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Washington, D. C. 20230

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Investigation  
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August 7, 2015

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Countervailing Duty Investigation of Certain Polyethylene  
Terephthalate Resin from the People's Republic of China:  
Decision Memorandum for the Preliminary Determination

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## I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain polyethylene terephthalate (PET) resin from the People's Republic of China (PRC), as provided in section 703 of the Tariff Act of 1930, as amended (Act). This investigation covers two producer/exporter entities: (1) Dragon Special Resin (Xiamen) Co., Ltd. (Dragon); Xiang Lu Petrochemicals Co., Ltd.; Xianglu Petrochemicals (Zhangzhou) Co., Ltd.; and Xiamen Xianglu Chemical Fiber Company Limited (collectively, Dragon Group); and (2) Jiangyin Xingyu New Material Co., Ltd., Jiangsu Xingye Plastic Co., Ltd., Jiangyin Xingjia Plastic Co., Ltd., Jiangyin Xingtai New Material Co., Ltd., Jiangsu Xingye Polarization Co., Ltd., Jiangsu Sanfangxiang Group Co., Ltd., Jiangyin Hailun Petrochemicals Co., Ltd., Jiangyin Xinlun Chemical Fiber Co., Ltd., Jiangyin Huasheng Polymer Co., Ltd., Jiangsu Sanfangxiang International Trading Co., Ltd., Jiangyin Huayi Polymerization Co., Ltd., Jiangyin Xingsheng Plastic Co., Ltd., Jiangyin Chemical Fibre Co., Ltd., Jiangyin Huaxing Synthetic Co., Ltd., and Jiangyin Bolun Chemical Fiber Co., Ltd., and one additional company<sup>1</sup> (collectively, Xingyu).

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<sup>1</sup> The identity of this company is business proprietary information (BPI). For further details, see Memorandum from Ilissa Kabak Shefferman, International Trade Compliance Analyst, AD/CVD Operations, Office VI, to Angelica Townshend, Program Manager, AD/CVD Operations, Office VI, "Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Preliminary Determination Calculations for Xingyu," dated August 7, 2015 (Xingyu Preliminary Calculation Memo).

## II. BACKGROUND

### A. Case History

On March 10, 2015, the Department received countervailing duty (CVD) and antidumping duty (AD) Petitions concerning imports of PET resin from the PRC filed in proper form by DAK Americas, LLC, M&G Chemicals, and Nan Ya Plastics Corporation, America (collectively, Petitioners).<sup>2</sup> On March 30, 2015, the Department initiated a CVD investigation of PET resin from the PRC.<sup>3</sup> Supplements to the Petition and our consultations with the Government of the PRC are described in the Initiation Checklist.<sup>4</sup> On April 2, 2015, we released U.S. Customs and Border Protection (CBP) data to parties under the Administrative Protective Order (APO). On April 13, 2015, we received comments on the CBP data from Petitioners. On April 23, 2015, we also released public research regarding the production and/or exportation of PET resin from the PRC.<sup>5</sup> We did not receive comments on this public research.

The Department determined to individually examine Dragon and Xingyu in this investigation<sup>6</sup> and, on April 28, 2015, the Department issued a CVD questionnaire to the Government of the PRC (GOC). Dragon filed its affiliation questionnaire response on May 18, 2015 (May 18 response). On June 1, 2015, in response to the Department's May 28, 2015 letter concerning the treatment of BPI,<sup>7</sup> Dragon re-filed its May 18 response. On June 15, 2015, Dragon filed its response to the initial countervailing duty questionnaire. Xingyu filed initial questionnaire responses on June 15, 22, and 29, 2015. The GOC filed an initial questionnaire response on June 15, 2015.

Between May 21, and July 22, 2015, the Department issued supplemental questionnaires to Dragon, Xingyu, and the GOC. Responses to these questionnaires were timely received between June 15 and July 28, 2015.

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<sup>2</sup> See "Petition for the Imposition of Countervailing Duties on Imports of Certain Polyethylene Terephthalate Resin from the People's Republic of China," dated March 10, 2015 (Petition) and the accompanying AD Petition.

<sup>3</sup> See *Certain Polyethylene Terephthalate Resin from the People's Republic of China, India, and the Sultanate of Oman: Initiation of Countervailing Duty Investigations*, 80 FR 18369 (April 6, 2015) (*Initiation*). On the same date we also published a notice of initiation for the AD investigation of PET film from the PRC. See *Certain Polyethylene Terephthalate Resin from Canada, the People's Republic of China, India, and the Sultanate of Oman: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 18376 (April 6, 2015) (*AD Initiation*); see also Countervailing Duty Investigation Initiation Checklist: Certain Polyethylene Terephthalate Resin from the People's Republic of China (PRC CVD Initiation Checklist), dated March 30, 2015.

<sup>4</sup> See PRC CVD Initiation Checklist.

<sup>5</sup> See Memorandum to File from Ilissa Kabak Shefferman, "Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Placement of Information on the Record, dated April 23, 2015.

<sup>6</sup> See "Respondent Selection" section below. See also Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China, Memorandum from Yasmin Nair, Senior International Trade Compliance Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, dated April 27, 2015 (Respondent Selection Memo).

<sup>7</sup> See Letter dated May 28, 2015, from Brian C. Davis, Acting Program Manager, Office VI, to counsel for Dragon concerning the bracketing of Dragon's May 18 response.

On May 14, 2015, based upon a request from Petitioners, the Department postponed the deadline for this preliminary determination until August 7, 2015.<sup>8</sup> On July 8, 2015, Petitioners submitted proposed benchmark prices for use in calculating a benefit for Input for Less Than Adequate Remuneration (LTAR).

On July 23, 2015, Petitioners submitted pre-preliminary comments. On July 31, 2015, Petitioners filed a request that the Department align the final determination of this CVD investigation with the companion AD investigation of PET resin from the PRC.

#### B. *Period of Investigation*

The period of investigation (POI) is January 1, 2014, through December 31, 2014.

### III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice.<sup>9</sup> We did not receive any scope comments from interested parties.

### IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is polyethylene terephthalate (PET) resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The scope includes blends of virgin PET resin and recycled PET resin containing 50 percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process.

The merchandise subject to this investigation is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

### V. ALIGNMENT

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on Petitioners' request,<sup>10</sup> we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of PET resin from the PRC.

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<sup>8</sup> See *Certain Polyethylene Terephthalate Resin from the People's Republic of China, India, and the Sultanate of Oman: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 80 FR 27635 (May 14, 2015).

<sup>9</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*, 80 FR at 18370.

<sup>10</sup> See Letter from the Petitioners dated July 31, 2015.

Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than December 21, 2015,<sup>11</sup> unless postponed.

## **VI. RESPONDENT SELECTION**

Section 777A(e)(1) the Act directs the Department to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. The countervailing duty petition named 35 exporters and/or producers of subject merchandise, and the CBP entry data identified 21 exporters and/or producers of subject merchandise during the POI. Given the large number of producers/exporters of PET resin from the PRC, the Department found that it would not be practicable to examine each known producer and/or exporter of subject merchandise in this investigation, consistent with section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2).<sup>12</sup> Based on the available resources and the analysis of the CBP data placed on the record, we selected Dragon and Xingyu, the two largest publicly-identifiable producers/exporters of the subject merchandise by volume, for individual examination as mandatory respondents in this investigation.

## **VII. INJURY TEST**

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On April 24, 2015, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of PET resin from the PRC.<sup>13</sup>

## **VIII. 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>14</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

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<sup>11</sup> We note that the current deadline for the final AD determination is December 20, 2015, which is a Sunday. Pursuant to Department practice, the signature date will be the next business day, which is Monday, December 21, 2015. See *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

<sup>12</sup> See Respondent Selection Memo.

<sup>13</sup> See *Certain Polyethylene Terephthalate Resin From Canada, China, India, and Oman: Investigation Nos. 701–TA–531–533 and 731–TA–1270–1273* (May 2015) (Preliminary); *Certain Polyethylene Terephthalate Resin From Canada, China, India, and Oman*, 80 FR 24276 (April 30, 2015).

<sup>14</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*), and accompanying Issues and Decision Memorandum (CFS IDM) at Comment 6.

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>15</sup>

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.<sup>16</sup> Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that the Department has the 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>17</sup> The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.<sup>18</sup>

## IX. SUBSIDIES VALUATION

### 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>19</sup> The Department finds the AUL in this proceeding to be 9.5 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.<sup>20</sup> The Department notified the respondents of the AUL in the initial questionnaire and requested data accordingly.<sup>21</sup> No party in this proceeding disputed this allocation period. Consistent with past practice, in order to appropriately measure any allocated subsidies, the Department will use a 10-year AUL period in this investigation.<sup>22</sup>

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 same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

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

<sup>16</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 Issues and Decision Memorandum (CWP IDM) at Comment 1.

