were cross-owned with GITI Fujian during the AUL but prior to the POI”); see also Letter to Cooper, “Second Supplemental Questionnaire in the Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China,” January 6, 2015 (the “Changes-In-Ownership” Appendix provides a complete list of the information the Department requires to conduct such analysis).

*GITI Fujian's Rebuttal Comments:*

- GITI Anhui and GITI Yinchuan Greatwall did produce merchandise under consideration, but because they never sold the products to the United States, neither company produced “subject merchandise,” and therefore none of the subsidies received by either company should be countervailed.
- AFA is not necessary as both companies submitted complete questionnaire responses for the entire AUL. The Department should have concluded in its verification report that GITI Anhui produced “merchandise under consideration” (or “like product”) until 2010. The verification report contains nothing to dispute that GITI Yinchuan Greatwall and GITI Anhui produced “subject merchandise” only until 2008.

**Department's Position:** In this final determination we are countervailing any subsidies received by GITI Anhui and GITI Yinchuan Greatwall through the last year they produced subject merchandise. We are also applying AFA to certain programs, in accordance with section 776(b) of the Act, as explained below.

In the Post-Preliminary Memorandum, we stated that:

“{s}ubsidies received by GITI Anhui and GITI Yinchuan Greatwall are attributable to GITI Fujian in accordance with 19 CFR 351.525(b)(6)(ii) because these two companies were producers of subject merchandise over the AUL. GITI Anhui produced passenger tires up to and through 2008; GITI Yinchuan Greatwall produced passenger tires from 2003 through 2008. Therefore, we will attribute to respondent the benefit from any subsidies received by these companies up to and through the last year they produced passenger tires. Subsidies received subsequent to this year will not be attributed to GITI Fujian.”<sup>315</sup>

During verification, we queried how GITI Anhui and GITI Yinchuan Greatwall determined they had stopped producing subject merchandise in 2008. The company officials stated that they reviewed the “SKU's” of all products produced every year. They initially stated that 2008 was the last year in which SKU's that were considered subject merchandise were produced. However, as discussed in greater detail in the verification report, we discovered at verification that several SKU's beginning with “100B” and with “LT” in the product description were in fact subject merchandise, which GITI Anhui and GITI Yinchuan Greatwall produced through 2010 and the POI, respectively.<sup>316</sup>

Based on our findings at verification, we are continuing to countervail any subsidies GITI Anhui and GITI Yinchuan Greatwall received through the last years they produced subject merchandise, which are 2010 and the POI, respectively. We will attribute to respondent the benefit from any subsidies received by these companies up to and through the last years they produced passenger tires. Subsidies received subsequent to these years will not be attributed to GITI Fujian.

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<sup>315</sup> See Post-Preliminary Memorandum at 5.

<sup>316</sup> See GITI Fujian's Verification Report at 7-8.

The GITI companies' attempt to distinguish between "merchandise under consideration" and "subject merchandise" has no support under the statute and regulations. The relevant regulation states that "{i}f two (or more) corporations with cross-ownership produce the subject merchandise, the Secretary will attribute the subsidies received by either or both corporations to the products produced by both corporations."<sup>317</sup> As is apparent from the plain language of the regulation, it is only necessary to produce subject merchandise, not to export it to the United States as well. Subject merchandise is defined in section 771(25) of the Act as "the class or of kind of merchandise that is within the scope of the investigation..." As described above, these companies produced in-scope merchandise through 2010 (in the case of GITI Anhui) and the POI (in the case of Yinchuan Greatwall). Further, the arguments of the GITI companies imply that some form of tracing of subsidies to imports to the United States is necessary. This is not true. As we have stated:

{T}racing subsidies is neither practical nor required by the CVD law. Instead, the Department has devised attribution rules that reasonably assign benefits based on who receives the subsidy and the express purpose of the subsidy at the time it was bestowed. *See* CVD Preamble, 63 FR at 65403 - 65404.<sup>318</sup>

Petitioner requests that the Department apply AFA where necessary to conclude that countervailable subsidies were received by GITI Anhui through 2010 and through the POI by GITI Yinchuan Greatwall and to apply AFA in determining the rates for such subsidies. However, while these two companies misidentified the last year they produced subject merchandise, both companies completed questionnaire responses covering the entire AUL and, with the exceptions noted below, appear to have correctly reported their usage of subsidies. Therefore, we find that total AFA is not warranted.

The Department is however applying AFA with respect to three programs: export seller's credits, export credit insurance, and export credit guarantees. In its questionnaire response, GITI Yinchuan Greatwall stated that the reason it did not use these programs was because it did not export during the POI.<sup>319</sup> Because the record now demonstrates that GITI Yinchuan Greatwall did, in fact, export during the POI, we are determining, relying on AFA, that GITI Yinchuan Greatwall used these programs. As AFA rates, we have assigned the highest rate from a prior PRC CVD proceeding to each program.

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<sup>317</sup> *See* 19 CFR 351.525(b)(6)(ii).

<sup>318</sup> *See CFS from the PRC*, and accompanying IDM at Comment 18.

<sup>319</sup> *See* GITI Fujian's Additional Companies SQR at 14-15.

## Comment 20: Subsidy Rate for GITI Anhui's Use of the Import Tariff and VAT Exemptions for Imported Equipment Programs

### *Petitioner's Comments:*

- The Department discovered at verification that, contrary to its questionnaire responses, GITI Anhui did in fact receive import duty and VAT exemptions on its equipment purchases during the AUL period. The Department properly declined to accept information about such import duty and VAT exemptions as minor corrections.
- As AFA, the Department should conclude that the company received import duty and VAT exemptions on its equipment purchases during the years of the AUL period in which it produced subject merchandise. The Department should apply the highest calculated rate for this program from a prior PRC CVD proceeding.
- The rate calculated in this instant investigation for this program is for the GITI companies and the GITI companies should not be permitted to benefit from their withholding of GITI Anhui's information.

### *GITI Fujian's Rebuttal Comments:*

- The reporting error made by GITI Anhui was inadvertent and does not affect the overall reliability of the GITI companies' responses for this program.
- As neutral facts available, the Department can either assign GITI Anhui the weighted-average rate of the subsidy rates calculated for other GITI companies based on their actual usage of this program during the AUL, or select the highest rate calculated for GITI companies that have used this program during the AUL period.

**Department's Position:** We are applying AFA, in accordance with section 776(b) of the Act, for this program because the GITI companies failed to report the use of this program by one of their cross-owned companies until verification, where we did not accept the information.<sup>320</sup>

GITI Fujian argues that its failure to report GITI Anhui's use of this program constitutes an inadvertent error. Citing *Lightweight Thermal Paper from China*,<sup>321</sup> GITI Fujian contends that the Department applies neutral facts available to cooperating respondents which have answered questionnaire responses and undergone verification, even if an inadvertent reporting error is discovered at verification. However, the facts of this instant investigation are distinguishable from those in *Lightweight Thermal Paper from China*, where the Department *accepted* information from a respondent during verification regarding the exemption from land use taxes and fees at verification and used facts available to measure the benefit of the subsidy.<sup>322</sup> Here, the Department *declined* to accept the information provided by the GITI companies at verification because it found that whether a program was used or not by a company is not "minor" in the view of the Department.<sup>323</sup>

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<sup>320</sup> See GITI Fujian's Verification Report at 17.

<sup>321</sup> See *Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at Comment 3.

<sup>322</sup> *Id.*, and accompanying IDM at 21-22.

<sup>323</sup> See GITI Fujian's Verification Report at 17.

