



C-570-025  
Investigation  
POI: 1/1/2014 – 12/31/2014  
**Public Document**  
E&C/Office VI: YN, EM

March 4, 2016

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Antidumping and Countervailing Duty Operations

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: Issues &  
Decision Memorandum for the Final Determination

---

## I. SUMMARY

The Department of Commerce (Department) 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 705 of the Tariff Act of 1930, as amended (the Act). This investigation covers two producer/exporter entities: (1) Dragon Special Resin (Xiamen) Co., Ltd. (Dragon); Xiang Lu Petrochemicals Co., Ltd. (Xianglu PC); Xianglu Petrochemicals (Zhangzhou) Co., Ltd. (Xianglu PC ZZ); Xiamen Xianglu Chemical Fiber Company Limited (Xianglu CC); and Dragon Aromatics (Zhangzhou) Co., Ltd. (DAC) (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).

---

<sup>1</sup> The identity of this company is business proprietary information (BPI). For further details, *see* Memorandum from Emily Maloof, International Trade Compliance Analyst, AD/CVD Operations, Office VI, to Brian C. Davis, Acting Program Manager, AD/CVD Operations, Office VI, "Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Determination Calculations for Xingyu," dated March 4, 2016 (Xingyu Final Calculation Memo).

## II. BACKGROUND

### A. Case History

On August 14, 2015, we published our *Preliminary Determination* for this investigation.<sup>2</sup> We preliminarily calculated a rate for Dragon Group and Xingyu, both cooperative mandatory respondents. The rates calculated were used to determine the rate applied to all-other producers/exporters.

On July 29, 2015, DAK Americas, LLC, M&G Chemicals and Nan Ya Plastics Corporation, (hereinafter, Petitioners), timely submitted new subsidy allegations to the Department.<sup>3</sup> The Department initiated on these programs on July 15, 2015.<sup>4</sup> On July 21, 2015, the Department released questionnaires concerning the new subsidy allegations to Dragon Group, Xingyu, and the Government of China (GOC). On July 31, 2015, and August 3, 2015, we received timely filed responses to these questionnaires.<sup>5</sup>

On November 3, 2015, Petitioners submitted pre-verification comments on the record to this investigation.<sup>6</sup> Between November 9, 2015, and November 20, 2015, we conducted verifications of the questionnaire responses submitted by the GOC, Dragon Group, and Xingyu. We released verification reports in January 2016.<sup>7</sup> On February 9, 2016, Dragon Group, Xingyu, and the GOC withdrew their requests for a hearing.<sup>8</sup>

On February 3, 2016, Petitioners, the GOC, Dragon Group, and Xingyu submitted timely case briefs, and also submitted timely rebuttal briefs on February 8, 2016.<sup>9</sup>

---

<sup>2</sup> See *Certain Polyethylene Terephthalate Resin from the People's Republic of China: Preliminary Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 80 FR 48810 (August 14, 2015) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>3</sup> See Letter from Petitioners, "Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China – New Subsidy Allegations," (July 29, 2015).

<sup>4</sup> See Memorandum to Scot Fullerton, "Countervailing Duty Investigation: Certain Polyethylene Terephthalate Resin from the People's Republic of China: New Subsidy Allegations," (July 15, 2015).

<sup>5</sup> See Letter from Xingyu, "Certain Polyethylene Terephthalate Resin from the People's Republic of China- Response to New Subsidy Allegations Questionnaire," (August 3, 2015) (Xingyu NSA); Letter from Dragon, "Certain Polyethylene Terephthalate Resin from the People's Republic of China- Response to New Subsidy Allegations Questionnaire," (July 31, 2015); Letter from GOC, "Certain Polyethylene Terephthalate Resin from the People's Republic of China- Response to New Subsidy Allegations Questionnaire," (August 3, 2015).

<sup>6</sup> See Letter from Petitioners, "Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China - Petitioners' Supplemental Pre-Verification Comments," (November 3, 2015) (Petitioners PVC).

<sup>7</sup> See Memoranda to Brian C. Davis, Acting Program Manager, AD/CVD Operations, Office VI, "Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Verification Report of the Government of China (GOC)" (January 19, 2016) (GOC VR); "Verification Report: Dragon Special Resin (Xiamen) Co., Ltd. (Dragon)" (January 19, 2016) (Dragon VR); and "Verification Report: Jiangyin Xingyu New Material Co., Ltd. (Xingyu)" (January 19, 2016) (Xingyu VR).

<sup>8</sup> See Letter from Xingyu and Dragon Group, Re: "Certain Polyethylene Terephthalate Resin from the People's Republic of China – Withdrawal of hearing Request" (February 9, 2016); Letter from GOC, Re: "Withdraw of Request for Hearing- MOFCOM" (February 9, 2016).

<sup>9</sup> See Letter from Petitioners, "Certain Polyethylene Terephthalate Resin from the People's Republic of China: Petitioners' Rebuttal Brief" (February 3, 2016) (Petitioners Rebuttal Brief); Letter from Dragon, "Certain Polyethylene Terephthalate Resin from the People's Republic of China-Dragon's Rebuttal Brief (February 3, 2016)

## **B. Period of Investigation**

The period for which we are measuring subsidies, the period of investigation (POI), is January 1, 2014, through December 31, 2014.

## **III. 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.

## **IV. 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>10</sup> In *CFS from the PRC*, the Department found that:

. . . given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.<sup>11</sup>

The Department affirmed its decision to apply the countervailing duty (CVD) law to the People's Republic of China (PRC) in numerous subsequent determinations.<sup>12</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

---

(Dragon Rebuttal Brief); Letter from Xingyu, "Certain Polyethylene Terephthalate Resin from the People's Republic of China-Xingyu's Rebuttal Brief (February 3, 2016) (Xingyu Rebuttal Brief); Letter from the GOC, "Certain Polyethylene Terephthalate Resin from the People's Republic of China: Rebuttal Brief - Ministry of Commerce of the People's Republic of China (February 3, 2016) (GOC Rebuttal Brief).

<sup>10</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 (IDM) at Comment 6.

<sup>11</sup> *Id.*

<sup>12</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 at Comment 1.

the Act, such as the PRC.<sup>13</sup> The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.<sup>14</sup>

## V. LIST OF ISSUES

The “Subsidies Valuation” and “Analysis of Programs” sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Additionally, we have analyzed the comments submitted by interested parties in their case briefs and rebuttal briefs in the “Analysis of Comments” section below, which contains the Department’s responses to the issues raised in these briefs. Based on the comments received, and our verification findings, we have made certain modifications to the *Preliminary Determination*, which are discussed below under each relevant program. We recommend that you approve the positions we have described in this memorandum. Below is a complete list of the issues in this investigation for which we have received comments from the parties.

**Comment 1: Whether to Disregard Certain Affiliates That Do Not Produce the Input They Supply**

**Comment 2: Treatment of Grants that the Department Rejected at Verification**

**Comment 3: Whether to Countervail Programs that Did Not Benefit Exports of Subject Merchandise to the United States**

**Comment 4: Whether to Adjust for Certain Ministerial Errors Made in the Preliminary Determination**

**Comment 5: Whether the Department Should Apply AFA to Dragon’s Loans**

**Comment 6: Whether the Department Should Apply AFA to Dragon’s VAT Refunds for FIEs for Domestically-Produced Equipment**

**Comment 7: Whether the Department Should Apply AFA to Dragon Aromatics**

**Comment 8: Whether the Department Should Apply Total AFA to Xingyu**

**Comment 9: Whether the Department Should Consider Chinese Producers of MEG and PTA as Authorities**

**Comment 10: Whether the Department Should Find the MEG and PTA Markets are Distorted Because Domestic Production Based Upon Unreliable Data, and Whether to Revise the Input Benchmarks**

**Comment 11: Whether Inputs Purchased Through Bonded Warehouses Should Be Treated As Domestically Produced Goods**

**Comment 12: Whether the Department Should Revise the Sales Denominator to Attribute Subsidy Program Benefits**

**Comment 13: Whether the Department Should Correct Errors on the GOC’s Policy Loans to Xingyu**

**Comment 14: Whether the Department Should Continue to Include VAT and Import Duties in Determining the Monthly Benchmark for PTA and MEG for LTAR**

**Comment 15: If the Department Does Not Use World Market Prices as Benchmarks in the Final Determination, whether it must correct certain errors in the monthly benchmark for the MEG for LTAR program**

**Comment 16: Whether a Program of Policy Lending for PET Resin Exists**

---

<sup>13</sup> Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

<sup>14</sup> See Public Law 112-99, 126 Stat. 265 §1(b).

## VI. 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>15</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>16</sup> The Department notified the respondents of the AUL in the initial questionnaire and requested data accordingly.<sup>17</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>18</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.

### B. Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or

---

<sup>15</sup> See 19 CFR 351.524(b).

<sup>16</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>17</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 IDM (*Solar Cells IDM*) at Comment 2. This issue is not relevant in this investigation, because the AUL does not go beyond 2002.

<sup>18</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.

more) corporations. The *CVD Preamble* to the Department's regulations further clarifies the Department's cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.<sup>19</sup>

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>20</sup>

To determine whether firms are cross-owned, we turn to the definition of cross-ownership as provided under 19 CFR 351.525(b)(6)(vi). The regulation states that cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.

### Dragon Group

Dragon Group responded to the Department's original and supplemental questionnaires on behalf of itself and three affiliated input suppliers: Xianglu PC; Xianglu PC ZZ; and Xianglu CF.<sup>21</sup> With respect to these companies, we continue to make the same cross-ownership determination and attribution finding as we made in the *Preliminary Determination*.<sup>22</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 Final Calculation Memo.<sup>23</sup>

---

<sup>19</sup> See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

<sup>20</sup> See *Barbeque de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>21</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>22</sup> See *Preliminary Determination PDM* at 6-7.

<sup>23</sup> *Id.* See also Memorandum from Bordas, Senior International Trade Compliance Analyst, AD/CVD Operations, Office VI, to Brian Davis, Acting Program Manager, AD/CVD Operations, Office VI, "Countervailing Duty Investigation of Polyethylene Terephthalate Resin from the People's Republic of China: Final Determination Calculations for Dragon Special Resin (Xiamen) Co., Ltd.; Xiang Lu Petrochemicals Co., Ltd.; Xianglu

For this final determination, we have also determined that DAC is cross-owned with Dragon Group within the meaning of 19 CFR 351.525(b)(6)(vi). DAC produces paraxylene (PX), which is an input primarily dedicated to the production of the downstream product.<sup>24</sup> 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 Final Calculation Memo.