<sup>17</sup> Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

<sup>18</sup> *See* Public Law 112-99, 126 Stat. 265 §1(b).

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

<sup>20</sup> *See* U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

<sup>21</sup> In past CVD investigations involving the PRC, we have stated that we will not countervail subsidies conferred before December 11, 2001, the date of the PRC's accession to the WTO. *See, e.g., 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 Issues and Decision Memorandum (Solar Cells IDM) at Comment 2. This issue is not relevant in this investigation, because the AUL does not go beyond 2002.

<sup>22</sup> *See Issues and Decision Memorandum: Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom*, 70 FR 40000 (July 12, 2005) at Comment 4.

## 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 another corporation 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>23</sup> In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.<sup>24</sup> The Court of International Trade has upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>25</sup>

### Dragon Group

Dragon responded to the Department’s original and supplemental questionnaires on behalf of itself and three affiliated input suppliers: Xiang Lu Petrochemicals Co., Ltd. (Xianglu Petrochemicals); Xianglu Petrochemicals (Zhangzhou) Co., Ltd. (Xianglu Petrochemicals Zhangzhou); and Xiamen Xianglu Chemical Fiber Company Limited (Xiamen Xianglu).<sup>26</sup> These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi); however, the ownership shareholding interests between these companies are not publicly available. For further discussion of ownership issues pertaining to these companies, refer to the Dragon Group Preliminary Calculation Memo.<sup>27</sup>

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<sup>23</sup> See, e.g., *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998).

<sup>24</sup> *Id.*

<sup>25</sup> See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>26</sup> See Dragon’s June 1, 2015 response to bracketing of affiliated companies (June 1 QR) at Attachment 1. See also Dragon’s June 1, 2015 response to Petitioners’ Comments (June 1 Comments).

<sup>27</sup> *Id.* See also Memorandum from Yasmin Nair, Senior International Trade Compliance Analyst, AD/CVD Operations, Office VI, to Angelica Townshend, Program Manager, AD/CVD Operations, Office VI, “Countervailing Duty Investigation of Polyethylene Terephthalate Resin from the People’s Republic of China: Preliminary Determination Calculations for Dragon Special Resin (Xiamen) Co., Ltd.; Xiang Lu Petrochemicals Co., Ltd.; Xianglu Petrochemicals (Zhangzhou) Co., Ltd.; and Xiamen Xianglu Chemical Fiber Company Limited,” dated August 7, 2015 (Dragon Group Preliminary Calculation Memo).

## Summary of Attribution of Subsidies to Dragon Group

Dragon was a producer of the subject merchandise during the POI. Therefore, we attributed subsidies that Dragon received to its sales, in accordance with the relevant provisions of 19 CFR 351.525(b).

Xianglu Petrochemicals, Xianglu Petrochemicals Zhangzhou, and Xiamen Xianglu supplied Dragon with two inputs: purified terephthalic acid (PTA) and monoethylene glycol (MEG). These companies were cross-owned during the POI within the meaning of 19 CFR 351.525(b)(6)(vi). Because Xianglu Petrochemicals, Xianglu Petrochemicals Zhangzhou, and Xiamen Xianglu are input producers that supplied inputs to Dragon that are primarily dedicated to the production of the downstream product pursuant to 19 CFR 341.525(b)(6)(iv), we are attributing all subsidies received by Xianglu Petrochemicals, Xianglu Petrochemicals Zhangzhou, and Xiamen Xianglu to the combined sales of the input and downstream products produced by the input producers and Dragon (net of intercompany sales).<sup>28</sup>

## Xingyu

Jiangyin Xingyu New Material Co., Ltd. (Xingyu New Material) responded to the Department's original and supplemental questionnaires on behalf of itself, a producer/exporter; four additional producer/exporters: Jiangsu Xingye Plastic Co., Ltd. (Xingye Plastic); Jiangyin Xingjia Plastic Co., Ltd. (Xingjia); Jiangyin Xingtai New Material Co., Ltd. (Xingtai); Jiangsu Xingye Polarization Co., Ltd. (Xingye Poly); one parent holding company: Jiangsu Sanfangxiang Group Co., Ltd. (Sanfangxiang Group); the following input suppliers: Jiangyin Hailun Petrochemicals Co., Ltd. (Hailun); Jiangyin Xinlun Chemical Fiber Co., Ltd. (Xinlun); Jiangyin Huasheng Polymer Co., Ltd. (Huasheng); Jiangsu Sanfangxiang International Trading Co., Ltd. (Sanfangxiang Trading); Jiangyin HuaYi Polymerization Co., Ltd. (HuaYi); Jiangyin Xingsheng Plastic Co., Ltd. (Xingsheng); Jiangyin Chemical Fibre Co., Ltd. (Chemical Fibre); Jiangyin Huaxing Synthetic Co., Ltd. (Huaxing); and Jiangyin Bolun Chemical Fiber Co., Ltd. (Bolun); and one additional company; (collectively, Xingyu).<sup>29</sup> These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of parent and input supplier Sanfangxiang Group's majority shareholding in all of the above-named companies; however, the ownership shareholding interests between these companies are not publicly available. For further discussion of ownership issues pertaining to these companies, refer to the Xingyu Preliminary Calculation Memo.<sup>30</sup>

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<sup>28</sup> For the denominators used in the preliminary calculations, *see* Dragon Group Preliminary Calculation Memo.

<sup>29</sup> *See* Xingyu's May 12, 2015 initial affiliation questionnaire response (Xingyu May 12 AQR) at Exhibit 1 and June 15 SAQR at Exhibits 1 and 2.

<sup>30</sup> *See* Memorandum from Ilissa Kabak Shefferman, International Trade Compliance Analyst, AD/CVD, Operations, Office VI, to Angelica Townshend, Program Manager, AD/CVD Operations, Office VI, "Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Preliminary Determination Calculations for Jiangyin Xingyu New Material Co., Ltd.," dated August 7, 2014 (Xingyu Preliminary Calculation Memo).

## Summary of Attribution of Subsidies to Xingyu

Sanfangxiang Group is a parent holding company located in Sanfangxiang Village, Zhouzhuang Town, Jiangyin, China. Sanfangxiang Group also supplied MEG, a primarily dedicated input for the production of PET resin, to at least one cross-owned producer/exporter during the POI. Sanfangxiang Group has majority shareholding in all cross-owned producers/exporters and cross-owned input providers, detailed below.

Xingyu New Material, Xingye Plastic, Xingjia, Xingtai, and Xingye Poly were producers of subject merchandise during the POI. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we attributed subsidies that these companies received to their combined sales (net of intercompany sales).

Sanfangxiang Group, Hailun, Xinlun, Huasheng, Sanfangxiang Trading, Huayi, Xingsheng, Chemical Fibre, Huaxing, and Bolun supplied inputs to the cross-owned producers/exporters noted above. Because these cross-owned suppliers provided inputs to producers/exporters that are primarily dedicated to the production of the downstream product pursuant to 19 CFR 351.525(b)(6)(iv), we are attributing all subsidies received by Sanfangxiang Group, Hailun, Xinlun, Huasheng, Sanfangxiang Trading, HuaYi, Xingsheng, Chemical Fibre, Huaxing, and Bolun to the combined sales of the input and downstream products produced by the input provides and Xingyu New Material, Xingye Plastic, Xingjia, Xingtai, and Xingye Poly (net of intercompany sales).<sup>31</sup>

### C. *Denominators*

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program.<sup>32</sup> As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). For a further discussion of the denominators used, *see* the Preliminary Calculation Memoranda. Similarly, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator (or the total export sales of the cross-owned affiliates, as described above).<sup>33</sup>

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<sup>31</sup> For the denominators used in the preliminary calculations, *see* Xingyu Preliminary Calculation Memo.

<sup>32</sup> *See* 19 CFR 351.525(b)(1)-(5).

<sup>33</sup> *See* 19 CFR 351.525(b)(2).

## X. BENCHMARKS AND DISCOUNT RATES

The Department is investigating loans received by Dragon and Xingyu from PRC state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.<sup>34</sup> The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

### A. Short-Term RMB-Denominated 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.” Normally, the Department uses comparable commercial loans reported by the company as a benchmark.<sup>35</sup> If the firm did not have any comparable commercial loans during the period, the Department’s regulations provide that we “may use a national average interest rate for comparable commercial loans.”<sup>36</sup>

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from the PRC*, loans provided by PRC banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.<sup>37</sup> Because of this, any loans received by the respondents from private PRC 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 PRC benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department’s practice. For example, in *Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.<sup>38</sup>

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *CFS from the PRC*<sup>39</sup> and more recently updated in *Thermal Paper from the PRC*.<sup>40</sup> Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank’s classification of countries as low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship

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<sup>34</sup> See 19 CFR 351.524(b)(1).