GITI Fujian also argues that the CIT has found the Department’s refusal to apply AFA to a cooperating respondent for an inadvertent reporting error reasonable, where (1) the respondent voluntarily disclosed the inadvertent error prior to starting verification of the relevant topic, (2) the respondent has provided a plausible explanation regarding why the error occurred, and (3) the Department was able to verify the scope of the reporting error and has been satisfied that it does not impugn the overall reliability of the relevant response.<sup>324</sup>

Though not specifically cited, it appears that GITI Fujian relies upon *Ad Hoc Shrimp*.<sup>325</sup> However, GITI Fujian’s reliance on this case is misplaced. Although the CIT upheld the Department’s decision to apply “neutral” facts available,<sup>326</sup> the facts in the determination at issue in that case, *Thai Shrimp*,<sup>327</sup> are distinguishable from those before the Department in this investigation. In *Thai Shrimp*, the respondent failed to report certain export price sales, which represented a “very small quantity” of its total reported U.S. sales. The Department applied facts available to the unreported sales because the respondent reported the error at the earliest opportunity (prior to verification of the relevant topic), explained that it was the result of a clerical error (a computer error related to miscoding of a customer name), and substantiated its explanation to the Department’s satisfaction.<sup>328</sup>

Unlike *Thai Shrimp*, which involved a small subset of sales data that were missed in the respondent’s submission due to a purely technical error related to miscoding of certain sales, in this case there was a wholesale failure to report data by GITI Anhui. Indeed, the situation here does not involve a simple failure to provide complete information, but rather, a failure to report correctly whether the program was used at all. Further, the unreported data in the present case are far more substantial in quantity and quality, involving VAT and duty exemptions on the company’s purchases of equipment throughout the AUL, *i.e.*, multi-year values that go into the numerator for the subsidy benefit. Therefore, consistent with prior cases where a company did not report its use of a program,<sup>329</sup> AFA is warranted; we are determining a rate following our AFA hierarchy. The highest rate calculated for this program in a prior case is 9.71 percent. That rate will be used as AFA for this program for the GITI companies.

## **Comment 21: AFA Rate for Yongsheng**

### *Petitioner’s Comments:*

- The Department correctly determined that total AFA was warranted with respect to Yongsheng and should assign AFA rates for all programs the Department has countervailed since the *Preliminary Determination*. The Department should apply the

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<sup>324</sup> See Letter from GITI Fujian, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Rebuttal Brief of GITI Tire (Fujian) Co., Ltd.,” April 27, 2015, at 34.

<sup>325</sup> See *Ad Hoc Shrimp Trade Action Comm. v. United States*, 675 F. Supp. 2d 1287 (CIT 2009).

<sup>326</sup> *Id.*, 675 F. Supp. 2d at 1305-06.

<sup>327</sup> See *Certain Frozen Warmwater Shrimp From Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 50933 (August 29, 2008) (*Thai Shrimp*), and accompanying IDM.

<sup>328</sup> *Id.*, and accompanying IDM at Comment 14.

<sup>329</sup> See, *e.g.*, *Photovoltaic Products From the PRC*, and accompanying IDM at 16-17; *Chlorinated Isocyanurates*, and accompanying IDM at Comment 2.

highest calculated program-specific rates determined for the cooperating respondents in calculating Yongsheng's AFA rate.

- As AFA, the Department should apply two separate AFA rates for the Export Buyer's Credits and Export Seller's Credits programs.
- The Department should continue to instruct U.S. Customs and Border Protection (CBP) to apply Yongsheng's total AFA rate to all exports of subject merchandise produced by Yongsheng, regardless of the entity actually exporting subject merchandise. Yongsheng might evade paying duties at the AFA rate by funneling its exports through other exporters to benefit from a lower all-others rate.

*Crown International*<sup>330</sup> *Comments:*

- Although Crown International was not subject to individual investigation by the Department, and thus did not receive a separate subsidy rate, its exports should be assigned the all others rate.
- Cash deposit instructions following a CVD investigation normally require that the rate of a producer also be assigned to the exporters of the merchandise if that exporter did not itself receive a separate producer rate. This analysis should not be applied to exports of Crown International that were produced by Yongsheng because it was not selected as a mandatory respondent and did not fail to respond to the Department's requests for information.
- Crown International should not be punished by the Department and be assigned an AFA subsidy rate for the failure of its producer of subject merchandise, Yongsheng, to cooperate in the investigation.

**Department's Position:** For this final determination, we are treating the export buyer's and export seller's credits as two separate programs. We are also continuing to determine that any rate assigned to Yongsheng, a producer, is the appropriate rate to be assigned to any company exporting its merchandise.

As stated in the *Preliminary Determination*, Yongsheng withdrew as a mandatory respondent from this investigation.<sup>331</sup> Because it withdrew from this proceeding, we found that it withheld requested information and significantly impeded this proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, we based the subsidy rate for Yongsheng on facts otherwise available, and determined that AFA was warranted, pursuant to section 776(b) of the Act because Yongsheng failed to cooperate to the best of its ability. Our decision to use AFA is unchanged from the *Preliminary Determination*.<sup>332</sup>

As explained under the "Application of Facts Available" section above, for investigations involving the PRC, the Department computes the total AFA rate for non-cooperating companies generally using program-specific rates calculated for the cooperating respondents in the instant investigation, or if appropriate, calculated in prior PRC CVD cases. Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the

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<sup>330</sup> The company's complete name is Crown International Corporation.

<sup>331</sup> See PDM at 21-25.

<sup>332</sup> *Id.*

highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program within the investigation, the Department uses the highest non-*de minimis* rate calculated for the same or similar program (based on treatment of the benefit) in another PRC CVD proceeding. Absent an above-*de minimis* subsidy rate calculated for the same or similar program, the Department applies the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non-cooperating companies. Our approach in this regard is unchanged from the *Preliminary Determination*.<sup>333</sup>

Regarding Petitioner's argument that we treat the export buyer's credit and export seller's credit as two separate countervailable programs that should each be assigned a separate AFA rate, we agree. Petitioner properly alleged, and we initiated an investigation on, two separate programs: export buyer's credit program and export seller's credit program.<sup>334</sup> Therefore, for this final determination, we are applying two separate AFA rates to assign to Yongsheng for these programs.<sup>335</sup> This is similar to prior case treatment of these programs.<sup>336</sup>

Crown International requests that the cash deposit rate for its exports of subject merchandise produced by Yongsheng be the "all others" rate, and not Yongsheng's AFA rate. By granting this request, we would undermine our AFA decision by allowing Yongsheng to evade its AFA rate by exporting its merchandise through companies assigned the all others rate. Moreover, while AD proceedings measure price discrimination and thus the exporter's role in pricing decisions can be significant in determining AD rates, CVD proceedings do not assess price discrimination. Thus, the Department typically calculates producer-specific rates, not rates specific to exporters. Therefore, we are continuing to assign Yongsheng a rate as a producer of subject merchandise, and this rate applies to all merchandise produced by Yongsheng.

## **Comment 22: Appropriate Time Periods for Critical Circumstances Analysis**

### *Petitioner's Comments:*

- For the final determination of critical circumstances, the Department should compare two six-month periods, December 2012 through May 2014, and June 2014 to November 2014.
- The Department, as AFA, should continue to find that Yongsheng had massive imports over a short period of time.

### *API's Rebuttal Comments:*

- The Department should continue using a five-month period for its critical circumstances analysis. It is reasonable that October 2014, is the last calendar month within which importers were likely to make shipments without significant concern that the goods would be subject to duty deposits as the result of an affirmative CVD preliminary determination.

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<sup>333</sup> *Id.*

<sup>334</sup> See CVD Initiation Checklist.

<sup>335</sup> See Attachment.

<sup>336</sup> See *Containers*, and accompanying IDM at 13.

*GITI Fujian's Rebuttal Comments:*

- In critical circumstances determinations, the Department's practice is to examine the longest period for which import information is available up to the date of the preliminary determination.
- A seventh month comparison period should be used to determine if critical circumstances exist.
- December 2014 data should be included as the record shows the *Preliminary Determination* cannot be attributed to having an impact on the company's December, 2014 shipments.