Pursuant to 19 CFR 351.525(b)(6)(iv), we are attributing subsidies to DAC to the combined sales of the input and downstream products produced by the input producers and Dragon (net of intercompany sales). To measure the benefit and program use of certain subsidies received by DAC, we are applying adverse facts available (AFA) for this final determination. For further discussion, *see* the “Use of Facts Otherwise Available and Adverse Inferences,” section, below.

### Xingyu

In the *Preliminary Determination*, the Department determined that Xingyu was cross-owned with a number of affiliates. The companies included producers of subject merchandise, and producers or suppliers of inputs used in the production of the subject merchandise.<sup>25</sup> With respect to Xingyu, we continue to apply the same attribution methodology described in the *Preliminary Determination* for subsidies provided to the producers of the subject merchandise, the parent company and cross-owned producer of the input, pursuant to certain subsections under 19 CFR 351.525(b)(6).

For Dragon Group and Xingyu, we received comments concerning the appropriateness of including in the benefit calculations subsidies to cross-owned input suppliers that did not produce the supplied input. These comments are addressed, below, in the “Analysis of Comments” section, at Comment 1. For this final determination, we have not included certain subsidies received by input suppliers that did not actually produce the input that they supplied. Instead, for input suppliers that did not actually produce the input, we only attributed subsidies for inputs for which the benefit calculation demonstrated that the subsidy passed through to the respondents, such as purchases of PTA and monoethylene glycol (MEG) for less than adequate remuneration (LTAR).

### **C. Denominators**

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondent’s receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent’s export or total sales. At verification, Xingyu and Dragon Group presented minor corrections to their previously reported sales values. We have incorporated these revisions to the sales values, as necessary, for this final determination. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the Dragon Group Final Calculation Memo and the Xingyu Final Calculation Memo.

---

Petrochemicals (Zhangzhou) Co., Ltd.; Xiamen Xianglu Chemical Fiber Company Limited; and Dragon Aromatics (Zhangzhou) Co., Ltd.,” dated March 4, 2016 (Dragon Group Final Calculation Memo).

<sup>24</sup> See Dragon Aromatics’ July 23, 2015 response (DAC QR).

<sup>25</sup> See *Preliminary Determination Memorandum* at 7-8.

## VII. BENCHMARKS AND DISCOUNT RATES

We investigated loans received by Dragon Group and Xingyu from PRC state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.<sup>26</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>27</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>28</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>29</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>30</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>31</sup> and more recently updated in *Thermal Paper from the PRC*.<sup>32</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

---

<sup>26</sup> See 19 CFR 351.524(b)(1).

<sup>27</sup> See 19 CFR 351.505(a)(3)(i).

<sup>28</sup> See 19 CFR 351.505(a)(3)(ii).

<sup>29</sup> See *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10.

<sup>30</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 IDM (Lumber IDM) at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

<sup>31</sup> See *CFS from the PRC*, and accompanying IDM at Comment 10.

<sup>32</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>33</sup> Beginning in 2010, however, the PRC moved to the upper-middle income category and remained there through 2013.<sup>34</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>35</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>36</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>37</sup> For 2010, however, the regression does not yield that outcome for the PRC's income group.<sup>38</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>39</sup> First, 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

---

<sup>33</sup> See World Bank Country Classification, <http://econ.worldbank.org/>; see also Memorandum to the File "Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China: Interest Rate Memorandum," dated August 7, 2015 (Banking Memorandum).

<sup>34</sup> See World Bank Country Classification.

<sup>35</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>36</sup> For loans received in 2014, we used a 2013 benchmark interest rate as the 2014 data has not been analyzed. See Comment 13 at "Analysis of Programs," below.

<sup>37</sup> See Banking Memorandum.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

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>40</sup> Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.<sup>41</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>42</sup>

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term markup 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>43</sup> Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.<sup>44</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>45</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.

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

---

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> See, e.g., *Thermal Paper from the PRC*, and *Thermal Paper IDM* at 10.

<sup>43</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>44</sup> See Xingyu Final Calculation Memo.

<sup>45</sup> See *Thermal Paper IDM* at 10.

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 continue to use, 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>46</sup> The interest rate benchmarks and discount rates used in our final calculations are provided in the Dragon Group Final Calculation Memo and Xingyu Final Calculation Memo.<sup>47</sup>

#### E. *MEG and PTA 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. The respondents reported 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 this final determination, we continue to find that the GOC’s presence in the PTA market was not significant enough to lead to distorted domestic prices.<sup>48</sup> Record information indicates that the majority of PTA that is consumed within the PRC is provided by domestic production.<sup>49</sup> Further, the GOC provided information demonstrating that only 10 percent of domestic production is attributable to producers with majority government management or ownership interests.<sup>50</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 state-owned entities (SOEs) or government agencies through other methods had control of, or otherwise distorted, this market during the POI, we determine that the domestic PTA market is not distorted during the POI.<sup>51</sup>

Thus, we further determine that it is appropriate to rely on actual import transactions reported by the respondents as benchmarks for PTA, pursuant to 19 CFR 351.511(a)(2)(i), to determine the subsidy rate during the POI for the provision of PTA for LTAR.

As discussed in further detail in the “Use Of Facts Otherwise Available and Adverse Inferences,” section, below, and at Comment 10, we amend our *Preliminary Determination* with regard to

---

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

<sup>47</sup> *See* Dragon Final Calculation Memo and Xingyu Final Calculation Memo.

<sup>48</sup> *See Preliminary Determination* PDM at 12-13

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

<sup>50</sup> *Id.* *See also* GOC VR at 6-7 and Exhibit 2-5.

<sup>51</sup> This finding is based solely on the facts of this particular proceeding and pertaining to the instant POI. 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.

benchmarks to measure the adequacy of remuneration for MEG.<sup>52</sup> As explained in the “Use Of Facts Otherwise Available and Adverse Inferences,” section, below, because we were unable to verify the MEG market data, we are finding as AFA that the GOC’s involvement in the MEG market significantly distorted MEG prices in the PRC. As such, we were unable to verify the MEG market data that we relied upon in the *Preliminary Determination* to determine that no distortion exists in the Chinese MEG market.

Given that we have determined that “tier-one” benchmark prices are not appropriate for MEG, we next evaluated information on the record to determine whether there is a “tier-two” world market price available to producers of subject merchandise in the PRC. Petitioners provided benchmark information that included information regarding MEG and PTA world market import prices, and information on ocean freight related to a previous case. We analyzed the benchmarks provided and concluded that the input prices provided by petitioners are not suitable as we normally rely upon export statistics, rather than import data, due to the accuracy of assessing the prices Chinese firms would have paid for the input product. Consequently, consistent with our practice, we placed world market prices of MEG exports as derived from the Global Trade Atlas (GTA) on the record.<sup>53</sup> We find the GTA pricing data is sufficiently reliable and representative for use in the benchmark calculation. We did not receive comments from parties concerning the GTA benchmark data.

The Department’s regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. According to 19 CFR 351.511(a)(2)(iv), we calculated a weight average of the GTA prices for each month. Regarding delivery charges, we have added to the monthly average benchmark prices amounts for ocean freight and inland freight charges that would be incurred to deliver MEG from the port to the company’s facilities. For ocean freight, we have considered comments submitted by Xingyu and Dragon Group concerning the appropriateness of including certain data points, and we have addressed these comments in the Final Calculation Memoranda.<sup>54</sup> We have also added the applicable VAT and import duties, at the rates reported by the GOC. Our benchmark calculations are fully described in the Dragon Group Final Calculation Memo and Xingyu Final Calculation Memo.

#### F. *Provision of Electricity for LTAR*

In the *Preliminary Determination*, we relied, as AFA, on PRC provincial tariff schedules for electricity supplied by the GOC as a benchmark for measuring the benefit from electricity provided to the Dragon Group and to Xingyu for LTAR.<sup>55</sup> We received no comments on the appropriateness of this benchmark, and we continue to rely on this same information for this final determination.

---

<sup>52</sup> See *Preliminary Determination* PDM at 12-13. See also GOC VR at 4-6.

<sup>53</sup> See Memorandum from Emily Maloof to File, “Countervailing Duty Investigation of Certain Polyethylene Terephthalate from the People’s Republic of China: Submitting Benchmark Information,” (February 18, 2016).

<sup>54</sup> See Letter from Xingyu and Dragon Group, Re: “Certain Polyethylene Terephthalate from the People’s Republic of China – Comments on Department Post-Preliminary Benchmarks” (February 23, 2016). See also Dragon Final Calculation Memo and Xingyu Final Calculation Memo.

<sup>55</sup> See *Preliminary Determination* PDM at 15-16.

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

### A. Applicable Law

Section 776(a) of the Tariff Act of 1930, as amended (the Act) provides that, subject to section 782(d) of the Act, the Department shall apply “facts otherwise available” if: (1) necessary information is not on the record; or (2) 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.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.<sup>56</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.<sup>57</sup>

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>58</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.<sup>59</sup>

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it

---

<sup>56</sup> See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The text of the TPEA may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>57</sup> See *Applicability Notice*, 80 FR at 46794-95.

<sup>58</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

<sup>59</sup> See also 19 CFR 351.308(c).

shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>60</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>61</sup> Further, and under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.<sup>62</sup>

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.<sup>63</sup> The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>64</sup>

## **B. 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>65</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>66</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, consistent with the *Preliminary Determination*, 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 continue to use the highest import duty rate that Dragon Group did report for its other import purchases to calculate the benefit under this program.<sup>67</sup> Dragon Group did not submit comments pertaining to this issue.

---

<sup>60</sup> See also 19 CFR 351.308(d).

<sup>61</sup> See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 at 870 reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (1994).

<sup>62</sup> See section 776(c)(2) of the Act; TPEA, section 502(2).

<sup>63</sup> See section 776(d)(1) of the Act; TPEA, section 502(3).

<sup>64</sup> See section 776(d)(3) of the Act; TPEA, section 502(3).

<sup>65</sup> See Dragon’s June 15, 2015 Initial Questionnaire Response (Dragon IQR) at Exhibit 24.