<sup>35</sup> See 19 CFR 351.505(a)(3)(i).

<sup>36</sup> See 19 CFR 351.505(a)(3)(ii).

<sup>37</sup> See *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10.

<sup>38</sup> 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 Issues and Decision Memorandum (Lumber IDM) at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

<sup>39</sup> See *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10.

<sup>40</sup> See *Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*) and accompanying Issues and Decision Memorandum (Thermal Paper IDM) at 8-10.

between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.<sup>41</sup> Beginning in 2010, however, the PRC moved to the upper-middle income category and remained there through 2013.<sup>42</sup> Accordingly, as explained further below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2013. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.<sup>43</sup>

After the Department identifies the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.<sup>44</sup>

In each of the years from 2001-2009 and 2011-2013 the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.<sup>45</sup> For 2010, however, the regression does not yield that outcome for the PRC's income group.<sup>46</sup> This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009 and 2011-2013. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010-2013 and "lower middle income" for 2001-2009.<sup>47</sup> First,

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<sup>41</sup> See World Bank Country Classification, <http://econ.worldbank.org/>; see also Memorandum to the File "Countervailing Duty Investigation of 53-Foot Domestic Dry Containers from the People's Republic of China: Benchmark Memo," dated concurrently with this memorandum (Preliminary Benchmark Memo).

<sup>42</sup> See World Bank Country Classification.

<sup>43</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013) and accompanying Preliminary Decision Memorandum at "Benchmarks and Discount Rates," unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013), and accompanying Issues and Decision Memorandum (Shrimp IDM).

<sup>44</sup> The World Bank has not yet published the World Governance Indicators for 2014. Therefore, for this preliminary determination, we have applied the 2013 short-term benchmark rate for situations that require a 2014 short-term benchmark. We intend to update the short-term benchmark if the World Bank releases all necessary information in time for us to analyze it prior to the final determination.

<sup>45</sup> See Memorandum to File from Ilissa Shefferman, International Trade Compliance Analyst, entitled "Banking Memorandum," (August 7, 2015) (Banking Memorandum).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

we did not include those economies that the Department considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.<sup>48</sup> Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.<sup>49</sup>

#### B. *Long-Term RMB-Denominated Loans*

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.<sup>50</sup>

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.<sup>51</sup> Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.<sup>52</sup>

#### C. *Foreign Currency-Denominated Loans*

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is following the methodology developed over a number of successive PRC investigations.<sup>53</sup> For U.S. dollar short-term loans, the Department used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rate for companies with a BB rating. Likewise, for any loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

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

<sup>49</sup> *Id.*

<sup>50</sup> See, e.g., *Thermal Paper from the PRC*, and Thermal Paper IDM at 10.

<sup>51</sup> See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*) and accompanying Issues and Decision Memorandum (Citric Acid IDM) at Comment 14.

<sup>52</sup> See Dragon Group Preliminary Calculation Memo.

<sup>53</sup> See Thermal Paper IDM at 10.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question. *See* Banking Memorandum for the resulting inflation-adjusted benchmark lending rates.

#### D. *Discount Rates*

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.<sup>54</sup> The interest rate benchmarks and discount rates used in our preliminary calculations are provided in Dragon and Xingyu’s Preliminary Calculation Memoranda.<sup>55</sup>

#### E. *Input Benchmarks*

The Department normally relies on so-called “first-tier” benchmarks, pursuant to 19 CFR 351.511(a)(2)(i), which include prices stemming from actual transactions between private parties, actual imports, and, in certain circumstances, actual sales from competitively run government auctions, unless it determines that prices from such transactions are not available or are not suitable as benchmarks because the foreign government’s presence in the input market is significant enough to lead to distorted prices. While no party suggested the use of “first-tier” benchmarks for MEG or PTA or submitted information specifically for this purpose, respondents did report the information concerning their imports of MEG and PTA during the POI. Under 19 CFR 351.511(a)(2)(i), actual imports may be considered a “first-tier” benchmark.

For MEG, the GOC provided information indicating that imports of MEG accounted for nearly 70 percent of domestic consumption.<sup>56</sup> Given the large penetration of imports of MEG in the PRC MEG market, and the lack of other evidence on the record to show that SOEs or government agencies through other methods had control of, or otherwise distorted, these markets during the POI, we preliminarily determine that the GOC’s presence in this market is not significant enough to lead to distorted domestic prices.

For PTA, the majority of PTA that is consumed within the PRC is provided by domestic production.<sup>57</sup> However, the GOC provided information demonstrating that only 10 percent of domestic production is attributable to producers with majority government management or ownership interests.<sup>58</sup> Given the relatively small market share of state holdings in PRC PTA producers, and the lack of other evidence on the record to show that SOEs or government

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<sup>54</sup> *Id.*

<sup>55</sup> *See* Dragon Group Preliminary Calculation Memo and Xingyu Preliminary Calculation Memo.

<sup>56</sup> *See* GOC Questionnaire Response, dated June 15, 2015 (GOC IQR) at 89-90.

<sup>57</sup> *Id.* at 109-111.

<sup>58</sup> *Id.*

agencies through other methods had control of, or otherwise distorted, these markets during the POI, we preliminarily determine that the GOC's presence in the PTA market is not significant enough to lead to distorted domestic prices.<sup>59</sup>

For the reasons described above, we preliminary determine that the GOC's involvement in the MEG and PTA markets does not lead to significantly distorted MEG and PTA prices in the PRC. Thus, we further preliminarily determine that it is appropriate to rely on actual import transactions reported by the respondents as benchmarks for MEG and PTA, pursuant to 19 CFR 351.511(a)(2)(i), to determine the subsidy rate during the POI for the provision of MEG and PTA for less than adequate remuneration (LTAR).

## **XI. 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, use the "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. For purposes of this preliminary determination, we are relying on facts otherwise available with respect to certain of the respondent companies and the GOC, as described below.

Section 776(b) of the Act further provides that the Department may use an adverse inference in relying on 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. For purposes of this preliminary determination, we find it necessary to rely on adverse facts available (AFA) with respect to the GOC, as described below.

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>60</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>61</sup>

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<sup>59</sup> We make this finding based solely on the facts of this particular case. In other cases, even if there are similar levels of import penetration and SOE production as here, we may consider other indicators of market distortion in determining whether domestic prices can serve as an appropriate benchmark.

<sup>60</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>61</sup> See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

## *Application of Facts Available*

### Dragon Group – Import Duty Rate for Purchases of Capital Equipment

In its questionnaire response, Dragon Group did not report the original import duty rates for certain of its capital equipment purchases.<sup>62</sup> We asked in a supplemental questionnaire for these rates, and Dragon Group replied that these rates were unavailable because the import purchase included various components.<sup>63</sup>

The original import duty rates are necessary to calculate a benefit for the Import Tariff and Value-Added Tax (VAT) Exemptions on Imported Equipment in Encouraged Industries program. Therefore, pursuant to section 776(a)(1) of the Act, as facts available (FA) in this investigation, where Dragon Group did not report import duty rates, we are using the highest import duty rate that Dragon Group did report for its other import purchases to calculate the benefit under this program.

### Dragon Group and Xingyu – Provision of MEG and PTA for Less Than Adequate Remuneration

In their questionnaire responses, Dragon Group and Xingyu reported “unknown” for the name of the producer of certain purchases of MEG and PTA that were made during 2014.<sup>64</sup> In a supplemental questionnaire, we asked Dragon Group to describe the steps it undertook in its attempt to gather the requested producer identifications. Dragon Group responded by describing how it ascertained the identities of the producers that it did report.<sup>65</sup> Specifically, it either obtained the requested information from the packing bags or it obtained the producer information directly from the suppliers.<sup>66</sup> Where it could not obtain the requested producer information, Dragon Group reported “unknown.”

As for Xingyu, regarding its reporting of “unknown” for the producer name of certain MEG purchases, Xingyu stated that such purchases do not have accompanying product specification certificates from the producers. Xingyu stated that the only documentation accompanying these MEG purchases were “Goods Received Notes,” which show only the identity of the suppliers, not the producers.<sup>67</sup>

Based on the above, because Dragon Group and Xingyu were unable to identify the producer(s) of the MEG and PTA that was purchased from trading companies, the GOC was not able to provide a response to the Input Producer Appendix for those purchases. We find that the necessary information for these unidentified producers is not on the record. As such, we have no information that would enable us to determine that these producers are not “authorities” within the meaning of section 771(5)(B) of the Act. Therefore, pursuant to section 776(a)(1) of the Act, as facts available (FA) in this investigation, we preliminarily find that the percentage of MEG

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<sup>62</sup> See Dragon’s June 15, 2015 Initial Questionnaire Response (Dragon IQR) at Exhibit 24.