**Department's Position:** The Department is continuing to define base and comparison periods within the bounds of its normal practice by extending the comparison period up through the month of the *Preliminary Determination*, to the extent shipment data are available on the record to do this. We are comparing shipments over a period beginning in June 2014, through November 2014,<sup>337</sup> with the period December 2013, through May 2014.<sup>338</sup> We have not included the month of the *Preliminary Determination* because the *Preliminary Determination* was published on the first day of the month (*i.e.*, on December 1, 2014). As such, including data from that month would be distortive in the critical circumstances analyses because it would reflect the impact of the preliminary cash deposits collected on shipments during the greater part of that month.<sup>339</sup> The Department's position is supported by both law and prior decisions.<sup>340</sup>

As AFA, we are also continuing to find that critical circumstances exist for Yongsheng. Parties submitted additional arguments regarding the use of Yongsheng's own shipping data to determine if massive imports existed over a short period, as discussed below at Comment 24.

**Comment 23: Whether Seasonality Exists in the Critical Circumstances Data**

*Yongsheng and ITG Voma's Comments:*

- The critical circumstances data used by the Department to find a massive increase in imports contains seasonality, as demonstrated by ITG Voma's data.
- The passenger tire industry as a whole predictably experiences marked seasonal trends in imports of tires as a result of several factors, including summer driving patterns as well as

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<sup>337</sup> Because the *Preliminary Determination* published on December 1, 2014, we are including in the base period data up to December 1, 2014, *i.e.*, all of November 2014 shipping data.

<sup>338</sup> See Memorandum, "Monthly Shipment Quantity and Value Analysis for Critical Circumstances," June 11, 2015 (Critical Circumstances Memorandum).

<sup>339</sup> See, *e.g.*, *CWP from the PRC*, and accompanying IDM at Comment 11.

<sup>340</sup> See section 705(a)(2) of the Act and 19 CFR 351.206. Pertinent examples of the Department's past practice regarding the application of critical circumstances include *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 and accompanying IDM at Comment 3 (April 16, 2004), and *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003) and accompanying IDM at Comment 7.

snow tires. ITG Voma provided evidence that the seasonal demand for tires, driven by warmer weather and increased travel in the summer, impacts imports.

- The Department erroneously rejected similar data.
- Contrary to the Department's claim, the regulations do not require a decade worth of data to demonstrate seasonality. The Department's past practice has been to look at seasonal trends during the two or three year period preceding the investigation. The Department's heightened evidentiary burden is unreasonable and unlawful.
- The Department should find that seasonal trends are the basis for a massive increase in imports, and not the filing of AD/CVD petitions.

*API's Rebuttal Comments:*

- Seasonal trends should preclude a finding of massive imports for critical circumstances.

*GITI Fujian's Rebuttal Comments:*

- If the Department uses a six-month comparison period, then any increase in the GITI companies' imports should be attributed to seasonality and not import stockpiling.
- Import data covering 2004 to 2014 corroborates the seasonal trend. Imports of subject tires for 2008 and 2012 are aberrational, as the import pattern was disrupted by the economic recession in 2008 and in 2012 by the removal of safeguard tariffs.

*Petitioner's Rebuttal Comments:*

- The Department reasonably determined that the evidence on the record, including information provided by ITG Voma, did not show seasonal patterns for imports of passenger tires.
- There was limited evidence provided by respondents to support their seasonality claim, which was not borne out in the import data.

**Department's Position:** We are continuing to find that seasonality in the critical circumstances context does not exist for passenger tires. In the *Preliminary Determination*, the Department examined and addressed all the evidence that had been placed on the record concerning the surge in imports following the filing of the petition and reasonably determined that the evidence did not show seasonal patterns for passenger tire imports.<sup>341</sup>

Contrary to ITG Voma's statements, the Department did not reject its data or ignore its seasonality claim. We specifically addressed ITG Voma's seasonality argument, stating that,

{a}side from lacking regularity, the increase at issue here lacks a solid theoretical basis. The summer increase is the supposed result of the increased demand for snow tires (in anticipation of winter) and tires to replace those worn out during the summer. That theory is only supported by a single affidavit, which does not refer to any additional evidence of these reasons for a predictable increase in demand at this time each year.<sup>342</sup>

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<sup>341</sup> See PDM at 9-11.

<sup>342</sup> *Id.* at 9-10.

Even after reviewing ITG Voma's arguments, we determined that the record did not support parties' arguments regarding seasonality. As we noted in the *Preliminary Determination*, "there was no predictable fluctuation associated with seasonal trends."<sup>343</sup>

As for parties' comments that the Department unreasonably required that the supposed seasonality pattern be apparent in 10 years' worth of data, the Department disagrees. As we explained:

After analyzing the data for all other producers/exporters, the Department determines that there is no predictable fluctuation associated with seasonal trends over the past *four years*. For all other exporters/producers, while shipments increase regularly between the base and comparison period over the past 10 years, the increases have been as low as 3.86 percent and thus do not establish a pattern of an increase that can explain the 2014 increase of 35.45 percent.<sup>344</sup>

As is clear from our *Preliminary Determination*, the use of GTA data covering a 10-year period was done to see if a seasonal trend, as argued by parties, could be seen over a greater time span.<sup>345</sup> The Department determined that seasonality did not exist over a four year period; the 10-year analysis merely demonstrates that over an even greater period, seasonality does not exist, confirming our decision over a four year period. While no party submitted data from the mandatory respondents that would allow us to adjust the GTA data in years prior to 2011 (and in fact we only asked the respondents for data starting in March 2011), this did not hamper our analysis. The limited evidence for seasonality advanced by respondents was not borne out in the import data, which showed no consistent and predictable seasonal pattern. Our determination that the evidence did not show clear, predictable trends that would establish that seasonality accounted for the post-petition surge in passenger tires from the PRC, or that would allow the Department to measure and correct the data on the record to account for such trends, was reasoned and supported by substantial evidence. Parties have not pointed to specific record evidence that the Department has not already considered. Therefore, we are continuing to find that seasonality does not exist for this final determination for the reasons explained in the *Preliminary Determination*.

#### **Comment 24: Whether Company Specific Data Should be Used in the Department's Critical Circumstances Analysis**

*Yongsheng's Comments:*

- The Department should use Yongsheng's company-specific data to determine critical circumstances.

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<sup>343</sup> *Id.*

<sup>344</sup> *Id.* (emphasis added).

<sup>345</sup> We used GTA data over a 10-year period, subtracting shipment volumes as reported by the respondents for the years 2011 through 2014.

*API's Comments:*

- The Department's methodology for determining there were massive imports for all-others contained several flaws including: missing HTS numbers under which subject merchandise may be classified; making adjustments to aggregated entry data with company-specific shipping data despite a time lag between the two data sets; and analysis of entry data that is not company-specific.
- For the final determination, company-specific determinations should be conducted, as intended by Congress, using either company submitted data company-specific entries from IM-115 data maintained by CBP.
- Congress intended that critical circumstances determination be made base on the imports of each importer, not the collective exports of exporters and/or foreign sellers.
- Grouping all-other companies together for the critical circumstances analysis, for whom no response was required, denies API the equal protection of the Fourteenth and Fifth Amendments to the Constitution, and penalizes the importers who did not increase their imports.
- The Department is required by law to have a rational basis for the classification of the responders by grouping all other exporters and producers as one group and not requesting information as to whether each importer increased its imports by 15 percent over the base period. The Department arbitrarily created two classes (individually reviewed respondents and all others) without justification or providing a rational basis as to the differences between the companies, and without making importer-specific critical circumstances determinations.