<sup>66</sup> See Dragon’s July 16, 2015 Supplemental Questionnaire Response (July 16 SQR) at page 6.

<sup>67</sup> See *Preliminary Determination* PDM at 14.

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

In their questionnaire responses, Dragon Group and Xingyu reported “unknown” for the producer name of certain purchases of PTA that were made during 2014.<sup>68</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>69</sup> Specifically, it either obtained the requested information from the packing bags or it obtained the producer information directly from the suppliers.<sup>70</sup> Where it could not obtain the requested producer information, Dragon Group reported “unknown.”

As for Xingyu, the company stated that such purchases do not have accompanying product specification certificates from the producers.<sup>71</sup> Xingyu stated that the only documentation accompanying these purchases were “Goods Received Notes,” which show only the identity of the suppliers, not the producers.<sup>72</sup>

Based on the above, because Dragon Group and Xingyu were unable to identify the producer(s) of the PTA that was purchased from trading companies, the GOC was not able to provide a response to the Input Producer Appendix for the companies that produced those purchases. In the *Preliminary Determination*, we found that the necessary information for these unidentified producers was not on the record. As such, we had 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. Parties did not comment on this issue. Therefore, we continue to make the same finding for the final determination.

Consistent with the *Preliminary Determination*, pursuant to section 776(a)(1) of the Act, as FA in this investigation, we continue to find that the percentage of MEG and PTA supplied to Dragon Group and Xingyu by trading companies that was produced by unidentified suppliers is attributable to “authorities” at the same ratio of MEG and PTA by SOEs during the POI.<sup>73</sup> We find that this portion of the 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>74</sup> and section 776(a) of the Act.

---

<sup>68</sup> See Dragon IQR at Exhibits 28 and 31 and Xingyu June 15, June 22, and June 29 IQRs.

<sup>69</sup> See July 16 SQR at pages 1 and 2.

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

<sup>71</sup> See Xingyu’s July 16 SQR at pages 4-5.

<sup>72</sup> *Id.*

<sup>73</sup> See GOC IQR at 89-90 and 110-111. See also *Preliminary Determination* PDM at 14.

<sup>74</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 IDM at “Provision of Primary Aluminum for LTAR” and Comment 18.

## *Application of Adverse Facts Available*

### DAC – Income Tax Programs

In its questionnaire response, Dragon Group stated that it did not need to provide a full questionnaire response for DAC because DAC was in the stage of pilot production, was still being established and not actually operating during the POI.<sup>75</sup> In response to Petitioners' concerns raised about DAC,<sup>76</sup> we instructed Dragon Group to provide a complete questionnaire response for DAC. In our questionnaire, we asked "please provide complete, translated tax returns filed during the POI (preferably a copy of the tax return stamped by the government). Include all schedules and attaches included with your return. In addition, please provide any amendments to your return."<sup>77</sup> In response to our request for its income tax returns, Dragon stated that this request was, "{n}ot applicable because DAC is still in the stage of pilot production and has not paid corporate income tax up to the present time."<sup>78</sup>

On the first day of verification, we asked Dragon Group for DAC's 2013 income tax return.<sup>79</sup> Dragon Group stated that DAC was not required to file an income tax return because it was in pilot production.<sup>80</sup> We instructed Dragon Group to provide some kind of support to prove it was not required by the GOC to file an income tax return. On the second day of verification, we asked again for this support. Dragon Group stated it was still looking for support.<sup>81</sup> At the beginning of the third day of verification, we asked again for the support. Dragon Group stated it had discovered information that it wanted to present to us at the end of the day.<sup>82</sup> At the end of the last day, Dragon Group provided its 2013 income tax return.<sup>83</sup> The form provided by DAC was not stamped with an official seal of acceptance by the national tax bureau, nor did it bear any other kind of markings to confirm its authenticity.<sup>84</sup> Thus, after being asked in the questionnaire, and repeatedly at verification, Dragon Group ultimately provided a tax return that the Department was unable to verify.<sup>85</sup> Therefore, the Department determines that the use of facts available pursuant to section 776(a)(2)(D) of the Act is warranted in determining the countervailability of the income tax programs.

We further find that an adverse inference is warranted, pursuant to section 776(b) of the Act. Despite repeated requests, Dragon Group failed to provide a copy of DAC's income tax return that could be confirmed as authentic and thus considered verified.<sup>86</sup> As a result, we find that

---

<sup>75</sup> See Dragon's May 18, 2015 questionnaire response (May QR) at 2-3.

<sup>76</sup> See Letter from Petitioners, "Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China – Petitioners' Response to Dragon's May 18, 2015 Affiliated Companies Questionnaire Response," (May 27, 2015) (Petitioners' May 27 Response).

<sup>77</sup> See Dragon's July 23, 2015 Supplemental Questionnaire Response (July 23 SQR) at 12.

<sup>78</sup> See Petitioners' May 27 Response at 12.

<sup>79</sup> See Dragon VR at 4-6.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

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

<sup>84</sup> *Id.*, at Exhibit 4-12.

<sup>85</sup> See Dragon VR at 4-6.

<sup>86</sup> *Id.*

Dragon Group did not act to the best of its ability in this investigation. Accordingly, we find that AFA is warranted with regard to measuring income tax program use and benefit for DAC.

In applying AFA to Dragon Group for its failure to provide a verifiable income tax return for DAC, we are guided by the Department's approach in other recent PRC CVD investigations and reviews.<sup>87</sup> The standard income tax rate for PRC corporations filing income tax returns during the POI was 25 percent.<sup>88</sup> We, therefore, find that the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent (*i.e.*, the income tax programs combined provide a countervailable benefit of 25 percent). Consistent with past practice, the 25 percent AFA rate does not apply to the income tax credit and rebate, accelerated depreciation, or import tariff and VAT exemption programs because such programs may not affect the tax rate.<sup>89</sup>

#### DAC - Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries

During the Department's verification of DAC's questionnaire response, the Department asked how we could verify DAC's reported purchases to confirm reporting completeness.<sup>90</sup> Company officials stated that they do not individually record their purchases in their financial accounts.<sup>91</sup> Instead, they refer to an equipment list that is eligible for import duty rebate. This list is specific to DAC and was issued in 2009.<sup>92</sup> Company officials explained that all the purchases on the purchase spreadsheet can be tied to the list, except certain domestic purchases for which there was no tax incentive or rebate.<sup>93</sup> We asked how the company compiled the list of purchases and company officials stated that they relied upon the physical invoices to compile the list.<sup>94</sup>

Because we were unable to tie Dragon's individual imported equipment purchases to its financial accounts, we were unable to verify the completeness of DAC's reporting of this program. Thus, we are basing the CVD rate for DAC, in part, on FA, pursuant to sections 776(a)(2)(D) of the Act because we were unable to verify reporting completeness of this program for DAC. We further find that an adverse inference is warranted, pursuant to section 776(b) of the Act because we determine that Dragon Group failed to act to the best of its ability when it. We are using as AFA a subsidy rate of 9.71 percent to measure DAC's benefit for this program because its information could not be verified.<sup>95</sup>

---

<sup>87</sup> See, *e.g.*, *Certain Uncoated Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 3110 (January 20, 2016) (*Uncoated Paper from the PRC*), and accompanying Issues and Decision Memorandum at 20-21.

<sup>88</sup> See GOC QR at Exhibit 19 at 2 (unnumbered).

<sup>89</sup> See, *e.g.*, Thermal Paper IDM at "Selection of the Adverse Facts Available Rate;" see also Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination, 77 FR 64468 (October 22, 2012) (*Steel Pipe from India*), and accompanying IDM at "Selection of the Adverse Facts Available Rate."

<sup>90</sup> See Dragon Group VR at 6-7.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> See *New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010) (*Tires from the PRC Preliminary Results*) ("C: VAT and Import Duty Exemptions on Imported Material"), unchanged in *New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative*

## Dragon Group—Policy Loans and Preferential Export Financing

As discussed in Comment 5, below, before *the Preliminary Determination*, we instructed Dragon Group to “report all financing to your company that was outstanding at any point during the POI, regardless of whether you consider the financing to have been provided under the program.”<sup>96</sup> In the *Preliminary Determination*, we relied on Dragon Group’s responses to our questions regarding the Policy Loan and Preferential Export Financing programs. During verification Dragon Group presented, as minor corrections, numerous new loans that fell under the Policy Loans and Preferential Export Financing programs for Dragon and Xianglu CF and under the Policy Loan program for Xianglu PC ZZ.<sup>97</sup> Dragon Group explained that these loans were paid off during the POI, and, thus, Dragon did not report these loans prior to verification.<sup>98</sup> During verification, we rejected these loans as being mere minor corrections because the scope of the corrections was not minor in nature.<sup>99</sup> Therefore, because the extensive nature of the corrections presented at verification by Dragon Group to its loans, we were not able to verify the Policy Lending or Export Financing programs for Dragon and its cross-owned affiliates.

Thus, we find that Dragon Group withheld necessary information requested by the Department regarding its use of these programs and that as a result, necessary information is missing on the record. In accordance with sections 776(a)(1) and 776(a)(2) of the Act, we determine that the use of FA is warranted in determining the countervailability of these programs for the companies listed above. Moreover, because Dragon Group failed to provide necessary information regarding program use, despite the Department’s requests that it do so, we find that Dragon Group failed to act to the best of its abilities in providing requested information that was in its possession, and that the application of AFA is warranted, pursuant to 776(b) of the Act, in determining benefit.

We attempted to verify loans that fell under the Policy Loan program for Xianglu PC and DAC and Preferential Export Lending programs for Xianglu PC, Xianglu PC ZZ and DAC. We discovered at verification that, rather than reporting the interest expenses for loans as they were incurred by the companies during the POI, Dragon Group used a formula to approximate its interest expenses.<sup>100</sup> Dragon Group confirmed that it relied upon this formula for reporting all of its loans for all cross-owned companies.<sup>101</sup> Because of Dragon Group’s decision with regard to this reporting methodology, we were unable to verify the actual interest expenses that Dragon Group incurred for these loans.

We rely upon the interest expenses to calculate the benefit for loan programs. Thus, we find that necessary information is not available on the record, and that Dragon Group withheld information requested by the Department. In accordance with section 776(a)(1) and 776(a)(2) of the Act, we determine that the use of FA is warranted in determining Dragon Group’s benefits

---

*Review*, 76 FR 23286 (April 26, 2011) (*Tires from the PRC Final Results*).