<sup>63</sup> See Dragon’s July 16, 2015 Supplemental Questionnaire Response (July 16 SQR) at page 6.

<sup>64</sup> See Dragon IQR at Exhibits 28 and 31 and Xingyu June 15, June 22, and June 29 IQRs.

<sup>65</sup> See July 16 SQR at pages 1 and 2.

<sup>66</sup> *Id.*

<sup>67</sup> See Xingyu’s July 16 SQR at pages 4-5.

and PTA supplied to Dragon Group and Xingyu by trading companies produced by unidentified suppliers is produced by “authorities” at the same ratio of MEG and PTA by state-owned enterprises (SOEs) during the POI.<sup>68</sup> Therefore, we find that this portion of the MEG and PTA supplied by these “unknown” enterprises constitutes a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act and that Dragon Group and Xingyu received a benefit to the extent that the price they paid for the MEG and PTA produced by these producers was for LTAR. Our use of FA in this regard is consistent with the Department’s practice<sup>69</sup> and section 776(a) of the Act.

### *Application of Adverse Facts Available*

#### GOC – Provision of Electricity for LTAR

The GOC did not provide complete responses to the Department’s questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act. In both the Department’s original questionnaire and the July 2, 2015 supplemental questionnaire, the Department asked the GOC to provide, for each province in which a respondent is located, a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no provincial-specific information in response to these questions in its initial questionnaire response.<sup>70</sup> The Department reiterated these questions in a supplemental questionnaire and the GOC did not provide the requested information in its supplemental questionnaire response.<sup>71</sup> This information is necessary for determining whether the GOC provides a subsidy that is specific under this program.

Consequently, we preliminarily determine that necessary information is not available on the record and that the GOC withheld information that was requested of it. Thus, the Department must rely on facts otherwise available in making our preliminary determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. In this regard, despite being asked twice for the information, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In drawing an

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<sup>68</sup> See GOC IQR at 89-90 and 110-111.

<sup>69</sup> See *Aluminum Extrusions From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying Issues and Decision Memorandum at “Provision of Primary Aluminum for LTAR” and Comment 18.

<sup>70</sup> See the GOC’s June 15, 2015 Initial Questionnaire Response (GOC IQR) at 121.

<sup>71</sup> See the GOC’s July 16, 2015 Supplemental Questionnaire Response (GOC July 16 SQR) at 23-24.

adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and that there is specificity within the meaning of section 771(5A) of the Act. We also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we selected are derived from information from the record of the instant investigation and are the highest electricity rates on this record for the applicable rate and user categories.<sup>72</sup>

#### GOC – Whether Certain PTA and MEG Producers Are “Authorities”

As discussed below under the section “Programs Preliminarily Found to be Countervailable,” the Department is investigating whether the GOC provided PTA and MEG for LTAR. We asked the GOC to provide information regarding the specific companies that produced the PTA and MEG that the mandatory respondents purchased during the POI. Specifically, we sought information from the GOC that would allow us to analyze whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act. For each producer that the GOC claimed was privately owned by individuals during the POI, we requested identification of the owners, members of the board of directors, or managers of the producers who were also government or Chinese Communist Party (CCP) officials or representatives during the POI.

The GOC did not provide this requested information for any producer. Instead, the GOC argued that “even if an owner, a director, or a manager of the two producers is a Government or CCP official, this individual can never have additional responsibility, authority and/or capacity regarding the operation of the company as a consequence of his/her official or representative identity.”<sup>73</sup>

Because the GOC did not provide information we need for our analysis, we asked for this information a second time, in a supplemental questionnaire issued on July 2, 2015. The GOC referred back to its June 15, 2015 initial questionnaire response and stated that it could not provide additional information.<sup>74</sup>

The GOC did not identify the individual owners, members of the board of directors or senior managers of the producers who were CCP officials during the POR for any producer. The Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be relevant because public information suggests that the CCP exerts significant control over activities in the PRC.<sup>75</sup> We have explained our understanding of the CCP's involvement in the PRC's economic and political structures in past proceedings.<sup>76</sup> With

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<sup>72</sup> See Preliminary Benchmark Memo.

<sup>73</sup> See GOC's IQR at 76-77.

<sup>74</sup> See GOC's July 16 SQR at 13.

<sup>75</sup> See Memorandum from Ilissa Kabak Shefferman, International Trade Compliance Analyst to the File, “Placement of information onto the record” (August 7, 2015).

<sup>76</sup> *Id.*

regard to the GOC's claim that PRC law prohibits GOC officials from taking positions in private companies, we have previously found that this particular law does not pertain to CCP officials.<sup>77</sup>

The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act. The GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC's responses in prior CVD proceedings involving the PRC demonstrate that it is, in fact, able to access information similar to what we requested.<sup>78</sup> Additionally, pursuant to section 782(c) of the Act, if the GOC could not provide any information, it should have promptly explained to the Department what attempts it undertook to obtain this information and proposed alternative forms of providing the information.<sup>79</sup>

We preliminarily find that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in issuing our preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, we preliminarily find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. As AFA, we are finding that certain producers of PTA and MEG for which the GOC failed to identify whether the members of the board of directors, owners or senior managers were CCP officials, are "authorities" within the meaning of section 771(5)(B) of the Act.

For details on the calculation of the subsidy rate for the respondents, *see* below at "Provision of MEG for LTAR" and "Provision of PTA for LTAR."

#### GOC – Provision of PTA and MEG is Specific

The Department asked the GOC to provide a list of industries in the PRC that purchase PTA and MEG directly and to provide the amounts (volume and value) purchased by each of the

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<sup>77</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 Issues and Decision Memorandum at 16.

<sup>78</sup> *See, e.g., High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012) (*HPSC from the PRC*), and accompanying Issues and Decision Memorandum (HPSC IDM) at 13.

<sup>79</sup> Section 782(c)(1) of the Act states, "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority of the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party." Furthermore, the Department's questionnaire explicitly informs respondents that if they are unable to respond completely to every question in the questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, the respondents must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response.

industries, including the PET resin industry.<sup>80</sup> The Department requests such information for purposes of its *de facto* specificity analysis. The GOC stated that it does not collect this information and could not provide the requested information regarding the industries in the PRC that purchase PTA and MEG directly.<sup>81</sup> In our July 2, 2015 supplemental questionnaire, we asked a second time for this information, and instructed the GOC that it should explain what steps it took in its attempt to gather the data. We also instructed the GOC to explain why it could not solicit the requested information from the China Chemical Fibers Association (CCFA) or some other public source. Again, the GOC did not provide the requested information.<sup>82</sup> It also did not explain how it attempted to gather the requested information, nor why this information is not available from the CCFA or other public source.<sup>83</sup>

Therefore, consistent with past proceedings,<sup>84</sup> we preliminarily determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that the Department must rely on “facts available” in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC’s provision of MEG and PTA is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

#### GOC - Energy Savings Technology Reform

Dragon Group reported, and the GOC confirmed, use of the Energy Savings Technology Reform program. However, the GOC did not provide the information we requested to determine whether this program is *de facto* specific. Namely, the GOC stated it did not collect the information relating to:

- (a) The amount of assistance approved for each mandatory respondent company, including all cross-owned companies and trading companies that sell the subject merchandise to the United States.
- (b) The total amount of assistance approved for all companies under the program.
- (c) The total number of companies that were approved for assistance under this program.
- (d) The total amount of assistance approved for the industry in which the mandatory respondent companies operate, as well as the totals for every other industry in which companies were approved for assistance under this program.
- (e) The total number of companies that applied for, but were denied, assistance under this program.<sup>85</sup>

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<sup>80</sup> See Initial Questionnaire at Section B.1 and B.2.

<sup>81</sup> See GOC IQR at 92 and 113.

<sup>82</sup> See GOC July 16 SQR at 18-19.

<sup>83</sup> *Id.*

<sup>84</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 Issues and Decision Memorandum (Wind Towers IDM) at Comment 13.

<sup>85</sup> See GOC IQR at 12.