*Kenda's<sup>346</sup> Comments:*

- Kenda submitted its shipping data through the *Preliminary Determination*, which would not be burdensome for the Department to review, and which would show that Kenda's imports did not massively increase over a short period of time.
- The Department should use Kenda's own data and determine that critical circumstances do not exist for Kenda.

*Petitioner's Rebuttal Comments:*

- While Yongsheng did provide its shipping data, it withdrew from the investigation; therefore its information could not be verified. The statute does not require the Department to rely on information that cannot be verified. The Department correctly applied AFA with regard to finding critical circumstances for Yongsheng.
- The statute makes clear that the Department is not required to individually examine each exporter if it is not practical to do so.
- The Department has a reasonable basis for treating certain respondents, such as those that are selected for individual examination and have their data verified, differently from others.
- The Department is not required to rely on information that cannot be verified, including shipping data from companies not selected as mandatory respondents.

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<sup>346</sup> The company's complete name is Kenda Rubber (China), Co., Ltd.

**Department’s Position:** We are continuing to find, using AFA, that critical circumstances exist for Yongsheng. We are also not determining critical circumstances using individual shipment data, except for cooperative companies that were selected as mandatory respondents pursuant to section 777A(e) of the Act.

Yongsheng was selected as a mandatory respondent, but withdrew from the investigation, and made no mention that it would continue to participate only in respect to answering the Department’s critical circumstances data request.<sup>347</sup> Notwithstanding Yongsheng’s stated intent to continue as an interested party, the Department’s practice is not to verify information from parties that withdraw from participation as a mandatory respondent.<sup>348</sup> Therefore, the shipment data it placed on the record could not be verified.<sup>349</sup> The Department is not required to consider record information that cannot be verified, or where the party has demonstrated that it failed to act to the best of its ability in providing the information requested, and meeting the requirements established by, the Department.<sup>350</sup> Based on Yongsheng’s failure to provide complete responses to the Department’s CVD questionnaire, we determined that AFA was warranted, and as AFA, determined that critical circumstances existed for Yongsheng.<sup>351</sup> Yongsheng has continued not to participate in this investigation; therefore the Department is not deviating from its *Preliminary Determination*, and continues to find AFA is warranted. This determination is consistent with prior investigations, where a mandatory respondent withdrew from the investigation, and the Department determined, as AFA, that critical circumstances existed for the non-participating mandatory respondent.<sup>352</sup>

API argues that there were several flaws in the *Preliminary Determination* of critical circumstances for all others. First, it claims that the Department excluded HTS numbers under which subject merchandise is classifiable. However, consistent with our practice, we collect data based on the non-basket category HTS numbers listed in the scope.<sup>353</sup> API did not state which specific HTS number it believed was excluded from the analysis, nor did it suggest how we could adjust the data reported under this number to remove shipments of non-subject

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<sup>347</sup> See Letter from Yongsheng, “Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Withdrawal from Participation as a Mandatory Respondent, Shandong Yongsheng Rubber Group Co., Ltd.,” October 6, 2014 (where Yongsheng stated that it “withdraw{s} from participation as a mandatory respondent, through responses to questionnaires, in the above-referenced investigation”).

<sup>348</sup> See CVD Initial QR at I-10, where we state that “Failure to allow full and complete verification of any information may affect the consideration accorded to that or any other verified or non-verified item in the responses.” By withdrawing from the investigation, Yongsheng did not allow the Department to conduct verification, and, as noted in the CVD Initial QR, failure to respond completely to the Department’ questionnaire “may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.”

<sup>349</sup> See section 782(e)(2) of the Act.

<sup>350</sup> See section 782(e) of the Act.

<sup>351</sup> See PDM at 11, 21.

<sup>352</sup> See *Carbon and Certain Alloy Steel Wire Rod From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 68858, (November 19, 2014) and accompanying IDM at 10.

<sup>353</sup> See, e.g., *Solar Cells from the PRC*, and accompanying IDM at 10; see also Memorandum, “Monthly Shipment Quantity and Value Analysis for Critical Circumstances,” November 21, 2014.

merchandise. Thus, we will continue to use data from the non-basket category HTS numbers listed in the scope.

API next notes that the GTA data, which covers entries, is adjusted using company-specific shipping data. API states that entries and shipments occur weeks apart, such that adjusting the GTA data by the mandatory respondents' shipment data cannot be a valid basis for determining whether all other companies had massive imports. Therefore, company-specific data should be used to determine if massive imports exist for each company. However, nothing was submitted on the record indicating that this lag was so great that the adjustment we made would lead to invalid results or that the lag would lead to results biased towards an affirmative determination. API has also requested for the first time in its case brief that the Department ask CBP to provide, on an expedited basis, entry information on a company-specific basis in order to determine whether critical circumstances exist on a company-by-company basis. However, it is not feasible to collect new information from CBP at this point in the proceeding, *i.e.*, after case briefs have been filed with the Department.<sup>354</sup>

Regarding API's comments that we must turn to company-specific data, we have continued to make our critical circumstances determination on a company-specific basis for participating, fully cooperative mandatory respondents only. This is consistent with the Department's past practice and with section 777A(e) of the Act.<sup>355</sup> Several parties have also requested that the Department analyze their shipping data placed on the record, or review company-specific data from CBP, to determine on an individual company basis whether critical circumstances exist. However, no party has identified a statutory or regulatory provision that would require the Department to make company-specific critical circumstances determinations.

Further, similar considerations apply to the Department's critical circumstances analysis as do to our respondent selection analysis. Section 777A(e)(2)(A)(ii) of the Act expressly provides that the Department is allowed to limit its examination to a reasonable number of exporters or producers accounting for the largest volume of the subject merchandise from the PRC that can be reasonably examined, if we determine that it is not practicable to determine individual rates for all exporters or producers because of the large number of such exporters or producers. Thus, consistent with section 777A(e)(2)(A) of the Act, we do not calculate subsidy rates for any non-selected companies, as long as the mandatory respondents cooperate in the investigation, because it would not be practicable to do so.<sup>356</sup> Just as we determined that we could not reasonably determine individual countervailable subsidy rates for more than two entities, we cannot determine critical circumstances on a company-specific level beyond the mandatory respondents, even if such data is on the record, because doing so is not practicable.<sup>357</sup>

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<sup>354</sup> See, e.g., *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 24.

<sup>355</sup> See, e.g., *CWP from the PRC*, and accompanying IDM at Comment 10-11, see also *Solar Cells from the PRC*, and accompanying IDM at 10.

<sup>356</sup> See Memorandum, "Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Respondent Selection," August 13, 2014, at 6.

<sup>357</sup> See, e.g., *CWP from the PRC*, and accompanying IDM at 88.

API also claims that Congress intended that critical circumstances be based on imports of each importer. We find the legislative history cited by API to be unpersuasive. Further, API's claims are not supported by the relevant provisions of the Act itself, including sections 703(e) and 705(a)(2) of the Act. API has not pointed to any statutory provision that would require such an individual analysis by the Department, nor has it explained how such an intent co-exists with section 777A(e) of the Act, which recognizes that the Department may have to limit the number of entities individually examined.

Finally, API argues that the Department has denied it equal protection by grouping together all other exporters and producers and determining that their imports were massive. API states that,

{c}ase law involving the Equal Protection clause requires that the Department have a rational basis for the classification of the responders by grouping all other exporters and producers as one group and not requesting information as to whether each importer increased its imports by 15% over the base period. None exists. The Department, however, arbitrarily created two classes without justification or providing a rational basis as to the differences between the companies, and without considering whether each importer increased its volume of imports beyond 15%.<sup>358</sup>

However, the Department does have a rational basis for making separate critical circumstances determinations for the mandatory respondents and the non-individually examined companies. The statute makes clear that the Department is not required to individually examine every exporter or producer if it is not practical to do so because of the large number of exporters or producers involved in the investigation.<sup>359</sup> Nor is the Department required to rely upon information, such as shipping data from non-selected entities, which cannot be verified. This means that the Department has a reasonable basis for treating certain respondents – those who are selected for individual examination and have had their data verified – differently from others. Because the Department has a reasonable basis for making separate determinations and grouping together all other exporters and producers, contrary to API's claims, we are not violating its right to equal protection under the law.