<sup>96</sup> See Dragon IQR at 14-15

<sup>97</sup> See Dragon VR at 2-3.

<sup>98</sup> *Id.*

<sup>99</sup> For additional information concerning the scope of the minor corrections, see Dragon Group’s verification report at 2-3.

<sup>100</sup> See Dragon VR at 12-13.

<sup>101</sup> *Id.*

from these programs for the companies listed above. Moreover, because Dragon Group failed to provide necessary information regarding program use, despite the Department’s request that it do so, we find that Dragon Group failed to act to the best of its abilities in providing requested information that was in its possession, and that the application of AFA is warranted, pursuant to 776(b) of the Act, in determining benefit.

Relying on AFA, we find, as discussed below under Comment 5, that the Dragon Group benefited at the rate of 10.54 percent *ad valorem* for Policy Loans and 10.54 percent *ad valorem* for Preferential Export Lending.

#### Dragon Group and Xingyu—Grants Discovered at Verification

On the first day of verification Xingyu and Dragon Group presented previously unreported grants as minor corrections. For Dragon Group, we accepted two of the three grants presented as minor corrections.<sup>102</sup> For Xingyu, we rejected four of the six grants presented as minor corrections.<sup>103</sup> We rejected the other five previously unreported grants because these were recorded in accounts that should have been examined prior to verification, and “whether a program was used or not by a company is not ‘minor’ in the view of the Department.”<sup>104</sup>

The Department’s initial questionnaire asked respondents to report “other subsidies.”<sup>105</sup> The questionnaire is clear in instructing respondents to report “any other forms of assistance to {the} company.”<sup>106</sup> Therefore, we find that necessary information is not available on the record, and Xingyu and Dragon Group withheld information requested by the Department. In accordance with sections 776(a)(1) and 776(a)(2) of the Act, we determine that the use of FA is warranted in calculating Xingyu and Dragon Group’s benefits from these programs. Moreover, because Xingyu and Dragon Group failed to the best of their ability to answer our questions on “other subsidies,” including reporting assistance which should have been discovered in respondents’ accounting system, we find that Xingyu and Dragon Group failed to act to the best of their abilities in providing requested, necessary information that was in their possession, and that the application of AFA is warranted, pursuant to 776(b) of the Act, in determining benefit. Relying on AFA, we find, as discussed below under Comment 2, that Xingyu and Dragon Group benefited at the rate of 0.58 percent *ad valorem* per missing program, the highest rate determined for a similar program in a prior CVD proceeding.<sup>107</sup>

---

<sup>102</sup> See Dragon VR at VE 1-1.

<sup>103</sup> See Xingyu VR at VE 1-1.

<sup>104</sup> See *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 IDM at 18. Three of the five grants rejected at verification were related to a cross-owned affiliate that was excluded from this program calculation, as it was not a producer of the input it supplied. For these three grants, there is thus no countervailable subsidy attributed to Dragon Group. See also “Attribution of Subsidies.”

<sup>105</sup> See Department’s *Initial Questionnaire* at Section III.

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

<sup>107</sup> See *Off-the-Road Tires from the PRC CVD Review Preliminary Results*, 75 FR at 64275, unchanged in *Off-the-Road Tires from the PRC CVD Review*.

## Dragon Group—VAT Refunds for FIEs for Domestically-Produced Equipment

As discussed below, at the verification of Dragon Group’s questionnaire response, we discovered domestic purchases that were not reported to the Department and for which Dragon Group did not pay VAT.<sup>108</sup> Dragon Group explained that it chose not to report these purchases that were not eligible for the VAT refund as no VAT was due.<sup>109</sup> While the program was initiated as inclusive of both refunds and exemptions, Dragon Group made the methodological decision not to report the exemptions to the Department.<sup>110</sup>

Therefore, we find that necessary information is not available on the record, and Dragon Group withheld information requested by the Department. In accordance with section 776(a)(1) and 776(a)(2) of the Act, we determine that the use of FA is warranted in calculating Dragon Group’s benefits from this program. Moreover, because Dragon Group failed to provide complete details regarding program use, despite the Department’s request that it do so, we find that Dragon Group failed to act to the best of its ability in providing requested information that was in their possession, and that the application of AFA is warranted, pursuant to 776(b) of the Act, in determining benefit. Relying on AFA, we find, as discussed below under Comment 6, that Dragon Group benefited at the rate of 9.71 percent *ad valorem*, the highest rate determined for a similar program in a prior CVD proceeding.<sup>111</sup>

## 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>112</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>113</sup> This information is necessary for determining whether the GOC provides a subsidy that is specific under this program. We received no comments from parties

---

<sup>108</sup> See Dragon VR at 17-18.

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

<sup>110</sup> See 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>111</sup> See *Off-the-Road Tires from the PRC CVD Review Preliminary Results*, 75 FR at 64275, unchanged in *Off-the-Road Tires from the PRC CVD Review*.

<sup>112</sup> See the GOC’s June 15, 2015 Initial Questionnaire Response (GOC IQR) at 121.

<sup>113</sup> See the GOC’s July 16, 2015 Supplemental Questionnaire Response (GOC July 16 SQR) at 23-24.

on this determination. Consequently, we continue to determine that necessary information is not available on the record and that the GOC withheld information that was requested of it.

Therefore, the Department relies on FA in making our determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we continue to 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 FA under section 776(b) of the Act. In drawing an 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>114</sup>

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

As discussed below under the section “Programs 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.<sup>115</sup>

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>116</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>117</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

---

<sup>114</sup> See Preliminary Benchmark Memo.

<sup>115</sup> See *Uncoated Paper from China* and accompanying IDM at 15.

<sup>116</sup> See GOC's IQR at 76-77.

<sup>117</sup> See GOC's July 16 SQR at 13.

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>118</sup> We have explained our understanding of the CCP's involvement in the PRC's economic and political structures in past proceedings.<sup>119</sup> With 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>120</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>121</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>122</sup>

We continue to 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 determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, we continue to find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests 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.<sup>123</sup> We address the GOC's arguments about this issue at Comment 9.

---

<sup>118</sup> See Memorandum from Ilissa Kabak Shefferman, International Trade Compliance Analyst to the File, "Placement of information onto the record" (August 7, 2015).

<sup>119</sup> *Id.* See also *Uncoated Paper from the PRC* at 15.

<sup>120</sup> See *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010), and accompanying IDM at 16.

<sup>121</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 IDM (*HPSC IDM*) at 13.

<sup>122</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.

<sup>123</sup> See Comment 9 for the GOC's rebuttal of this finding.

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 – The MEG Market Is Distorted by the Significant Government Presence

In the initial questionnaire, the Department requested information about the value and volume of MEG domestic consumption that is accounted for by domestic production.<sup>124</sup> The Department requests such information to determine the government’s role in the relevant input market, including whether the GOC is the predominant provider of these inputs in the PRC and whether its significant presence in the market distorts all domestic transaction prices. The GOC provided the requested data, asserting that only about 30 percent of MEG domestic consumption was accounted for by domestic production.<sup>125,126</sup> The Department relied upon the GOC’s assertion to preliminarily determine that the GOC’s presence in the MEG market does not result in distorted prices.<sup>127</sup> Subsequent to our *Preliminary Determination*, we attempted to verify the MEG market information. In preparation for verification, we asked the GOC to verify its claim that imports of MEG accounted for nearly 70 percent of domestic consumption during the POI.<sup>128</sup> We also asked the GOC to verify the role of state-owned enterprises or government agencies in the MEG market during the POI.<sup>129</sup>

In its questionnaire response, the GOC stated that the MEG import data and domestic market data came from China Chemical Fibers Association (CCFA).<sup>130</sup> At verification, the GOC made CCFA officials available. However, for the first time, the Department discovered that CCFA data was obtained from an independent consulting firm that gathered the data on the CCFA’s behalf.<sup>131</sup> We asked whether there was anyone from the independent consulting firm who could speak to how they collected the data. However, no one from the consulting firm was made available to speak to the Department at verification.<sup>132</sup> We asked whether the CCFA knew how the consulting firm came to their data. CCFA officials stated that they did not know.<sup>133</sup> Further, the GOC was unable to explain how the consulting firm collected its market data.<sup>134</sup> We asked whether the GOC did its own research to ensure the reported domestic production of MEG covers all MEG producers in China. The GOC said it did not.<sup>135</sup> Thus, because we were unable to determine how the MEG market data was collected, we find that the MEG market data submitted by the GOC is unverified and cannot be used to determine what types of entities supply the domestic MEG market and the extent to which imports constitute a significant share of domestic MEG consumption. As a result, the Department was unable to verify that the Chinese MEG market is not distorted by the government’s role in that market.

---

<sup>124</sup> *See* April 28, 2015 Countervailing Duty Questionnaire at section “Questionnaire for the People’s Republic of China” at 6-7.

<sup>125</sup> *See* GOC’s IQR at 89.

<sup>126</sup> *Id.*, at 74-75 and Exhibits 34 and 35.

<sup>127</sup> *See* Preliminary Determination at 12.

<sup>128</sup> *See* Verification Outline from the Department to the GOC at 7 (October 29, 2015).

<sup>129</sup> *See* GOC VR at 4-6.

<sup>130</sup> *Id.*, at 2.

<sup>131</sup> *See* GOC VR at 4-6.

<sup>132</sup> *Id.*, at 5.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

Because we determine the MEG market data is unverified, the Department must rely on “facts available” in making our final determination, in accordance with section 776(a)(2)(D) of the Act. Moreover, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Specifically, the GOC’s failure to disclose prior to verification that it relied on an independent, third-party consultant to source its market data; its inability to explain the sources of the market data; its inability to explain how the data was gathered; its failure to make available personnel from the consulting firm to answer the Department’s questions about the data; and its failure to ensure the reliability of the market data impaired the Department’s ability to verify the MEG market data. Consequently, we find that 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 PRC prices of MEG from actual transactions involving Chinese buyers and sellers are distorted by the significant presence and involvement of the GOC.<sup>136</sup> Therefore, we find that the use of domestic Chinese prices are not suitable as benchmarks and that an external benchmark is warranted for calculating the benefit for the provision of MEG for less than adequate remuneration.<sup>137</sup> Further, as a result of this application of AFA, we no longer have reliable record information as to what percentage of MEG production can be attributed to state-owned entities.<sup>138</sup> As a consequence, for MEG purchases where the respondents were unable to report the identity of the producer, we are attributing these purchases to GOC authorities.