The GOC also did not provide this information when it was requested of it in the Department’s supplemental questionnaire.<sup>86</sup> Again, it stated that it did not collect these data.<sup>87</sup> Therefore, we preliminarily determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that the Department must rely on “facts available” in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC’s provision of Energy Savings Technology Reform is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

#### GOC – Provision of “Other Subsidies” as Specific

In response to Dragon Group’s and Xingyu’s self-reporting of numerous “Other Subsidies” in their initial questionnaire responses,<sup>88</sup> we issued a supplemental questionnaire to the GOC requesting full questionnaire responses regarding these initially-reported “Other Subsidies.” In its response, the GOC provided no information regarding these subsidy programs, other than the amount of the grants and year of receipt, in either its initial questionnaire response or its supplemental questionnaire response.<sup>89</sup> In its supplemental questionnaire response, the GOC stated that due to time limitations and the number of local government entities involved, it was unable to provide full questionnaire responses regarding these initially-reported “Other Subsidies” reported by respondents in initial questionnaire responses. The GOC further stated that it believes the limited information it did provide (*i.e.*, the amount and year of receipt) is sufficient for the Department to make a determination for the subsidy rate calculation.

Based upon the above, we preliminarily determine that necessary information to determine whether these initially-reported “Other Subsidies” are specific is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that the Department must rely on “facts available” in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC’s provision of these initially-reported “Other Subsidies” is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

In addition, late in the proceeding, on July 20, Dragon Group reported in a supplemental questionnaire response the receipt of 84 additional “Other Subsidies” during the POI and AUL.<sup>90</sup>

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<sup>86</sup> See GOC July 16 SQR at 2.

<sup>87</sup> *Id.*

<sup>88</sup> See Dragon IQR at Section G: Other Subsidies; see also Xingyu’s June 15, June 22, and June 29 IQRs.

<sup>89</sup> See GOC IQR at Section F: Other Subsidies; see also GOC July 16 SQR at 30.

<sup>90</sup> See Dragon 7/20 SQR.

These subsidy programs were not part of the initiation of this investigation. As noted above, the GOC stated its intention in its initial questionnaire response to not respond to questioning regarding “Other Subsidies.” Specifically, the GOC stated, “[i]n the absence of allegations and sufficient evidence in respect of “other” subsidies, consistent with Article 11.2 and other relevant articles of the WTO Agreement on Subsidies and Countervailing Measures no reply to this question is warranted or required.”<sup>91</sup> Accordingly, there is no information on the record from the GOC regarding these 84 “Other Subsidies.”

Based upon the above, we preliminarily determine that necessary information to determine whether these 84 “Other Subsidies” confer a financial contribution and constitute specific subsidies is not available on the record and that the GOC has withheld requested information. Thus, the Department must rely on “facts available” in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the GOC’s provision of various “Other Subsidies” is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act and constitute a financial contribution pursuant to section 771(5)(D) of the Act.

## **XII. ANALYSIS OF PROGRAMS**

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

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

#### **1. Policy Loans to the PET Resin Industry**

The Department is examining whether the GOC has encouraged the development of the PET resin industry through financial support from SOCBs and government policy banks, such as the China Development Bank.

When examining a loan program, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support objectives or goals. Where such plans or policy directives exist, then it is our practice to find that a policy lending program exists that is specific to the named industry (or producers that fall under that industry). Once that finding is made, we rely upon the analysis undertaken in *CFS from the PRC*, supplemented by the subsequent analysis in the Public Bodies Memorandum, to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.

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<sup>91</sup> See GOC IQR at page 128.

Dragon and Xingyu, as well as their cross-owned companies, reported having loans outstanding from SOCBs in the PRC during the POI.<sup>92</sup> The Department preliminarily finds that these loans are countervailable. The information on the record indicates the GOC placed great emphasis on targeting the petrochemical and, more specifically, the ethylene industries (both of which are involved in the production of PET resin), for development in recent years. For example, the “*Guidelines of the 11<sup>th</sup> Five-Year Plan for National Economic and Social Development (2006-2010)*” calls for the support of the petrochemical industry and specifically the ethylene industry.<sup>93</sup> Additionally, the *Guidance Catalogue on Industrial Structural Adjustment (2011)*, (Revised 2013) lists the petrochemical industry as an “encouraged category.”<sup>94</sup> Also, the *Order of the State Development Planning Commission and the State Economic and Trade Commission on Distributing the List of industries, Products and Technologies Currently Encouraged by the State for Development (Revised in 2000)* lists the ethylene industry as “encouraged.”<sup>95</sup> Finally, the *Decision of the State Council on Promulgating and Implementing the ‘Temporary Provisions on Promoting Industrial Structure Adjustment’ No. 40* states in the preamble that “All relevant administrative departments shall speed up the formulation and amendment of policies on public finance, taxation, credit, land, import and export, etc., effectively intensify the coordination and cooperation with industrial policies, and further improve and promote the policy system on industrial structure adjustment” with respect to the listed industrial categories.<sup>96</sup> Article 6 of the Decision of the State Council on Promulgating the Interim Provision on Promoting Industrial Structure Adjustment for Implementation (No. 40 (2005)) lists the petrochemical and ethylene industries.<sup>97</sup>

Therefore, given the evidence demonstrating the GOC’s objective of developing the petrochemical and (more specifically) the ethylene sector, through preferential loans, we preliminarily determine there is a program of preferential policy lending specific to producers of PET resin within the meaning of section 771(5A)(D)(i) of the Act. We also preliminarily 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.”<sup>98</sup> The loans provide a benefit equal to the difference between what the recipients paid in interest on their loans and the amount they would have paid on comparable commercial loans.<sup>99</sup> To calculate the benefit from this program, we used the benchmarks discussed above under the “Subsidy Valuation Information” section.<sup>100</sup> To calculate the net countervailable subsidy rate under this program we divided the benefit by the appropriate sales denominator (exclusive of inter-company sales), as described in the “Subsidies Valuation” section, above.

On this basis, we preliminarily determine a subsidy rate of 7.21 percent *ad valorem* for Dragon Group and 1.34 percent *ad valorem* for Xingyu.

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<sup>92</sup> See Dragon’s IQR at Exhibit 21; see also Xingyu’s Initial QR at Exhibit 9.

<sup>93</sup> See GOC’s IQR at Exhibit 7, Chapter 13, section 2.

<sup>94</sup> *Id.* at Exhibit 15, Chapter XI.

<sup>95</sup> *Id.* at Exhibit 16, Article 17.

<sup>96</sup> *Id.* at Exhibit 17.

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

<sup>98</sup> See, e.g., *OTR Tires Final Determination*, and accompanying IDM at Comment E2.

<sup>99</sup> See section 771(5)(E)(ii) of the Act.

<sup>100</sup> See also 19 CFR 351.505(c).

## **2. Preferential Export Financing**

Dragon Group and Xingyu reported receiving loans from the Export-Import Bank of China (EIBC) during the POI.<sup>101</sup> Dragon Group reported that these loans were for export order financing.<sup>102</sup> Xingyu reported that these loans were for purchase of materials, fixed facilities, and imports.

We preliminarily find that Dragon Group's loans from the EIBC that were outstanding during the POI are countervailable export loans. As a loan from a government policy bank, these loans constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act. We further determine that the EIBC export loans are specific under section 771(5A)(B) of the Act because receipt of the financing is contingent upon export performance. Also, we determine that the export loans confer a benefit within the meaning of section 771(5)(E)(ii) of the Act.

To calculate the benefit under this program, we compared the amount of interest paid against the export loans to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the "Benchmarks and Discount Rates" section. To calculate the net countervailable subsidy rate for Dragon Group and Xingyu, we divided the benefits by the appropriate total export sales denominator (exclusive of inter-company sales), as described in the "Subsidies Valuation" section, above.

On this basis, we preliminarily determine the net countervailable subsidy rate to be 2.84 percent *ad valorem* for Dragon Group and 0.21 percent *ad valorem* for Xingyu.

## **3. Export Seller's Credits**

Xingyu reported that three cross-owned respondents carried outstanding loans during the POI from EIBC.<sup>103</sup> The GOC identified Sanfangxiang Group, Xingyu New Material, and Xingye Plastic as recipients of loans under the Export Seller's Credits program.<sup>104</sup> Based on the GOC's identification of use of this program by these three Xingyu respondents, we are preliminarily classifying these loans as Export Seller's Credits for this preliminary determination, but will seek further clarification regarding the nature of these loans prior to the final determination.

Consistent with *Citric Acid from the PRC*, we find that the loans provided by the GOC under this program constitute a financial contribution under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act.<sup>105</sup> The loans also provide a benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between the interest the recipient paid and what it would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated

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<sup>101</sup> See Dragon IQR at 17 and Exhibit 21.

<sup>102</sup> See Dragon IQR at 17.

<sup>103</sup> See Sanfangxiang Group June 15 IQR at Exhibit 8, Xingyu New Material June 15 IQR at Exhibit 11, and Xingye Plastic June 15 IQR at Exhibit 10.