#### **Comment 25: Whether to Modify the Language of the Exclusion on Special Trailer (ST) Tires**

##### *Petitioner's Comments:*

- The scope language should be modified to allow certain "N" speed-rated ST tires to be excluded from the scope if the maximum load limit and maximum pressure molded on the tire sidewall exceeded those for listed passenger tire sizes.
- The Department should retain the load index and speed rating marking requirements in the scope exclusions that were suspended pending the final determination. Removing these requirements will negatively impact the ability of CBP to administer any order and will increase the opportunity for circumvention.

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<sup>358</sup> See Letter from API, "Certain Passenger Vehicle and Light Truck Tires from China; Case C-570-017; Case Brief on Non-scope Issues," April 16, 2015, at 10.

<sup>359</sup> See section 777A(c)(2) of the Act.

- Tires with a less than 12” wheel diameter should not be excluded from the scope. Record information indicates that tires of this size are under development for passenger tires, and if they are eventually listed in the *Yearbook* under the passenger or light truck vehicle chapters, they will be, and should be, included in the scope.

*RVIA’s Comments:*

- The warning label (*i.e.*, “For Trailer Use Only”) and the “ST” prefix are sufficient to clearly show that ST tires are not intended for use on passenger vehicles or light trucks. Additional requirements would render the scope redundant, overbroad and include products that are not passenger tires.
- Speed ratings, either numerical or in letter code, are unnecessary to prevent circumvention; the markings applied in current industry practice are sufficient to demonstrate the ST tires are not suitable for use as passenger tires.

*Carlisle’s Comments:*

- The Department should exclude Carlisle’s “N” speed rated ST tires marked in the manner suggested in Petitioner’s submission of January 22, 2015.
- Carlisle’s models of ST tires with a bias ply construction should be excluded from the scope of these investigations because they are tire sizes that are not listed in the passenger tire or light truck tire sections of the *Yearbook*.
- The Department should find that all ST tires that overlap in size exclusively with passenger vehicle tires are outside the scope of the investigation.
- The *Amended Preliminary Determination*<sup>360</sup> is a prior restraint on speech that is causing Carlisle to engage in self-censorship. The Department’s action constitutes a violation of the right to freedom of speech guaranteed by the First Amendment, and it continues to cause immediate and irreparable harm to Carlisle.

*Petitioner’s Rebuttal Comments:*

- Petitioner has shown that light truck tires, which can also be used on trailers, can have an “ST” marking. Eliminating the requirement that the speed rating be molded on the sidewall of the tire effectively eliminates the basis of the exclusion in physical differences and rests it solely on what warning or label a producer may select to place on the tire. By not requiring these markings, the Department would massively increase the burden on CBP to administer the orders by removing CBP’s ability to quickly and easily determine if a tire meets exclusion requirements by simply viewing the information molded on the tire’s sidewall.
- The Department should reject Carlisle’s request to exclude its bias ply tires from the scope because it is not based on differences between in-scope and out-of-scope merchandise, would encourage circumvention, and is unnecessary to address any of Carlisle’s merchandise.
- Excluding tires that overlap with any passenger tire size regardless of overlap with light truck tire sizes would eradicate dividing lines between in-scope and excluded merchandise. Carlisle’s request is not clear as to what exclusion it seeks (tires that

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<sup>360</sup> See *Amended Preliminary Determination*, 79 FR at 78399.

overlap only passenger sizes but not light truck sizes, or tires that overlap a passenger tire size regardless of any additional overlap with a light truck size), and its request should be declined.

- The requirements that excluded tires bear certain markings, such as load indexes and speed ratings, merely require the disclosure of purely factual, noncontroversial commercial information. As the purpose of the marking requirements is to clearly distinguish between in- and out-of-scope tires for the administrability of the orders and to reduce opportunities for circumvention, the marking requirements are reasonably related to a substantial governmental interest; there is no conflict between the enforcement of the marking requirements and the First Amendment.

*RVIA's and Tredit's Rebuttal Comments:*

- The proposed scope language excluding “N” speed rated tires is overly complex and is certain to make the administrability of the order more difficult, and should not be accepted by the Department.
- Petitioner has presented no arguments or evidence that the proposed requirement of a speed rating inscription, in and of itself, on ST tires is necessary for administrability purposes or to prevent circumvention.
- The only marking likely to prevent consumer confusion is the already present warning language prohibiting use of such tires on anything other than specialty trailers.
- Markings for load index and speed rating are not necessary and provide no increased efficiencies in administering the order; these markings place an undue burden on producers and risks inclusion of admittedly excluded tires.

**Department's Position:** For this final determination, the Department has clarified the scope language of the AD and CVD investigations such that “N” speed-rated ST tires are excluded from the scope if the maximum load limit and maximum pressure molded on the tire sidewall exceed those for listed passenger tire sizes. The Department is retaining the requirement that ST tires include speed rating and load index markings and is not modifying the scope based on other additional requests from parties, as further explained below. For a complete description of the scope of the investigation for this final determination, *see* Section III, above.

As noted in the Scope Clarification Memorandum, “[i]n determining whether to modify a scope in an investigation, the Department has three primary concerns: (1) ensuring that the revised scope accurately reflects the products for which the petitioner(s) seeks relief; (2) providing interested parties with sufficient opportunity for comments that can be evaluated by the Department; and (3) making sure that the revised scope would be administrable by CBP and that it is not susceptible to circumvention.”<sup>361</sup> With these concerns in mind, we reviewed Petitioner's modified scope language to exclude “N” speed-rated ST tires that meet certain requirements. Petitioner was concerned that a blanket exclusion of “N” speed-rated ST tires would overlap with

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<sup>361</sup> *See* Memorandum, “Scope Clarification in the Antidumping Duty and Countervailing Duty Investigations of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China,” November 21, 2014 (Scope Clarification Memorandum), at 7.

in-scope passenger tires. However, with Carlisle's arguments in mind,<sup>362</sup> Petitioner submitted modified scope language to exclude "N" speed-rated ST tires if the maximum load limit and maximum pressure molded on the tire sidewall exceeded those for listed passenger tire sizes.<sup>363</sup> This modification to the language addressed ST tires, which are designed to provide greater load capacities than passenger tires, while maintaining an administrable exclusion based on the information molded on the tire's sidewall and objectively found in the *Yearbook*.

While RVIA argues that the suggested language is overly complex, and would take time and effort for CBP to follow, on February 19, 2015, Carlisle submitted additional comments, agreeing with Petitioner's proposed modification to the scope language.<sup>364</sup> Because both the party requesting the exclusion and the Petitioner have agreed to the modification of the scope language, Petitioner argues, the Department should have no concern amending the exclusion under paragraph (6) of the preliminary clarification to include certain "N" speed-rated tires that meet the higher maximum load limit and maximum inflation requirements.

The Department is modifying the scope using Petitioner's modified scope language that addresses concerns regarding "N" speed-rated ST tires and excludes certain tires for which the Petitioner does not seek relief. The Department's standard practice is to provide ample deference to petitioner with respect to the definition of the product(s) for which it seeks relief during the investigation phase of an AD or CVD proceeding.<sup>365</sup> Parties have had ample time to comment on this scope modification, and have provided over ten submissions on this issue alone for the Department to consider. Consistent with the Scope Clarification Memorandum, because this scope language modification is limited to physical descriptions relating to ST tires (*i.e.*, physical markings on the actual tires), we find that the modification of the scope language is drafted in a manner that is not overly complex and can be administered and enforced by CBP.<sup>366</sup>

The Department is also reinstating the requirements for load index and speed rating markings (exclusion (6)(d) and (6)(e)).<sup>367</sup> In the *Amended Preliminary Determination*, the Department suspended these requirements, but noted that our intent at that time was to retain the marking requirements for exclusion 6(d) and (e) in the final determinations in the CVD and AD

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<sup>362</sup> See, e.g., Letter from Carlisle, "Certain Passenger Vehicle and Light Truck Tires from China: Response to Petitioner's Opposition to CTP's Exclusion Request," December 9, 2014.