#### GOC – The 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 industries, including the PET resin industry.<sup>139</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>140</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 CCFA or some other public source. Again, the GOC did not provide the requested information.<sup>141</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>142</sup>

---

<sup>136</sup> See *CVD Preamble*, 63 FR 65348, 65377.

<sup>137</sup> See *Uncoated Paper from China* IDM at 54.

<sup>138</sup> See *Preliminary Determination* at 12.

<sup>139</sup> See *Initial Questionnaire* at Section B.1 and B.2.

<sup>140</sup> See *GOC IQR* at 92 and 113.

<sup>141</sup> See *GOC July 16 SQR* at 18-19.

<sup>142</sup> *Id.*

In the *Preliminary Determination*, we preliminarily determined that an application of adverse facts available was warranted.<sup>143</sup> The GOC did not comment on this determination. Therefore, consistent with past proceedings and our *Preliminary Determination*,<sup>144</sup> we continue to 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 determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we continue to 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>145</sup>

The GOC also did not provide this information when it was requested of it in the Department’s supplemental questionnaire.<sup>146</sup> Again, it stated that it did not collect these data.<sup>147</sup>

In the *Preliminary Determination*, we preliminarily determined an application of adverse facts available was warranted.<sup>148</sup> We did not receive comments on this determination. Therefore, we continue to 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 determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we continue to determine that the GOC failed to cooperate

---

<sup>143</sup> See *Preliminary Determination* PDM at 17-18

<sup>144</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. See also *Preliminary Determination* PDM at 17-18.

<sup>145</sup> See GOC IQR at 12.

<sup>146</sup> See GOC July 16 SQR at 2.

<sup>147</sup> *Id.*

<sup>148</sup> See *Preliminary Determination* at 18-19.

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. We did not receive comments from parties on this determination.

#### 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>149</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>150</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.

In the *Preliminary Determination*, we preliminarily determined an application of AFA was warranted.<sup>151</sup> We did not receive comments from parties on this determination. Therefore, based upon the above, we continue to 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 determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we continue to 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>152</sup> 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>153</sup> Accordingly, there is no information on the record from the GOC regarding these 84 “Other Subsidies.”

---

<sup>149</sup> See Dragon IQR at Section G: Other Subsidies; *see also* Xingyu's June 15, June 22, and June 29 IQRs.

<sup>150</sup> See GOC IQR at Section F: Other Subsidies; *see also* GOC July 16 SQR at 30.

<sup>151</sup> See *Preliminary Determination* at 19.

<sup>152</sup> See Dragon 7/20 SQR.

<sup>153</sup> See GOC IQR at page 128.

Based upon the above, we continue to 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 determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we continue to 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.

### C. Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the 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>154</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>155</sup>

In this investigation, the Department is examining the programs discussed in the *Preliminary Determination*. Because Xingyu, Dragon Group, and the GOC failed to act to the best of their ability in this investigation with regard to the programs discussed above, we are making an adverse inference with respect to these programs on which the Department initiated in this investigation.

It is the Department’s practice in a CVD investigation to select, as AFA, the highest calculated rate for the identical subsidy program, or if no identical subsidy program with a subsidy rate above zero is available, then a similar program.<sup>156</sup> Specifically, for programs other than those involving income tax exemptions and reductions, the Department applies the highest calculated

---

<sup>154</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>155</sup> See SAA, accompanying the URAA, H. Doc. No. 16, 103d Cong. 2d Session at 870 (1994).

<sup>156</sup> See, e.g., *Laminated Woven Sacks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Laminated Sacks*), and accompanying IDM at “Selection of the Adverse Facts Available;” *Aluminum Extrusions From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (Aluminum Extrusions from the PRC), and accompanying IDM at “Application of Adverse Inferences: Non-Cooperative Companies;” *Galvanized Steel Wire From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012) (Steel Wire from the PRC), and accompanying IDM at “Use of Facts Otherwise Available and Adverse Inferences;” and *Steel Pipe from India* and accompanying IDM at “Selection of the Adverse Facts Available Rate.”

rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program within the investigation where the rate is above zero, the Department looks for an above *de minimis* rate for the identical program in another proceeding involving the same country. Absent an above *de minimis* rate for the identical program, the Department uses the highest rate calculated for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above *de minimis* subsidy rate calculated for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified that could conceivably be used by the companies.<sup>157</sup>

The standard income tax rate for PRC corporations filing income tax returns during the POI was 25 percent.<sup>158</sup> We, therefore, find that the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent (*i.e.*, the income tax programs combined provide a countervailable benefit of 25 percent). Consistent with past practice, the 25 percent AFA rate does not apply to the income tax credit and rebate, accelerated depreciation, or import tariff and value add tax (VAT) exemption programs because such programs may not affect the tax rate.<sup>159</sup>

#### **D. Corroboration of Secondary Information Used to Derive AFA Rates**

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>160</sup>

The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.<sup>161</sup> The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.<sup>162</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. Additionally, as stated above, we are applying subsidy rates which were calculated in this investigation or previous PRC CVD investigations or

---

<sup>157</sup> See, *e.g.*, Thermal Paper IDM at “Selection of the Adverse Facts Available Rate.”

<sup>158</sup> See GOC QR at Exhibit 19 at 2 (unnumbered).

<sup>159</sup> See, *e.g.*, Thermal Paper IDM at “Selection of the Adverse Facts Available Rate;” see also Circular Welded Carbon-Quality Steel Pipe From India: Final Affirmative Countervailing Duty Determination, 77 FR 64468 (October 22, 2012) (*Steel Pipe from India*), and accompanying IDM at “Selection of the Adverse Facts Available Rate.”

<sup>160</sup> See SAA, at 870.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*, at 869-870.

administrative reviews. Additionally, no information has been presented which calls into question the reliability of these previously calculated subsidy rates that we are applying as AFA.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>163</sup>

In the absence of record evidence concerning certain programs under investigation, we reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs under investigation in this case. For the programs for which there is no program-type match, we selected the highest calculated subsidy rate for any PRC program from which the respondents could receive a benefit to use as AFA. The relevance of these rates is that they are actual, calculated CVD rates for a PRC program from which the companies could actually receive a benefit. Further, these rates were calculated for periods close to the POI. Due to the lack of certain record information concerning the programs under investigation, the Department corroborated the rates it selected to the extent practicable.

## **IX. ANALYSIS OF PROGRAMS**

Based upon our analysis of the record and the responses to our questionnaires, we determine the following.

### **A. Programs Determined To Be Countervailable**

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

The Department examined 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.

---

<sup>163</sup> See, e.g., *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

Dragon Group and Xingyu, as well as their cross-owned companies, reported having loans outstanding from SOCBs in the PRC during the POI.<sup>164</sup> The Department continues to find 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>165</sup> Additionally, the *Guidance Catalogue on Industrial Structural Adjustment (2011)*, (Revised 2013) lists the petrochemical industry as an “encouraged category.”<sup>166</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>167</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>168</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>169</sup>

Therefore, given the evidence demonstrating the GOC’s objective of developing the petrochemical and (more specifically) the ethylene sector, through preferential loans, we 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 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>170</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>171</sup> To calculate the benefit from this program, we used the benchmarks discussed above under the “Subsidy Valuation Information” section.<sup>172</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. For Dragon Group, we are relying on AFA to determine the benefit, as described above.

---

<sup>164</sup> See Dragon’s IQR at Exhibit 21; see also Xingyu’s Initial QR at Exhibit 9.

<sup>165</sup> See GOC’s IQR at Exhibit 7, Chapter 13, section 2.

<sup>166</sup> *Id.*, at Exhibit 15, Chapter XI.

<sup>167</sup> *Id.*, at Exhibit 16, Article 17.

<sup>168</sup> *Id.*, at Exhibit 17.

<sup>169</sup> *Id.*

<sup>170</sup> See, e.g., *New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) (*OTR Tires from the PRC*) and accompanying IDM at Comment E2.

<sup>171</sup> See section 771(5)(E)(ii) of the Act.

<sup>172</sup> See also 19 CFR 351.505(c).

On this basis, we determine a subsidy rate of 1.43 percent *ad valorem* for Xingyu and 10.54 percent *ad valorem* for Dragon Group.<sup>173</sup>

## **2. Preferential Export Financing**

Dragon Group and Xingyu reported receiving loans from the Export-Import Bank of China (EIBC) during the POI.<sup>174</sup> Dragon Group reported that these loans were for export order financing.<sup>175</sup> Xingyu reported that these loans were for purchase of materials, fixed facilities, and imports.<sup>176</sup>

We find that respondents' loans from the EIBC that were outstanding during the POI are countervailable export loans. Consistent with *Seamless Pipe from the PRC*, 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.<sup>177</sup> 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.<sup>178</sup> Also, we determine that the export loans confer a benefit within the meaning of section 771(5)(E)(ii) of the Act.<sup>179</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 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. For Dragon Group, we are relying on AFA to determine the benefit, as described above.

---

<sup>173</sup> See Xingyu Final Calculation Memo and Dragon Final Calculation Memo. See also "Application of Adverse Facts Available" and Comment 5.

<sup>174</sup> See Dragon IQR at 17 and Exhibit 21.

<sup>175</sup> See Dragon IQR at 17.

<sup>176</sup> See Xingyu's July 14 SQR at Exhibit S3-4.

<sup>177</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 "B. Export Loans from the Export-Import Bank of China."

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

On this basis, we determine the net countervailable subsidy rate to be 10.54 percent *ad valorem* for Dragon Group and 0.28 percent *ad valorem* for Xingyu.<sup>180</sup>

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

Xingyu reported that three cross-owned respondents carried outstanding loans during the POI from EIBC.<sup>181</sup> The GOC identified Sanfangxiang Group, Xingyu New Material, and Xingye Plastic as recipients of loans under the Export Seller's Credits program.<sup>182</sup> Based on the GOC's identification of use of this program by these three Xingyu respondents, we classified these loans as Export Seller's Credits for the Preliminary Determination. At verification, we found no discrepancies from what Xingyu and the GOC initially reported.<sup>183</sup> Thus, we continue to classify these loans as Export Seller's Credits for this 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>184</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 exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(B) of the Act.<sup>185</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 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 determine the net countervailable subsidy rate to be 0.49 percent *ad valorem* for Xingyu.<sup>186</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

---

<sup>180</sup> See Xingyu Final Calculation Memo and Dragon Final Calculation Memo. See also "Application of Adverse Facts Available."