<sup>104</sup> See GOC IQR at 30.

<sup>105</sup> See Citric Acid IDM at 13.

exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(B) of the Act.<sup>106</sup>

To calculate the benefit under this program, we compared the amount of interest paid against the export loans to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the “Benchmarks and Discount Rates” section. To calculate the net countervailable subsidy rate for Xingyu, we divided the benefits by the the appropriate total export sales denominator (exclusive of inter-company sales), as described in the “Subsidies Valuation” section, above. As neither the GOC nor Dragon Group report Dragon Group’s use of this program, no subsidy rate is calculated for Dragon for this program.

On this basis, we preliminarily determine the net countervailable subsidy rate to be 0.53 percent *ad valorem* for Xingyu.<sup>107</sup>

#### **4. Import Tariff and Value-Added Tax (VAT) Exemptions on Imported Equipment in Encouraged Industries**

Circular 37 exempts foreign invested enterprises (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>108</sup> As of January 1, 2009, the GOC discontinued VAT exemptions under this program, but companies can still receive import duty exemptions. Dragon Group and Xingyu reported receiving VAT and tariff exemptions under this program as FIEs. The Department has previously found VAT and tariff exemptions under this program to confer countervailable subsidies.<sup>109</sup>

Consistent with *Wood Flooring from the PRC*, we preliminarily 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 and they provide a benefit to the recipient in the amount of VAT and tariff savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily 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.

Since this indirect tax is provided for, or tied to, the capital structure or capital assets of a firm, as reported by the respondents, the Department treated this tax as a non-recurring benefit and allocated the amount of the VAT and/or tariff exemptions, as applicable in the given year, over

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<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> See GOC IQR at 51.

<sup>109</sup> See *Multilayered Wood Flooring From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011) (*Wood Flooring from the PRC*), and accompanying Issues and Decision Memorandum.

the AUL. 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 for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described above in the section “Subsidies Valuation Information,” to calculate the amount of the benefit allocable to the POI. We then divided the benefit amount by the appropriate sales denominator (exclusive of inter-company sales), as described in the “Subsidies Valuation” section, above.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.54 percent *ad valorem* for Dragon Group and 0.02 percent *ad valorem* for Xingyu under this program.

## **5. Provision of Inputs for LTAR**

### **a. Provision of MEG and PTA for LTAR**

The Department is examining whether Dragon Group or Xingyu purchased MEG and PTA, predominant inputs for PET resin, at LTAR. We requested information from the GOC regarding the specific companies that produced these input products that Dragon Group and Xingyu purchased during the POI. Specifically, we sought information from the GOC that would allow us to determine whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act. The GOC provided information indicating several producers of MEG and PTA are SOEs.<sup>110</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 state-owned enterprises in the PRC possess, exercise, or are vested with governmental authority.<sup>111</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 preliminarily 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.<sup>112</sup>

As described above in the “Use of Facts Otherwise Available and Adverse Inferences” section, for the remaining producers, the GOC failed to cooperate to the best of its ability in responding to our requests for information. Therefore, we determine as AFA that the remaining producers of MEG and PTA purchased by both respondents are “authorities” within the meaning of section 771(5)(B) of the Act and, as such, that the provision of MEG and PTA constitutes a financial contribution under section 771(5)(D)(iii) of the Act. As described above, in the “Use of Facts Otherwise Available and Adverse Inferences” section of this memorandum, for purchases where respondents reported “unknown” for the producer information, we are calculating a benefit on

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<sup>110</sup> See GOC IQR at Exhibit 34, 35, 44, and 45.

<sup>111</sup> See Memorandum from Ilissa Kabak Shefferman, International Trade Compliance Analyst to the File, “Placement of information onto the record” (August 7, 2015).

<sup>112</sup> See *Oil Country Tubular Goods from the People’s Republic of China; Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014), and accompanying Issues and Decision Memorandum at Comment 6.

the basis of the ratio of government-ownership in MEG and PTA producers, as reported by the GOC.

As explained in the “Use of Facts Otherwise Available and Adverse Inferences” section of this memorandum above, we preliminarily determine that the GOC is providing MEG and PTA to a limited number of industries and enterprises, and, hence, that the subsidies under these programs are specific pursuant to section 771(5A)(D)(iii).

As discussed above under the “Benchmarks and Discount Rates” section, the Department preliminarily determines it is appropriate to use actual import transaction prices reported by respondents for MEG and PTA as benchmark prices, *i.e.*, “tier-one” prices, to calculate the benefit under these programs. Consistent with our practice, the Department adjusted the benchmark prices to include delivery charges, import duties, and VAT, pursuant to 19 CFR 351.511(a)(2)(iv). Regarding delivery charges, we included ocean freight and the inland freight charges incurred by Xingyu and Dragon Group for delivery of MEG and PTA to respondents’ production facilities. We added import duties as reported by the GOC, and the VAT applicable to imports of MEG and PTA into the PRC, also as reported by the GOC. 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>113</sup>

Based on this comparison, we preliminarily determine that MEG and PTA were provided for LTAR and that a benefit exists in the amount of the difference between the benchmark prices and the prices each respondent paid. 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 Preliminary Calculation Memoranda.

On this basis, we preliminarily determine a subsidy rate of 0.00 percent *ad valorem* for Dragon Group for MEG and 3.20 percent *ad valorem* for PTA. For Xingyu, we preliminarily determine a subsidy rate of 0.14 percent *ad valorem* for MEG and 0.92 percent *ad valorem* for PTA.

#### b. Provision of Electricity for LTAR

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the GOC’s provision of electricity for LTAR, in part, on AFA. Therefore, we determine that the GOC’s provision of electricity confers a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act and is specific under section 771(5A)(D) of the Act.

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<sup>113</sup> For Xingyu, we utilized the MEG and PTA purchase databases submitted in the July 14 SQR. In its July 28 response to our supplemental questionnaire from July 16 requesting clarification of information reported in various MEG purchase databases, Xingyu submitted the requested information along with a few other minor corrections to additional databases. These revised databases were submitted too late in the proceeding for purposes of the preliminary determination. We intend to verify the revised databases submitted on July 28 and consider the information for the final determination.

For determining the existence and amount of any benefit under this program, we selected the highest non-seasonal provincial rates in the PRC for each electricity category (*e.g.*, “large industry,” “general industry and commerce”) and “base charge” (either maximum demand or transformer capacity) used by the respondent. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category.<sup>114</sup>

Consistent with our approach in *Wind Towers from the PRC*, we first calculated the respondents’ variable electricity costs by multiplying the monthly kWh consumed at each price category (*e.g.*, peak, normal, and valley, where appropriate) by the corresponding electricity rates paid by the respondent during each month of the POI.<sup>115</sup> Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by the respondent during the POI from the monthly benchmark variable electricity costs.

To measure whether Xingyu or Dragon Group received a benefit with regard to its base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to the companies by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the company’s consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by the company during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from the respondent’s variable electricity payments and base rate payments.<sup>116</sup>

To calculate the net subsidy rates attributable to Xingyu and Dragon Group, we divided the benefit by total POI sales of respondent producers as described in the “Subsidies Valuation Information” section above. On this basis, we preliminarily determine that Xingyu received a countervailable subsidy rate of 0.87 percent *ad valorem* and Dragon Group received a countervailable subsidy rate of 4.92 percent *ad valorem*.

## **6. Energy Savings Technology Reform**

Dragon Group reported that it received assistance in the form of grants from the Xiamen Municipal Bureau of Economic and Information Technology.<sup>117</sup> We preliminarily determine that the assistance received by Dragon Group constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 19 CFR 351.504, respectively.

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<sup>114</sup> Multiple Xingyu respondents reported sourcing electricity from other cross-owned respondents. To calculate electricity benefits for Xingyu, we utilized only those purchases of electricity made directly from the state-owned electricity company.

<sup>115</sup> See *Wind Towers* IDM at 21-22.

<sup>116</sup> For more information on the respondent’s electricity usage categories and the benchmark rates we have used in the benefit calculations, see *Electricity Benchmark Memo*. For the calculations, see *Xingyu Preliminary Calculation Memo* and *Dragon Group Preliminary Calculation Memo*.

<sup>117</sup> See *Dragon IQR* at 7 and *GOC IQR* at 5.

As discussed under “Use of Facts Otherwise Available and Adverse Inferences,” above, the Department is relying on AFA to preliminarily determine that the grant program is specific because the GOC failed to provide information, which was requested of it on two occasions, regarding the details of the government assistance.