<sup>363</sup> See Letter from Petitioner, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China—Scope of the Investigations, Petitioner's Reply to CTP's Scope Ruling Request," January 22, 2015.

<sup>364</sup> See Letter from Carlisle, "Certain Passenger Vehicle and Light Truck Tires from China Request for Final Scope Ruling – CTP Specialty Trailer Tire Models," February 19, 2015.

<sup>365</sup> See, e.g., *Lumber from Canada*, and accompanying IDM at "Scope Issues" (stating that the Department possesses the authority to define or clarify the scope of an investigation throughout the investigation); *Final Determination of Sales at Less Than Fair Value: Certain Carbon Alloy Wire Rod from Japan*, 59 FR 5987 (February 9, 1994), and accompanying IDM at Comment 1 ("Petitioners' scope definition is afforded great weight because petitioners can best determine from what products they require relief."); and *Allegheny Bradford Corp. v. United States*, 342 F. Supp. 2d 1172, 1187-88 (2004) (explaining the deference given to the Department in determining the scope of AD and CVD orders).

<sup>366</sup> See Memorandum, "Phone Conference with Customs and Border Protection," October 14, 2014 (CBP Conference Memorandum).

<sup>367</sup> See Section IV above.

investigations.<sup>368</sup> We also stated that interested parties had the opportunity to address the necessity of these requirements or any amendments thereto, including the threshold speed requirement and associated markings, in case and rebuttal briefs for the Department’s consideration before the final determinations in the CVD and AD investigations. RVIA and Tredit submitted comments stating that the warning label (*i.e.*, “For Trailer Use Only”) and the ST prefix are sufficient to clearly show that ST tires are not intended for use on passenger vehicles or light trucks, and fall outside of the scope of these investigations.<sup>369</sup> Both parties argue that the Department should not require speed rating and load index markings on ST tires. According to these parties, it is common practice in the ST tire industry for “tires that are intended for use at 65 MPH or below...to be manufactured with no speed rating inscribed on the sidewalls,” such that “including the unnecessary requirement of an inscribed speed rating would result in the scope covering products (ST tires that do not include speed ratings) that all parties have agreed should not be included, would be burdensome to ST tire producers, and would result in unnecessary scope inquiries in the future.”<sup>370</sup>

While neither Petitioner nor these interested parties disagree on the speed rating of ST tires itself, Petitioner argues that the speed rating and load index marking should be required on these tires to allow the ST tire exclusions to be administrable and to limit the opportunity to circumvent the orders. First, based on the record, there is no requirement that only tires with objective ST tire characteristics are marked with “For Trailer Use Only.” As such, the “For Trailer Use Only” warning provides no indication that the ST tire is physically different from passenger tires. Indeed, Petitioner has demonstrated that light truck tires, which can be used on trailers, sometimes bear the “ST” mark.<sup>371</sup> The Petitioner has also demonstrated that there are trailer tires in the market that are marked with the speed rating and load index.<sup>372</sup> The load index and speed rating markings are indicative of innate, and testable, physical characteristic differences. By eliminating the requirement that the load index and speed rating must be molded on the sidewall of the tire, the Department would effectively eliminate the basis of the exclusion in physical differences, and instead rely only on producer warning labels that can easily be manipulated.<sup>373</sup>

Furthermore, if the load index and speed rating is not molded on the sidewall of the tire, CBP would be required to conduct complex testing to determine if the tire meets the scope exclusion requirements, instead of quickly viewing the markings on the sidewall tire. CBP has explained to the Department that an “ST” marking alone would not be sufficient for its officers to

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<sup>368</sup> See *Amended Preliminary Determination*, 79 FR at 78399.

<sup>369</sup> See, *e.g.*, Letter from RVIA, “Recreation Vehicle Industry Association, Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Case Brief of the Recreation Vehicle Industry Association,” April 6, 2015 (RVIA Scope Brief), and Letter from Tredit, “Tredit Tire and Wheel Company, Inc., Certain Passenger Vehicle and Light Truck Tires from China: Case Rebuttal Brief on the Scope of the Investigations,” April 13, 2015 (Tredit Rebuttal Brief).

<sup>370</sup> See RVIA Scope Brief at 2.

<sup>371</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigation, Petitioner’s Reply to CTP’s Rebuttal Comments,” September 19, 2014, at Attachment 1.

<sup>372</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigation, Petitioner’s Reply to RVIA’s Scope Comments on Speed Rating Markings and CTP’s Request on Decision Timing,” October 2, 2014.

<sup>373</sup> See CBP Conference Memorandum.

determine the type of tire. CBP officials stated that “additional markings required by the Petitioner’s September 29, 2014 proposed scope language they had reviewed before the phone conference would be sufficient for determining the type of tire.”<sup>374</sup>

RVIA argues that CBP officials never stated which additional markings would be sufficient. While RVIA does not argue that the warning label, “ST” marking, and the load index mark should not be required on ST tires, it argues that on top of these markings, Petitioner has not explained how the inclusion of a speed rating marking would better inform CBP or customers that the tire is an ST tire in addition to the three markings. Tredit, pointing to a different case, states that in some instances CBP only needs one marking to differentiate in- and out-of-scope merchandise.<sup>375</sup>

However, comments on the record demonstrate that speed ratings are crucial to Petitioner’s exclusion language. Petitioner states that “the inclusion of speed ratings above ‘M’ in the scope exclusion would create overlap between in-scope and out-of-scope tires and eliminate one of the points of differentiation that CBP has stated are necessary for the administration of the exclusion.”<sup>376</sup> Clearly, Petitioner relies heavily on the speed rating differences to determine in- or out-of-scope merchandise. Additionally, by “ignoring any characteristics for purposes of exclusion other than whether the tire bears a ‘trailer’ label effectively eliminates any significance of physical differences between ST tires and passenger vehicle and light truck tires.”<sup>377</sup> While a load index marking is one difference of physical characteristics, Petitioner argues that speed rating markings in conjunction with load index marking will decrease the opportunity for circumvention of the order.<sup>378</sup> Finally, the number of markings that are required by CBP on some merchandise (e.g., brake rotors) to determine whether the product is in scope has no bearing on the number of marking requirements in this case as the merchandise referred to has no relation to the merchandise in this instant case.

Interested parties also raised the concern that if at the final determination, the Department were to start requiring load index and speed rating markings, the ST tire producers would be subject to undue burden and it would lead to the inclusion of merchandise that the Petitioner agrees should be excluded from the scope of the investigations.<sup>379</sup> This characterization misrepresents the Department’s intent when we temporarily suspended these requirements. In the same notice where the Department suspended certain marking requirements, we also stated “that it is the

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<sup>374</sup> *Id.*; see also Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigation, Petitioner’s Reply to TBC’s Scope Comments on Load Indexes,” September 29, 2014, at Attachment 1 (where, in addition to the ST markings, Petitioner recommended such additional markings as “For Trailer Service Only,” “For Trailer Use Only,” the tires load index, and tires speed rating. These additional markings were determined by CBP to be sufficient during the October 14, 2014 phone conference).

<sup>375</sup> See Tredit Rebuttal Brief.

<sup>376</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigations, Petitioner’s Reply to CTP’s Response on Scope and Comments on Unconstitutional Burden,” December 11, 2014, at 4.