<sup>181</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>182</sup> See GOC IQR at 30.

<sup>183</sup> See Xingyu VR at 8-10.

<sup>184</sup> See Citric Acid IDM at 13.

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

<sup>186</sup> See Xingyu Final Calculation Memo.

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>187</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>188</sup>

Consistent with *Wood Flooring from the PRC*, we continue to 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 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 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 determine a countervailable subsidy rate of 10.25 percent *ad valorem* for Dragon Group and 0.05 percent *ad valorem* for Xingyu under this program.<sup>189</sup>

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

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

The Department examined 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>190</sup> We understand the GOC’s classification of certain companies as SOEs to mean that

---

<sup>187</sup> See GOC IQR at 51.

<sup>188</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.

<sup>189</sup> See Xingyu Final Calculation Memo and Dragon Final Calculation Memo.

<sup>190</sup> See GOC IQR at Exhibit 34, 35, 44, and 45.

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>191</sup> The GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that the respondents received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.<sup>192</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 the basis of the ratio of government-ownership in MEG and PTA producers, as reported by the GOC. The GOC commented on this determination, as addressed below at Comment 9.

As explained in the “Use of Facts Otherwise Available and Adverse Inferences” section of this memorandum above, we 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). We received no comments from parties on this issue.

As explained in the “Use of Facts Otherwise Available and Adverse Inferences” section of this memorandum above, we determine that the MEG market is significantly distorted by the government’s presence, and, thus, an external benchmark is warranted for calculating the benefit for the provision of MEG for LTAR.

As discussed above under the “Benchmarks and Discount Rates” section, the Department determines it is appropriate to use actual import transaction prices as reported by respondents for PTA as benchmark prices, *i.e.*, “tier-one” prices, to calculate the benefit under this program.<sup>193</sup> We compared these monthly benchmark prices to the respondents’ reported purchase prices for individual domestic transactions, including VAT and delivery charges. Because the benchmark prices exceeded the prices paid by the companies for domestically-sourced purchases of PTA, we determine that the GOC provided PTA for LTAR and that a benefit exists in accordance with 19 CFR 351.511(a). To calculate the net subsidy rate for Dragon Group and Xingyu, as described under 19 CFR 351.525(b)(3), for each year, we summed the benefits from all purchases of PTA

---

<sup>191</sup> See Memorandum from Ilissa Kabak Shefferman, International Trade Compliance Analyst to the File, “Placement of information onto the record” (August 7, 2015).

<sup>192</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.

<sup>194</sup> See Xingyu Final Calculation Memo and Dragon Final Calculation Memo.

and we divided the yearly benefit by the company's relevant sales denominator in that year, as discussed in the "Subsidies Valuation Information" section above, and in the Final Calculation Memoranda.

For the portion of Dragon Group's and Xingyu's MEG purchases that we determined constituted a financial contribution, we compared the monthly benchmark prices to the respective company's actual purchase prices for MEG, including taxes and delivery charges, as appropriate. Because the benchmark prices exceed prices paid by the companies for MEG, we find that the GOC's provision of MEG for LTAR provides a benefit, in accordance with 19 CFR 351.511(a). To calculate the net subsidy rate for Dragon Group and Xingyu for this domestic subsidy, as described under 19 CFR 351.525(b)(3), for each year, we summed the benefits from all purchases of MEG and we divided the yearly benefit by the company's sales in that year, as discussed in the "Subsidies Valuation Information" section above, and in the Final Calculation Memoranda.

On this basis, we determine a subsidy rate of 0.12 percent *ad valorem* for Dragon Group for MEG and 3.15 percent *ad valorem* for PTA. For Xingyu, we determine a subsidy rate of 2.10 percent *ad valorem* for MEG and 1.66 percent *ad valorem* for PTA.<sup>194</sup>

#### b. Provision of Electricity for LTAR

For the reasons explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we continue to base 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.

To determine 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>195</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>196</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.

---

<sup>194</sup> See Xingyu Final Calculation Memo and Dragon Final Calculation Memo.

<sup>195</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>196</sup> See *Wind Towers* IDM at 21-22.

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>197</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 determine that Xingyu received a countervailable subsidy rate of 0.60 percent *ad valorem* and Dragon Group received a countervailable subsidy rate of 2.56 percent *ad valorem*.<sup>198</sup>

## **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>199</sup> We determine that the assistance received by Dragon Group constitutes a financial contribution and a benefit under sections 771(5)(D)(i) of the Act and 19 CFR 351.504, respectively.

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, the Department is relying on AFA to 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. We received no comments from parties on this issue.

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 Final Calculation Memoranda. We then summed the subsidy rates to arrive at Dragon Group's subsidy rate.

On this basis, we determine a countervailable subsidy rate of 0.05 percent *ad valorem* for Dragon Group.<sup>200</sup>

---

<sup>197</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 Final Calculation Memo and Dragon Final Calculation Memo.

<sup>198</sup> *See* Xingyu Final Calculation Memo and Dragon Final Calculation Memo.

<sup>199</sup> *See* Dragon IQR at 7 and GOC IQR at 5.

<sup>200</sup> *See* Dragon Final Calculation Memo.

## **7. 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>201</sup> According to the GOC, the program is designed to promote the development of FIEs in the PRC.<sup>202</sup> Dragon Group and Xingyu reported receiving VAT exemptions under this program.<sup>203</sup>

We 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>204</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.

For Xingyu, 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. In our *Preliminary Determination*, we determined that there was no measureable benefit provided by the GOC to Dragon Group and Xingyu. However, for the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section

---

<sup>201</sup> See GOC IQR at 63.

<sup>202</sup> *Id.*

<sup>203</sup> See Dragon IQR at page 22.

<sup>204</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.

above, we are applying AFA to Dragon’s purchases of domestically-purchased equipment for this final determination due to its failure to report certain VAT-exempted purchases.<sup>205</sup>

On this basis, we determine the countervailable subsidy rate to be 9.71 percent *ad valorem* for Dragon.<sup>206</sup> Xingyu’s countervailable subsidy rate remains unchanged from the Preliminary Determination, at 0.00 percent *ad valorem*.

### **“Other Subsidies” Reported in Initial Questionnaire Responses (IQRs)**

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>207</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 “Other Subsidies,” reported in IQRs, in part, on AFA. Therefore, as an adverse inference, we determine that the subsidies discussed below are 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 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.<sup>208</sup>

#### *Export Subsidies*

### **8. 2013 Annual Incentive Funds Stable Foreign Trade Policy**

Xingyu reported receipt of funds under this non-recurring subsidy program.<sup>209</sup> To calculate a benefit, we divided the total amount of funds received by the appropriate export sales

---

<sup>205</sup> Xianglu PC’s purchases did not provide a measureable benefit, and the Department was able to reconcile these purchases at verification.

<sup>206</sup> See Dragon Final Calculation Memo. See also “Application of Adverse Facts Available.”

<sup>207</sup> Refer to Appendix 1 of the Xingyu Preliminary Analysis Memorandum.

<sup>208</sup> We initiated on New Subsidy Allegations (NSA) on July 15, 2015 and sent Xingyu, Dragon, and the GOC NSA questionnaires on July 21, 2015. In Xingyu’s response to the NSA questionnaire, it reported use of certain programs that were previously included in the “other subsidies” section of the initial questionnaire response. The programs included in its response, were included in the preliminary determination, and at verification, we reviewed the completeness of Xingyu’s response and confirmed the accuracy of its grant reporting. See Xingyu NSA and Xingyu Final Calculation Memo

<sup>209</sup> See June 15 IQR and July 16 SQR at Exhibit S2-18.

denominator, as discussed in the “Subsidies Valuation Information” section above. On this basis, we determine a countervailable subsidy rate of 0.02 percent *ad valorem* for Xingyu.<sup>210</sup>

#### **9. Jiangsu Province Export Premium Subsidy**<sup>211</sup>

Xingyu reported receipt of funds under this non-recurring subsidy program.<sup>212</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 Final Calculation Memorandum. On this basis, we determine a countervailable subsidy rate of 0.03 percent *ad valorem* for Xingyu.

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

Xingyu reported receipt of funds under both of these program names.<sup>213</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. On this basis, we determine a countervailable subsidy rate of 0.02 percent *ad valorem* for Xingyu.<sup>214</sup>

#### *Domestic Subsidies*

#### **11. Transition Gold Support**

Xingyu reported receipt of funds under this non-recurring subsidy program.<sup>215</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. On this basis, we determine a countervailable subsidy rate of 0.01 percent *ad valorem* for Xingyu.<sup>216</sup>

#### **12. 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 investment activities, and no record of criminal activity. Entities applying for this funding must submit a timely application that details foreign investments.<sup>217</sup> To calculate a benefit, we divided the total amount of funds received by the appropriate total sales denominator, as discussed in the

---

<sup>210</sup> See Xingyu Final Calculation Memo.

<sup>211</sup> Grants received under this program were also reported as “Export Credit Insurance.” See Xingyu NSA at 1 and Xingyu Final Calculation Memo.

<sup>212</sup> See June 15 IQR and July 16 SQR at Exhibits S2-20, S2-21b, and S2-26.

<sup>213</sup> See June 15 IQR and July 16 SQR at Exhibit S2-21.

<sup>214</sup> See Xingyu Final Calculation Memo.

<sup>215</sup> See June 15 IQR and July 16 SQR at Exhibit S2-15.

<sup>216</sup> See Xingyu Final Calculation Memo.

<sup>217</sup> See June 15 IQR and July 16 SQR at Exhibit S2-16.

“Subsidies Valuation Information” section above.<sup>218</sup> On this basis, we determine a countervailable subsidy rate of 0.06 percent *ad valorem* for Xingyu.