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) to these grants, individually, to determine whether it should be allocated, using total sales as the denominator. The grants received during the POI did not pass the 0.5 percent test and, therefore, the grants were attributed to the POI. We calculated the subsidy from each grant separately by dividing the entire amount of the grant by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memoranda. We then summed the subsidy rates to arrive at Dragon Group’s subsidy rate.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.04 percent *ad valorem* for Dragon Group. For further information regarding this calculation, refer to the Dragon Group Preliminary Calculation Memo.

### **“Other Subsidies” Reported in Initial Questionnaire Responses**

In its initial questionnaire responses, Xingyu self-reported receipt of over 100 “Other Subsidies” during the POI and AUL. Dragon Group also self-reported receipt of “Other Subsidies” during the AUL in its initial questionnaire response. The majority of these grants provided no measurable benefit and were expensed in the year of receipt.<sup>118</sup> The grants that provided measurable benefit during the AUL are discussed below.

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the GOC’s provision of these initially-reported “Other Subsidies,” in part, on AFA. Therefore, as an adverse inference, we determine that the GOC’s provision of the subsidies discussed below is specific under section 771(5A)(D) of the Act. Based on the information provided by the GOC as to the amount of the subsidy and year of receipt, we preliminarily determine that there is a financial contribution in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act. Based on the information provided by respondents, we also find that benefits were conferred under 19 CFR 351.504.

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) to these grants, individually, to determine whether it should be allocated, using total sales as the denominator. The following grants received during the POI did not pass the 0.5 percent test and, therefore, the grants were allocated to the POI. We calculated the subsidy from each grant separately as described under each program below.

### ***Export Subsidies***

#### **7. 2013 Annual Incentive Funds Stable Foreign Trade Policy**

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<sup>118</sup> Refer to Appendix 1 of the Xingyu Preliminary Analysis Memorandum.

Xingyu reported receipt of funds under this non-recurring subsidy program.<sup>119</sup> To calculate a benefit, we divided the total amount of funds received by the appropriate export sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy rate of 0.02 percent *ad valorem* for Xingyu. For further information regarding this calculation, refer to the Xingyu Preliminary Analysis Memorandum.

#### **8. Export Credit Insurance**

Xingyu reported receipt of funds under this non-recurring subsidy program.<sup>120</sup> To qualify for this funding, entities are required to have purchased export credit insurance. To calculate a benefit, we divided the total amount of funds received by the appropriate export sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy rate of 0.03 percent *ad valorem*. For further information regarding this calculation, please refer to the Xingyu Preliminary Analysis Memorandum.

#### **9. Import/Export Credit Insurance/2013 Foreign Trade Policy Award**

Xingyu reported receipt of funds under both of these program names.<sup>121</sup> To calculate a benefit, we divided the total amount of funds received by the appropriate export sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy rate of 0.01 percent *ad valorem*. For further information regarding this calculation, please refer to the Xingyu Preliminary Analysis Memorandum.

#### *Domestic Subsidies*

#### **10. Transition Gold Support**

Xingyu reported receipt of funds under this non-recurring subsidy program.<sup>122</sup> To calculate a benefit, we divided the total amount of funds received by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy rate of 0.01 percent *ad valorem* for Xingyu. For further information regarding this calculation, refer to the Xingyu Preliminary Analysis Memorandum.

#### **11. Overseas Investment Discount (Jiangsu Province DOC)**

Xingyu reported receipt of funds under this non-recurring subsidy program. According to Sanfangxiang Group, the eligibility criteria for receiving benefits under this program are: legal incorporation within China, authorized by (an unnamed) relevant authority to conduct foreign

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<sup>119</sup> See June 15 IQR and July 16 SQR at Exhibit S2-18.

<sup>120</sup> See June 15 IQR and July 16 SQR at Exhibits S2-20, S2-21b, and S2-26.

<sup>121</sup> See June 15 IQR and July 16 SQR at Exhibit S2-21.

<sup>122</sup> See June 15 IQR and July 16 SQR at Exhibit S2-15.

investment activities, and no record of criminal activity. Entities applying for this funding must submit a timely application that details foreign investments.<sup>123</sup> To calculate a benefit, we divided the total amount of funds received by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy rate of 0.07 percent *ad valorem* for Xingyu. For further information regarding this calculation, refer to the Xingyu Preliminary Analysis Memorandum.

## **12. Energy Saving**

Xingyu reported receipt of funds under this program.<sup>124</sup> To calculate a benefit, we divided the total amount of funds received by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy rate of 0.05 percent *ad valorem* for Xingyu. For further information regarding this calculation, refer to the Xingyu Preliminary Analysis Memorandum

## **13. Technology Reform Interest Subsidy**

Xingyu reported receipt of funds under this non-recurring subsidy program.<sup>125</sup> To calculate a benefit, we divided the total amount of funds received by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy rate of 0.02 percent *ad valorem* for Xingyu. For further information regarding this calculation, refer to the Xingyu Preliminary Analysis Memorandum.

## **14. 2012 and 2013 Refund of Land Use Tax**

Xingyu reported receipt of this tax refund.<sup>126</sup> Xingyu stated that it received this tax refund because the company’s industry was categorized as “Supported” by the provincial government. To apply for this program, Xingyu stated that it was required to submit with its application the certificate of land right, audited financial statements, and a copy of the “paid-up land use tax note.”<sup>127</sup> Xingyu further stated that the amount of tax assistance equaled the full amount of land use tax paid to the tax authorities. To calculate a benefit, we divided the total amount of tax refund received by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy rate of 0.02 percent *ad valorem* for Xingyu. For further information regarding this calculation, refer to the Xingyu Preliminary Analysis Memorandum.

## **15. Income Tax Deduction for New High-Technology Enterprise (HNTE)**

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<sup>123</sup> See June 15 IQR and July 16 SQR at Exhibit S2-16.

<sup>124</sup> See June 15 IQR and July 16 SQR at Exhibit S2-17.

<sup>125</sup> See June 15 IQR and July 16 SQR at Exhibit S2-25.

<sup>126</sup> See June 22 IQR and July 16 SQR at Exhibit S2-29.

<sup>127</sup> See July 16 SQR at Exhibit S2-29.

Xingyu self-reported that it received HNTE status and, as such, the GOC grants the company an income tax rate preference of 10 percentage points. The Department previously determined that this program is de jure specific and, thus, found it countervailable.<sup>128</sup> Consistent with earlier cases, we preliminarily determine that this program constitutes a countervailable subsidy.<sup>129</sup> The exemption/reduction is a financial contribution in the form of revenue foregone by the GOC pursuant to section 771(5)(D)(ii) of the Act, and it provides a benefit to the recipient in the amount of the tax savings pursuant to 19 CFR 351.509(a)(1).<sup>130</sup> We also determine that the exemption/reduction afforded by the program is limited as a matter of law to certain enterprises, *i.e.*, HNTEs, and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we compared the income tax rate that Xingyu would have paid in the absence of the program (25 percent) to the income tax rate that the companies actually paid (15 percent). We treated the income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate for each year, pursuant to 19 CFR 351.525(b)(6)(ii), we divided the benefit by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memoranda.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.00 percent *ad valorem* for Xingyu. For further information regarding this calculation, refer to the Xingyu Preliminary Analysis Memorandum.

#### **16. Project Subsidy from Haicang Bureau of Science and Technology**

Dragon Group reported receipt of funds from the Haicang Bureau of Science and Technology for specific projects.<sup>131</sup> We preliminarily determine that this grant confers a countervailable subsidy. The grants are financial contributions 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).

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) to these grants, individually, to determine whether it should be allocated, using total sales as the denominator. The grants received during the POI did not pass the 0.5 percent test and, therefore, the grants were attributed to the POI. We calculated the subsidy from each grant separately by dividing the entire amount of the grant by the appropriate sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memoranda. We then summed the subsidy rates to arrive at Dragon Group’s subsidy rate.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.02 percent *ad valorem* for Dragon Group. For further information regarding this calculation, refer to the Dragon Group Preliminary Calculation Memo.

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<sup>128</sup> See Solar Cells IDM at 16-17 and Comment 25.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> See Dragon IQR at Exhibit 46.

## “Other Subsidies” Reported by Dragon Group

As discussed in the “Use of Facts Otherwise Available and Adverse Inferences” section above, late in the proceeding Dragon Group reported receipt of 84 additional subsidies during the POI and the AUL. The majority of these grants provided no measurable benefit and were expensed in the year of receipt.<sup>132</sup> The grants that provided measurable benefit during the AUL are discussed below.

For the reasons also explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the GOC’s provision of these other subsidies, in part, on AFA. Therefore, as an adverse inference, we determine that the GOC’s provision of the subsidies discussed below confers a financial contribution, in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act and is specific under section 771(5A)(D) of the Act. Based on the information provided by respondents, we also find that benefits were conferred under 19 CFR 351.504.