<sup>377</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigation, Petitioner’s Reply to NATM’s Supplemental Scope Comments,” October 9, 2014.

<sup>378</sup> *Id.*

<sup>379</sup> See Tredit Rebuttal Brief.

Department's current intent to retain the marking requirements for exclusion 6(d) and (e) in its final determinations in the CVD and antidumping duty investigations.”<sup>380</sup> Parties were put on notice six months before the final determinations that such markings could potentially be required. As the comments on the record at that time clearly show, the Department suspended these marking requirements because it was clear that enacting them would suspend parties' “N” speed-rated ST tires, which Petitioner noted was not part of the merchandise it was seeking relief of. Comments provided by both Carlisle and Petitioner have resolved this issue, leading to a separate scope exclusion to address this concern. The Department has determined that by not requiring these markings, the Department could be potentially creating an easy route for circumvention.

We are, therefore, retaining the speed rating and load index markings. The speed rating and load index markings reflect the physical differences between excluded ST tires and passenger tires. Parties have been on notice for at least six months that such requirements would be resumed, and, as the record demonstrates, can retool their molds so that their ST tires meet this scope exclusion and are not covered by the scope (indeed, as noted above, some ST tires are already marked with speed rating and load index).<sup>381</sup> The addition of these markings also eases the burden on CBP to administer the exclusion, as explained by CBP officials. And lastly, the markings decrease the opportunity for circumvention by making clear to all parties the physical characteristics of the tire.

The Department is not modifying the scope to exclude tires less than 12” in wheel diameter. While Carlisle initially requested this exclusion, it provided no comments regarding its position after the Department issued the Scope Clarification Memorandum, which stated that this issue was still pending. The scope of these investigations covers all passenger tires that are included in the passenger car and light truck tire sections of the *Yearbook*, regardless of size. Record evidence demonstrates that there is development of tires that have less than a 12” wheel diameter for use in passenger cars.<sup>382</sup> While the *Yearbook* currently does not list any passenger or light truck tires below a 12” wheel diameter, as noted by Petitioner, sub-12 inch wheel diameter tires are being developed for small city cars.<sup>383</sup> As such, these tires could be included in any updates to the *Yearbook*; therefore, they could be considered in-scope merchandise in the future.<sup>384</sup> In that eventuality, it is unclear from the record alone, that tires of less than 12” wheel diameters would not be for use as passenger tires. Because these tires could be considered in-scope, by excluding them at this time from the scope, we would be denying Petitioner the relief it seeks.

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<sup>380</sup> See *Amended Preliminary Determination*, 79 FR at 78399.

<sup>381</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigation, Petitioner’s Reply to RVIA’s Scope Comments on Speed Rating Markings and CTP’s Request on Decision Timing,” October 2, 2014.

<sup>382</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigations, Petitioner’s Opposition to CTP’s Exclusion Request,” December 5, 2015, at Attachment 5.

<sup>383</sup> *Id.*, at 9 and Attachment 5; see also Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China, Case Brief on the Scope of the Investigations,” April 6, 2015, at 7.

<sup>384</sup> *Id.*

Carlisle requested that the Department exclude its models of ST tires with a bias ply construction from the scope of these investigations because they are tire sizes not listed in the passenger vehicle or light truck tire chapters of the *Yearbook*.<sup>385</sup> Regardless of the tire construction, a careful reading of the scope makes clear that no such finding is required by the Department because the tires referenced by Carlisle are already excluded from the scope. The scope states:

all tires that lack a “P” or “LT” prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book*, as updated annually, unless the tire falls within one of the specific exclusions set out below.

If, as Carlisle repeatedly states on the record, its ST tires with a bias ply construction are of a size not listed in the passenger car or light truck tire sections of the *Yearbook*, then they would not be considered in-scope merchandise, and there is no need for the Department to create a separate, redundant company-specific exclusion for these tires. Carlisle appears to take issue with the Department’s statement in the Scope Clarification Memorandum that if bias ply tires were excluded, it “would be opening the door for circumvention, and denying Petitioner the relief they seek.”<sup>386</sup> However, the comment Carlisle was referring to was for a request from interested parties to exclude all diagonal or bias ply tires from the scope.<sup>387</sup> The Department noted that these tires are specifically covered in the Petition, and should therefore not be excluded or else we would be denying Petitioner the relief it seeks. Petitioner notes that “[a]s certain bias ply tires are unquestionably included in the scope, the fact that a tire is bias ply or not cannot distinguish an out-of-scope tire from an in-scope tire.”<sup>388</sup> The Department continues to find that, in general, bias ply tires are in-scope, unless, as noted above, they are of a size not within the passenger vehicle or light truck tire sections of the *Yearbook* or meet other scope exclusions.

Carlisle argues that ST tires that overlap in size with only passenger vehicle tires should be excluded from the scope. Carlisle claims that “[i]nclusion of any of Carlisle’s trailer tires that overlap in size exclusively with PV tires would impermissibly expand the scope of these investigations, contrary to the Department’s claim otherwise.”<sup>389</sup> The load limit and speed index ratings are distinct between ST and passenger tires, as reflected in the sidewall markings required by the DOT, such that no one would ever confuse the two. As Petitioner points out, because “Carlisle’s request is not clear as to what exclusion it seeks (tires that overlap only passenger sizes but not light truck sizes or tires that overlap a passenger tire size regardless of any additional overlap with a light truck size), its request should be declined.”<sup>390</sup> Carlisle’s request

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<sup>385</sup> See Letter from Carlisle, “Carlisle (Meizhou) Rubber Products Co. Ltd., Certain Passenger Vehicle and Light Truck Tires from China Case Brief re Scope - CTP Specialty Trailer Tire Models,” April 6, 2015 (Carlisle Scope Brief), at 4-10.

<sup>386</sup> See Scope Clarification Memorandum at 13.

<sup>387</sup> *Id.*, at 12.

<sup>388</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China, Rebuttal Brief on the Scope of the Investigations,” April 13, 2015 (Petitioner Scope Rebuttal Brief), at 11.

<sup>389</sup> See Carlisle Scope Brief at 11.

<sup>390</sup> See Petitioner Scope Rebuttal Brief at 14.

appears to be an attempt to exclude its “N” speed-rated ST tires, which as noted above, the Department is already excluding if they meet certain marking requirements. Furthermore, the Department has previously determined to exclude ST tires that meet certain conditions, as explained in the Scope Clarification Memorandum. If an ST tire overlaps in size with a passenger vehicle tire, but meets the scope exclusion requirements, regardless of this overlap, the tire would be excluded. It is unclear from Carlisle’s comments what additional relief it seeks that has not already been addressed by the new criteria in the scope language. The Department is rejecting this request as it would create uncertain scope language, and is unnecessary because all of Carlisle’s “N” speed-rated tires are already excluded from the scope.

Carlisle argues that any requirement that load indexes and speed ratings be marked on excluded tires would unconstitutionally burden free speech by preventing it from “engaging in lawful commercial speech that provides consumers with accurate information concerning the correct speed safety rating for Carlisle’s trailer tires.”<sup>391</sup> Petitioner notes though that the “requirements that excluded tires bear certain markings, such as load indexes and speed ratings, merely require the disclosure of purely factual, noncontroversial commercial information. Contrary to Carlisle’s claims, it is not being asked to refrain from any speech it wants to make, and the speech it claims is burdened is purely commercial.”<sup>392</sup> Carlisle has recognized that the Department’s and CBP’s interest in requiring these markings is “solely to aid in the enforcement of an antidumping and/or countervailing duty determination or order....”<sup>393</sup> Because these markings are required in order to clearly distinguish between in- and out-of-scope tires for the administrability of the orders and to reduce opportunities for circumvention, the requirements are reasonably related to a substantial governmental interest. Therefore, the Department has clarified the scope language of the AD and CVD investigations such that “N” speed-rated ST tires are excluded from the scope if the maximum load limit and maximum pressure molded on the tire sidewall exceed those for listed passenger tire sizes.