### **13. Energy Saving**

Xingyu reported receipt of funds under this program.<sup>219</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. On this basis, we determine a countervailable subsidy rate of 0.04 percent *ad valorem* for Xingyu.<sup>220</sup>

### **14. Technology Reform Interest Subsidy**

Xingyu reported receipt of funds under this non-recurring subsidy program.<sup>221</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. On this basis, we determine a countervailable subsidy rate of 0.02 percent *ad valorem* for Xingyu.<sup>222</sup>

### **15. 2012 and 2013 Refund of Land Use Tax**

Xingyu reported receipt of this tax refund.<sup>223</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>224</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. On this basis, we determine a countervailable subsidy rate of 0.01 percent *ad valorem* for Xingyu.<sup>225</sup>

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

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>226</sup> Consistent with earlier cases, we determine that this program constitutes a countervailable subsidy.<sup>227</sup> The exemption/reduction is a financial contribution in the form of revenue foregone by the GOC

---

<sup>218</sup> See Xingyu Final Calculation Memo.

<sup>219</sup> See June 15 IQR and July 16 SQR at Exhibit S2-17.

<sup>220</sup> See Xingyu Final Calculation Memo.

<sup>221</sup> See June 15 IQR and July 16 SQR at Exhibit S2-25.

<sup>222</sup> See Xingyu Final Calculation Memo.

<sup>223</sup> See June 22 IQR and July 16 SQR at Exhibit S2-29.

<sup>224</sup> See July 16 SQR at Exhibit S2-29.

<sup>225</sup> See Xingyu Final Calculation Memo.

<sup>226</sup> See Solar Cells IDM at 16-17 and Comment 25.

<sup>227</sup> *Id.*

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>228</sup>

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. On this basis, we determine a countervailable subsidy rate of 0.00 percent *ad valorem* for Xingyu.<sup>229</sup>

### **17. 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>230</sup> We 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. We then summed the subsidy rates to arrive at Dragon Group’s subsidy rate.

On this basis, we determine a countervailable subsidy rate of 0.01 percent *ad valorem* for Dragon Group.<sup>231</sup>

### **“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 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>232</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

---

<sup>228</sup> *Id.*

<sup>229</sup> See Xingyu Final Calculation Memo.

<sup>230</sup> See Dragon IQR at Exhibit 46.

<sup>231</sup> See Dragon Final Calculation Memo

<sup>232</sup> *Id.*

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.<sup>233</sup>

The benefit rates are as follows:<sup>234</sup>

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*

## **B. Programs Determined To Be Not Used**

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

- 18.** International Market Exploration Fund (SME Fund)
- 19.** City Construction Tax and Education Fees Exemptions for FIEs
- 20.** Xiamen Municipality Support for Pivotal Manufacturing Industries
- 21.** Xinghuo Development Zone Recycling Economic Construction Specialized Fund
- 22.** Science & Technology Awards
- 23.** Yangpu Economic Development Zone Preferential Tax Policies
- 24.** Xinghuo Development Zone Industrial Structural Adjustment Fund
- 25.** VAT Subsidies for FIEs
- 26.** Provision of Land for LTAR to Enterprises in Xinghuo Development Zone, Fengxian District, Shanghai Municipality

---

<sup>233</sup> See Dragon Final Calculation Memo.

<sup>234</sup> Additional subsidies were reported by one cross-owned affiliate, and were included in the *Preliminary Determination*. At verification, we verified that the company was a non-producing input supplier. Therefore, we now determine that there was no benefit as the programs were not related to the input for subject merchandise. We address this issue below, at Comment 1, and above in “Attribution of Subsidies.”

27. Provision of Land for LTAR to Enterprises in Yangpu Economic Development Zone, Hainan Province
28. Provision of Land for LTAR to Enterprises in Haicang Investment Zone, Xiamen, Fujian Province
29. Jiangsu Province, Jiangyin City Grants for Legal Fees in Trade Remedy Cases

### C. Programs That did Not Confer a Benefit in the POI

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

Xingyu reported receipt of three, non-recurring grants during the AUL under the “Famous Brands” program.<sup>235</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 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>236</sup>

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 determine that grants received by Xingyu under the “Famous Brands” program did not confer a benefit during the POI because the benefits were expensed in the year of receipt.<sup>237</sup>

#### **31. 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

---

<sup>235</sup> See June 15 IQR at page 9.

<sup>236</sup> See Wire Strand IDM at “Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level.”

<sup>237</sup> See Xingyu Final Calculation Memo.

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>238</sup>

The Department verified the specificity of this program in *Wind Towers from the PRC*.<sup>239</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>240</sup> we also 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 determine a countervailable subsidy rate of 0.00 percent *ad valorem* for Xingyu.<sup>241</sup>

#### **D. Final AFA Rates Determined for Programs Used by Xingyu**

As explained above, we rejected four grants that Xingyu presented at verification as minor corrections. Three of the four rejected grants were reported used by a non-producing input supplier. As explained in “Attribution of Subsidies” above, we are only attributing benefits received by non-producing input suppliers to Xingyu that directly relate to the input they supply. As such, we are attributing one rejected grant to Xingyu.<sup>242</sup> Listed below is the AFA rate applicable for the program.

<b>Program</b>	<b><i>Ad Valorem</i> Subsidy Rate (Percent)</b>
Rejected Grant <sup>243</sup>	0.06

#### **E. Final AFA Rates Determined for Programs Used by Dragon Group**

As explained above, we rejected one grant presented by Dragon Group at verification as a minor correction because it related to a program that was not previously reported. Listed below is the AFA rate applicable to this program. For additional description about this grant, *see* Dragon VR at 1-2.

<sup>238</sup> See *Wind Towers* IDM at 18-19 and Comment 17; *see also* *Solar Cells* IDM at 17 and Comment 25.

<sup>239</sup> See *Wind Towers* IDM at 18-19.

<sup>240</sup> *Id.*

<sup>241</sup> See Xingyu Final Calculation Memo.

<sup>242</sup> See Comment 2. Three additional grants were presented at verification as minor corrections that the Department rejected, however, grant programs for the respective company were not attributed to Xingyu as the cross-owned affiliate was not a producer of the subject merchandise or a producer of the input.

<sup>243</sup> Overseas Investment Discount Grant

<b>Program</b>	<b>Ad Valorem Subsidy Rate (Percent)</b>
Rejected Grant	0.58

## **X. CALCULATION OF THE ALL-OTHERS RATE**

Sections 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States excluding rates that are zero or *de minimis* or any rates determined entirely on the facts available. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the "all-others" rate by weight-averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. Therefore, for the "all-others" rate, we calculated a simple average of the two responding companies' rates.

## **XI. ANALYSIS OF COMMENTS**

### **Comment 1: Whether to Disregard Certain Affiliates That Do Not Produce the Input They Supply**

#### **Dragon Group and Xingyu assert the following:**

- Citing to 19 CFR 351.525(6) and 19 CFR 351.525(6)(iv), Dragon and Xingyu assert that the Department should not attribute countervailable programs to non-producing, cross-owned suppliers of inputs to subject merchandise.
- The Department's regulations indicate that subsidies will only be attributed when the input supplier has produced the inputs supplied. As such, the Department should only attribute countervailable subsidies to the five cross-owned producers of subject merchandise: Xingye Plastic, Xingjia, Xingtai, Xingye Poly, and Xingyu; SFX Group (parent company of Xingyu and other cross-owned producers of subject merchandise); and Hailun Petrochemicals (producer of PTA supplied to Xingyu and other cross-owned producers of the subject merchandise).<sup>244</sup>
- In the *Preliminary Determination*, program benefits received by input suppliers that did not produce the subject merchandise were attributed to producers and exporters. This should not be continued for the Final Determination.<sup>245</sup>

<sup>244</sup> See Xingyu's May 12, 2015 Initial Affiliation Questionnaire Response (Xingyu May 12 AQR) at 4.

<sup>245</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, 2015 (Xingyu Preliminary Calculation Memo) at 4.

- Dragon Group requests that the Department exclude non-producing input suppliers from the countervailing duty calculation, and only calculate benefits received by Dragon, producer of subject merchandise, and Xianglu PC and Xianglu PC ZZ, producers of PTA.<sup>246</sup>
- Xingyu asserts that to avoid double-counting purchases of PTA, MEG, and electricity, the companies did not report the producer name and address of transactions originating from cross-owned suppliers who are non-producers of the inputs.<sup>247</sup>
- Xingyu proposes that if input suppliers are not collapsed, the Department should use either evidence on the record or facts available to attribute PTA, MEG and electricity benefits received by the input suppliers to Xingyu, but should not attribute benefits arising out of loan programs and grants if the companies are not collapsed.

**Petitioners rebut, as follows:**

- Citing *Washers from Korea*, the Department should reject respondents' request to dismiss non-producing input suppliers. Petitioners argue that attribution to non-producing input suppliers is analogous with the attribution to a parent or holding company.<sup>248</sup>
- Petitioners contend that pursuant to 19 CFR 351.525(b)(6)(vi), the Department should continue to find Xingyu's input suppliers cross-owned, and provide inputs primarily dedicated to the production of subject merchandise.<sup>249</sup>
- Dragon Group's input suppliers also meet the same regulatory criteria, and thus the Department should continue to attribute countervailable benefits to Dragon.

**Department's Position:**

We disagree with Petitioners' attribution arguments with respect to this issue, in part. Petitioners suggest that the Department should not dismiss non-producing input suppliers from attribution of reported subsidies. Dragon Group and Xingyu reported that certain of their affiliated companies supplied inputs to the respective companies during the POI. Because these affiliated companies were not the producers of the inputs,<sup>250</sup> we are attributing, pursuant to 19 CFR 351.525(b)(6)(v), only those subsidies received by these companies that were transferred to Dragon Group and

---

<sup>246</sup> See Dragon's May 12, 2015 Initial Affiliation Questionnaire Response (Dragon May 12 AQR) at Exhibit 1.

<sup>247</sup> See Xingyu's June 15, 2015 Initial Questionnaire Response (Xingyu IQR) at 15.

<sup>248</sup> See *Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*), and accompanying IDM at 3; see also, e.g., *Certain Steel Products from Belgium*, 58 FR 37273, 37282 (July 9, 1993).

<sup>249</sup> See Xingyu's Preliminary Calculation Memo at 2 and 4.

<sup>250</sup> See Xingyu IQR at 4.