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) to these grants, individually, to determine whether it should be allocated over the AUL, using total sales or total export sales for export contingent subsidies as the denominator. The following grants were allocated to the POI. We calculated the subsidy from each grant separately as described under each program below. We then summed the subsidy rates to arrive at Dragon Group’s subsidy rate. For further information regarding these calculations, refer to the Dragon Group Preliminary Calculation Memo.

The benefit rates are as follows:

- 1. Other Subsidy: Bounty for Enterprise with production and sales growth: 0.02 percent *ad valorem***
- 2. Other Subsidy: 2013 Enterprise financing subsidy: 0.02 percent *ad valorem***
- 3. Other Subsidy: Subsidy Income in the fourth quarter of 2013: 0.01 percent *ad valorem***
- 4. Other Subsidy: Subsidy for Social Security: 0.03 percent *ad valorem***
- 5. Other Subsidy: Bounty for enterprise with production and sales growth: 0.01 percent *ad valorem***
- 6. Other Subsidy: 2013 Export Credit Insurance Premium Subsidy: 0.01 percent *ad valorem***
- 7. Other Subsidy: Subsidy for social security premium of employees: 0.01 percent *ad valorem***

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<sup>132</sup> Refer to Appendix 1 of the Dragon Preliminary Analysis Memorandum.

B. *Program Preliminarily Determined Not to Be Used During the POI*

The Department preliminarily determines that the following programs were not used during the POI:

1. International Market Exploration Fund (SME Fund)
2. City Construction Tax and Education Fees Exemptions for FIEs
3. Xiamen Municipality Support for Pivotal Manufacturing Industries
4. Xinghuo Development Zone Recycling Economic Construction Specialized Fund
5. Science & Technology Awards
6. Yangpu Economic Development Zone Preferential Tax Policies
7. Xinghuo Development Zone Industrial Structural Adjustment Fund
8. Income Tax Credits for Foreign Invested Enterprises (FIEs) and Certain Domestically-Owned Companies Purchasing Domestically-Produced Equipment
9. VAT Subsidies for FIEs
10. Provision of Land for LTAR to Enterprises in Xinghuo Development Zone, Fengxian District, Shanghai Municipality
11. Provision of Land for LTAR to Enterprises in Yangpu Economic Development Zone, Hainan Province

C. *Programs With No Benefit in the POI*

1. **GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands**

Xingyu reported receipt of two, non-recurring grants during the AUL under the “Famous Brands” program.<sup>133</sup> This program is administered at the central, provincial and municipal government levels. Qualifying companies receive grants, loans and other incentives to enhance export activity.

We preliminarily determine that the grants received under the famous brands program constitute a financial contribution, in the form of a direct transfer of funds, and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively, and 19 CFR 351.504(a). We find this program to be specific under sections 771(5A)(A) and (B) of the Act.<sup>134</sup>

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<sup>133</sup> See June 15 IQR at page 9.

<sup>134</sup> See Wire Strand IDM at “Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level.”

To calculate the benefit from the grants, we first applied the “0.5 percent expense test” as described in the “Allocation Period” section above. Grant amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. In calculating a benefit for these grants to Xingyu, we determine that they do not meet the 0.5 percent threshold for allocation over the AUL period, pursuant to 19 CFR 351.524(b)(2). Therefore, we preliminarily determine that grants received by Xingyu under the “Famous Brands” program provided no benefit during the POI because the benefits were expensed in the year of receipt.

## **2. Income Tax Deductions for Research and Development Expenses under the Enterprise Income Tax Law**

Article 30.1 of the Enterprise Income Tax Law of the PRC created a new program regarding the deduction of research and development expenditures by companies, which allows enterprises to deduct, through tax deductions, research expenditures incurred in the development of new technologies, products, and processes. Article 95 of Regulation 512 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. Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs. Xingyu reported use of this program during the POI. The Department previously found in *Wind Towers from the PRC* and *Solar Cells from the PRC* that this program provides a countervailable subsidy.<sup>135</sup>

The Department verified the specificity of this program in *Wind Towers from the PRC*.<sup>136</sup> This income tax deduction is a financial contribution 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). Consistent with our previous finding,<sup>137</sup> we also preliminarily determine that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with research and development in eligible high-technology sectors and, thus, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program to Xingyu, we treated the tax credits as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax the companies 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 (exclusive of inter-company sales), as described in the “Subsidies Valuation” section, above.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.00 percent *ad valorem* for Xingyu.

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<sup>135</sup> See *Wind Towers* IDM at 18-19 and Comment 17; see also *Solar Cells* IDM at 17 and Comment 25.

<sup>136</sup> See *Wind Towers* IDM at 18-19.

<sup>137</sup> *Id.*

### **3. VAT Refunds for FIEs Purchasing Domestically-Produced Equipment**

Under this program, the GOC refunds VAT paid by FIEs for the purchase of domestically produced equipment provided that the equipment does not fall into the non-duty-exemptible catalogue and the value of the equipment does not exceed the total investment limit of an FIE, as provided under the Trial Administrative Measures on Purchase of Domestically Produced Equipment by FIEs (GOUSHUIFA (1999) No. 171).<sup>138</sup> According to the GOC, the program is designed to promote the development of FIEs in the PRC.<sup>139</sup> Dragon Group and Xingyu reported receiving VAT exemptions under this program.<sup>140</sup>

We preliminarily determine that this program constitutes a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(i) of the Act and confers a benefit under section 771(5)(E) of the Act and pursuant to 19 CFR 351.510(a)(1). We further determine that the exemption/reduction afforded by this 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. Our approach in this regard is consistent with the Department’s practice.<sup>141</sup>

Normally, we treat exemptions from VAT as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when a VAT exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. Since the VAT exemptions under this program are tied to production equipment, we find that they are tied to respondents’ capital assets. Therefore, we are examining the import tariff exemptions that respondents received under the program during the AUL and through the end of the POI.

To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment by the VAT rate that would have been levied absent the program. For each year, we then divided the total grant amount by the corresponding total sales for the year in question. Next we performed the “0.5 percent test” on the sum of the VAT exemptions received in each year. Exemption amounts that did not exceed the 0.5 percent threshold were expensed fully in the year of receipt. For exemption amounts that exceeded the 0.5 percent threshold, we allocated the benefits over the 10-year AUL using the methodology described under 19 CFR 351.524(d)(1) of the Act.

We then divided the benefit, allocated to the POI, by total sales, as described in the “Attribution of Subsidies” section. On this basis, we preliminarily determine a countervailable subsidy of 0.00 percent *ad valorem* for Dragon Group and 0.00 percent *ad valorem* for Xingyu under this program.

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<sup>138</sup> See GOC IQR at 63.

<sup>139</sup> *Id.*

<sup>140</sup> See Dragon IQR at page 22.

<sup>141</sup> See, *e.g.*, *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015), and accompanying Issues and Decision Memorandum.

*D. Programs For Which Additional Information Is Needed*

1. Provisions of Land for LTAR to Enterprises in Haicang Investment Zone, Xiamen, Fujian Province

We are investigating whether Dragon Group received benefits under the provision of land-use rights at preferential rates to enterprises located in the Haicang Investment Zone, Xiamen, Fujian Province program. Dragon Group reported certain land plots for which we need additional information, including the original land-use contact between the respondent and the local government. We requested this information in a supplemental questionnaire, and we intend to include this program in a post-preliminary analysis.

2. New Subsidy Allegations

On June 15, 2015, we initiated an investigation of five new subsidy allegations filed by Petitioner. We are awaiting questionnaire responses from respondents, and intend to include these programs in a post-preliminary analysis.

3. Additional Cross-Owned Companies

We are analyzing additional questionnaire responses from companies that are affiliated with Dragon Group or Xingyu to determine whether these companies should be included in this investigation. We intend to include our findings in a post-preliminary determination.

**XIII. ITC NOTIFICATION**

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

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

**XIV. DISCLOSURE AND PUBLIC COMMENT**

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.<sup>142</sup> Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues

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<sup>142</sup> See 19 CFR 351.224(b).

raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the Federal Register. Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS. Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,<sup>143</sup> on the due dates established above.

## **XV. VERIFICATION**

As provided in section 782(i)(1) of the Act, we intend to verify the factual information submitted by the GOC, Dragon Group, and Xingyu.

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<sup>143</sup> See 19 CFR 351.303(b)(1).

**XVI. CONCLUSION**

We recommend applying the above methodology for this preliminary determination.

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\_\_\_\_\_  
Agree

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Disagree

*Ronald K Lorentzen*

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

*August 7, 2015*

\_\_\_\_\_  
Date