## **Comment 26: Whether Slingshot Tires Are Included in the Scope**

### *Petitioner’s Comments:*

- Based on record evidence, the Polaris Slingshot does not necessarily meet the definition of a motorcycle rather than an automobile.
- Several states have denied classifying the Slingshot as a motorcycle, and the physical characteristics of the Slingshot tires are different than the U-shaped cross section of true motorcycle tires.
- The Department should not exclude Slingshot tires from the scope.

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<sup>391</sup> See Carlisle Scope Brief at 15.

<sup>392</sup> See Petitioner Scope Rebuttal Brief at 5.

<sup>393</sup> See Letter from Carlisle, “Certain Passenger Vehicle and Light Truck Tires from China: Unconstitutional Burdens on Speech Created by Implementation of the Department’s Preliminary Affirmative Countervailing Duty Determination,” December 9, 2014, at 8.

*Polaris' Rebuttal Comments:*

- The Polaris Slingshot is a three-wheeled motorcycle, and is classified as a motorcycle (as defined under the National Highway Traffic Safety Administration regulations) in 46 states.
- The tires used on the Slingshot are engineered, produced and sold exclusively for use on the Slingshot vehicle. They are marked with “not for automotive use” on their sidewall.
- The Slingshot tires will not be sold outside of Polaris dealer channels and will be marked with a warning to prevent the use of these tires in automotive applications.
- The Department should find that these tires are not within the scope.

**Department's Position:** The Department determines that Polaris Slingshot tires are in-scope merchandise. The scope clearly states that tires, *regardless of their intended use*, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the *Yearbook*, are included in these investigations (emphasis added). Record evidence indicates that Polaris' Slingshot does not appear to necessarily meet the definition of a motorcycle rather than an automobile.<sup>394</sup>

Regardless of whether the Slingshot is or is not a motorcycle, the tires used on it, even though they may be engineered and produced exclusively for the Slingshot, meet the definition of automobile tires.<sup>395</sup> Passenger vehicle tires may be and are mounted on certain types of motorcycles.<sup>396</sup> One of the main differences between passenger tires and motorcycle tires is the “U-shaped” profile of motorcycle tires, which allow the tire to maintain contact with the road during turning.<sup>397</sup> Passenger tires remain at the same upright angle during a turn, so no curvature is needed to maintain road contact. However, a motorcycle leans as it turns, changing the area of the tire that is in contact with the road, hence requiring a “U-shaped” profile.<sup>398</sup> One test driver noted that the Slingshot “rides on low-profile, auto-style tires designed specifically for the Slingshot, the treads of which aren't rounded for cornering as they are on a motorcycle, but squared for traction.”<sup>399</sup> Record evidence further supports that unlike a typical motorcycle tire, the Slingshot tires have a profile of a passenger tire that is not “U-shaped.”<sup>400</sup> Polaris notes that its Slingshot tires are not marked with “M/C,” the marking used by the *Yearbook* to indicate a motorcycle tire.<sup>401</sup> Additionally, the sizes of these Slingshot tires are similar to passenger tires.<sup>402</sup> Indeed, Petitioner has shown that some riders use passenger vehicle tires on

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<sup>394</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China—Scope of the Investigations, Petitioner's Submission of Rebuttal Factual Information to Polaris' Scope Exclusion Request,” January 8, 2015 (Petitioner's January 8 Scope Comments).

<sup>395</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China—Scope of the Investigation, Petitioner's Reply to Kenda's Exclusion Request of Motorcycle Tires,” November 18, 2014 (Petitioner's November 18 Scope Comments).

<sup>396</sup> *Id.*, at Attachment 1.

<sup>397</sup> *Id.*

<sup>398</sup> *Id.*

<sup>399</sup> See Petitioner's January 8 Scope Comments at Attachment 3.

<sup>400</sup> See Petitioner's November 18 Scope Comments.

<sup>401</sup> See Letter from Polaris, “Certain Passenger Vehicle and Light Truck Tires from China: Exclusion of Certain Specialty Tires from the Scope of Investigation,” December 30, 2014.

<sup>402</sup> *Id.*

conventional motorcycles.<sup>403</sup> Despite Polaris' markings that these tires are to be used for Slingshots only, Polaris has not identified any physical difference that would preclude the use of these tires on passenger vehicles. The record evidence demonstrates that based on physical characteristics, Slingshot tires, regardless of their end-use on a Slingshot machine, are passenger tires. Exclusion of these Slingshot tires creates a potential for circumvention denying Petitioner the relief it seeks. Therefore, we are not amending the scope to exclude Polaris' Slingshot tires.

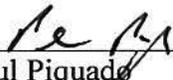
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<sup>403</sup> See Petitioner's November 18 Scope Comments at Attachment 1.

**XI. RECOMMENDATION**

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

Agree                       Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
For Enforcement and Compliance

11 JUNE 2015  
\_\_\_\_\_  
Date

Attachment

## Attachment

### Yongsheng AFA Subsidy Rate Calculation

Program Name		Rate
1	Government Policy Lending	1.31%
2	Discounted Loans for Export-Oriented Enterprises	10.54%
3	Export Seller's Credits from State-Owned Banks	4.25%
4	Export Buyer's Credits from State-Owned Banks	10.54%
5	Export Credit Insurance Subsidies	0.05%
6	Export Credit Guarantees	0.19%
7	Provision of Carbon Black for LTAR	8.15%
8	Provision of Nylon Cord for LTAR	0.44%
9	Provision of Synthetic Rubber and Butadiene for LTAR	1.08%
10	Provision of Natural Rubber for LTAR	0.43%
11	Provision of Land-Use Rights to Passenger Tire Producers for LTAR	2.55%
12	Provision of Land-Use Rights to SOEs for LTAR	2.55%
13	Provision of Land-Use Rights for FIEs for LTAR	0.59%
14	Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR	4.97%
15	Provision of Electricity for LTAR	1.16%
16	Income Tax Reduction for HNTes	25.00%
17	Income Tax Reduction for Advanced-Technology FIEs	
18	Enterprise Income Tax Law, R&D Program	0.11%
19	Two Free, Three Half Program for FIEs	0.41%
20	Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs	1.38%
21	Income Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment	1.38%
22	Import Tariff and VAT Exemptions for Imported Equipment	9.71%
23	VAT Refunds on FIE Purchases of Chinese-Made Equipment	3.46%
24	VAT Refunds for Domestic Firms on Purchases of Chinese-Made Equipment	3.46%
25	VAT Exemptions and Deductions for Central Regions	0.31%
26	State Key Technology Renovation Project Fund Program	0.55%
27	Famous Brands Program	0.55%
28	Special Fund for Energy-Saving Technology Reform	0.01%
29	The Clean Productions Technology Fund	0.55%
30	Export Interest Subsidy Funds for Enterprises Located in Guangdong and Zhejiang Provinces	0.55%
31	Funds for "Outward Expansion" of Industries in Guangdong Province	0.08%
32	Fixed Asset Investment Subsidies	0.02%

33	Tax Awards	0.04%
34	Provincial International Market Development Fund Grant	0.55%
35	Provincial Import Discount Loan Subsidy	0.55%
36	Subsidies for Companies Located in the Hefei Economic and Technology Development Zone	0.55%
37	Anhui Province Subsidies for FIEs	0.55%
38	Hefei Municipal Export Promotion Policies	0.55%
39	Subsidies for Companies Located in the Kunshan Economic and Technological Development Zone	0.55%
40	Weihai Municipality Subsidies for the Automobile and Tire Industries	0.55%
41	Subsidies for Companies Located in the Rongcheng Economic Development Zone	0.55%
	<b>Total AFA Rate:</b>	<b>100.77%</b>