Xingyu, respectively. Our approach in this regard is consistent with the Department's final determination in *Aluminum Extrusions from the PRC; 2010 and 2011 Administrative Review*.<sup>251</sup>

We disagree with Petitioners that *Large Residential Washers from Korea*<sup>252</sup> is applicable here. In the Korean case, the issue centered on a lump sum grant that the producer of subject merchandise received. The Korean respondent argued that the Department should reduce the amount of the grant included in the numerator in order to account for the fact that it purportedly transferred a portion of the grant to affiliated parties that were not subject to the Department's subsidy analysis. In rejecting the respondent's argument, the Department noted that respondent's claims regarding the transfer of the grant were based on untimely filed information. The Department also noted that it does not generally trace the actual use of funds once they are received by a company.

The situation in the instant investigation is different. Here, the Department is examining cross-owned affiliates that received inputs for LTAR from government authorities but which do not otherwise meet the necessary criteria for them to submit questionnaire responses (*e.g.*, while the cross-owned companies supplied inputs to Dragon Group and Xingyu during the POI, the companies were not producers of subject merchandise, parent companies, or producers of primary inputs, which they supplied to Dragon Group and Xingyu during the POI). Therefore, we find the only regulation that applied to these cross-owned firms is 19 CFR 351.525(b)(6)(v), which states that in situations where the circumstances described in 19 CFR 351.525(b)(6)(i)-(iv) do not apply, "if a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership, the Secretary will attribute the subsidies to products sold by the recipient of the transferred subsidy."<sup>253</sup>

As such, we will attribute all countervailable benefits received by Hailun Petrochemicals, Xingyu New Material, Xingtai, Xingjia, Sanfangxiang Group,<sup>254</sup> Xingye Poly, Xingye Plastic to Xingyu. Further, we will attribute benefits received by non-producing input suppliers from the programs included in the "Provision of Inputs for LTAR," as reported by Xingyu and confirmed at verification, to Xingyu.<sup>255</sup> For Dragon Group, we will attribute all countervailable benefits received by Dragon, Xianglu PC, Xianglu PC ZZ, and DAC to Dragon's *ad valorem* rate, and attribute benefits received by Xianglu CF under the input for LTAR programs to Dragon's *ad valorem* rate.<sup>256</sup>

---

<sup>251</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) (*Aluminum Extrusions from the PRC; 2010 and 2011 Administrative Review*), and accompanying IDM at Comment 15.

<sup>252</sup> See *Large Residential Washers from Korea*, and accompanying IDM at 3.

<sup>253</sup> *Id.*

<sup>254</sup> See 19 CFR 351.525(b)(6)(iii).

<sup>255</sup> See Xingyu AQR at Exhibit 1; see also Xingyu Final Determination Calculation Memo.

<sup>256</sup> See Dragon Final Calculation Memorandum and Xingyu Final Calculation Memorandum.

## Comment 2: Treatment of Grants that the Department Rejected at Verification

### Dragon Group and Xingyu assert the following:

- At verification, the Department did not accept four grants Xingyu presented as minor corrections because the Department stated that the programs were not previously reported. Xingyu argues that that the Department unreasonably rejected the information, although additional documentation was provided at verification that demonstrated the corrections were accurate and minor.<sup>257</sup>
- Dragon Group states that the Department unfairly rejected one of three grants presented as minor corrections at verification.
- Xingyu explains that the Department should not have rejected Bolun’s four grants presented as minor corrections, as they appear to be identical to previously reported grants submitted by other Xingyu Group companies.
- Dragon Group asserts that the rejected grant was excluded due to a typographical error and is only slightly over *de minimis*. Thus, not reporting the grant in question could be considered a ministerial error.
- Xingyu asserts that the grants to SFX Group are similar to other previously submitted educational grants reported by the company as “other subsidies.”<sup>258</sup>
- The grants presented by SFX Group and Dragon Group that were later rejected, met the criteria that the Department previously set forth in the verification outline to constitute a minor correction, as established by the U.S. Court of International Trade (CIT) pursuant to section 782(e) of the Act, in *Maui Pineapple*.<sup>259</sup>
- Citing *Maui Pineapple* and *American Brake*, Xingyu argues that the Department often concludes that errors in the submission do not affect the integrity of the response, and Xingyu’s data was easily verifiable.<sup>260</sup>
- The CIT’s decision in *American Brake* determines that if a party has acted to the best of its ability, failure to submit an error-free response should not “justify authorities from disregarding it.” Xingyu and Dragon assert that the Department still analyzes the effect of the minor corrections on the overall rate. Each company states that the grants would

---

<sup>257</sup> See Xingyu VR at 2-3 and Exhibit VE-1.

<sup>258</sup> See SFX Group’s Initial Questionnaire Response (SFX Group IQR), dated June 15, 2015 at 25-30 and Exhibit 18.

<sup>259</sup> See Xingyu VR at 2-3 and Dragon VR at 14-15; see also *Maui Pineapple vs. United States*, 264 F. Supp. 2d 1244, 1257 (*Maui Pineapple*).

<sup>260</sup> See, e.g., *Coalition for the Preservation of American Brake Drum & Rotor Aftermarket Mfrs. V. United States*, 44 F. Supp. 2d 229 (CIT 1999) (*American Brake*); see also *Maui Pineapple*, 264 F. Supp. 2d 1244 at 1257; see also Xingyu VR at 11-13.

have a minimal effect on the overall CVD rate and would be expensed prior to the POI, while also accounting for a low number of the total countervailable grants.<sup>261</sup>

- Citing the Department's practice in *PVLT Tires from China*, Xingyu requests that if the Department deems it is too late to retrieve the rejected grants for its final CVD calculation, then the Department should substitute an average of Xingyus similar grants for the missing information to perform the calculation. Dragon Group makes an identical cite and requests that the Department to substitute an average of Dragon Group's or Xingyu's grants that are identical or most similar to the rejected grants, if the Department does not retrieve the missing information.<sup>262</sup>
- Both companies argue that penalizing respondents through application of AFA for reporting unintentionally omitted grants is not appropriate as set forth by the Department in *Solar Products from China*, and thus, the Department should use Xingyu's and Dragon Group's own data for calculation of the rate.<sup>263</sup>
- Xingyu and Dragon Group contend that the Department has previously accepted new grant programs at verification and parties did not comment on such grants, indicating that the Department routinely accepts new grants as minor corrections.<sup>264</sup>
- Citing the Department's decision to accept grants during verification in *Shrimp from China*, Xingyu and Dragon contend that the minor correction phase is a request for information on new grant programs found while respondents are preparing for verification. The Department's refusal to accept the new grants presented is contrary to past practice.<sup>265</sup>
- Citing sections 776(a) and 782(a)(1)-(2) of the Act and the CAFC's decision in *Nippon Steel Corp.*, Xingyu and Dragon argue that there is no cause to apply adverse facts or total facts available to Xingyu Group's and Dragon's complete response. Both companies assert that they acted to the best of their ability, and the Department successfully verified certain data from both companies, excepting Xingyu's four grants and programs the Department misapprehended relating to Dragon.<sup>266</sup>

---

<sup>261</sup> See *American Brake*, 44 F. Supp. 2d 1244 at 236.

<sup>262</sup> See *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) (*PVLT Tires from China*), and accompanying IDM (*PVLT Tires IDM*) at 19-20, 35 & 37-38.

<sup>263</sup> See *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014) (*Solar Products from China*), and accompanying IDM (*Solar Products IDM*) at 10-11 & 16.

<sup>264</sup> See *PVLT Tires IDM* at 19-20, 35 & 37-38; see, e.g., *Drawn Stainless Steel Sinks From the People's Republic of China: Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013); see also, e.g., *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*).

<sup>265</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM (*Shrimp IDM*) at 57.

<sup>266</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Circ. 2003) (*Nippon Steel Corp.*).

- Xingyu contends that the CIT’s decision in *Goldlink* with regard to applying FA “induces” respondents to provide accurate, timely, and complete information. The Department must provide additional information to apply AFA and not make excessively punitive decisions.<sup>267</sup>
- Xingyu requests that if the Department chooses to apply FA, they should apply neutral facts available, which has been upheld under similar circumstances in the CIT.<sup>268</sup>
- Dragon Group asserts that the rejection of new information without any regard to the magnitude of the information is unreasonable and does not take into account the completeness of Dragon’s response. The Department carved out categories of unacceptable new information, while accepting other types of new information.
- Dragon Group proposes that the Department use a similar grant that Xingyu previously reported to calculate a benefit for Xianglu PC ZZ’s rejected grant.

**The GOC asserts the following:**

- The value of the unreported grants presented by each company at verification was small in comparison to the total number of grants previously reported. While the Department tries to calculate subsidies as accurately as possible, perfection should not be required of the Department or the respondents, who must provide “reams of data” in the investigation.
- Neither Petitioners nor the Department alleged that the grants reported as “other subsidies” existed and/or were received by respondents. Citing Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures, the GOC contends that the grants should not be included in the subsidy rate.
- As the Department’s verifiers are not “full-time/professional auditors” and participate in multiple verifications each year, small reporting errors may not be found during verification.
- If the Department were to apply an AFA rate, companies will have no reason to present unreported grants in the future, considering that there is a chance the Department would not discover the programs over the course of verification.

**Petitioners assert the following:**

- Xianglu PC ZZ presented an infrastructure grant that was previously undisclosed and which the Department did not accept as a minor correction.
- Consistent with amendments under the Trade Preferences Extension Act of 2015, the

---

<sup>267</sup> See *Goldlink Indus. Co. v. United States*, 41 F. Supp. 2d 1323, 1329 (CIT 2009) (*Goldlink*).

<sup>268</sup> See, e.g., *Ad Hoc Shrimp Trade Action Comm. V. United States* 675 F. Supp. 2d 1287, 1304-1305 (CIT 2009).

Department should use the highest rate applied to a grant program in a CVD PRC proceeding, 0.58 percent.

**Dragon rebuts, as follows:**

- The reported grant was merely one of 99 reported grants, and there is no evidence that Dragon did not use best efforts in reporting grants. This error was due to Dragon’s clerical error in an Excel formula.
- It is the Department’s practice to accept such grants as minor correction.
- The average value or rate of such {loans} comes nowhere close to the punitive rate proposed by Petitioners.

**Petitioners rebut, as follows:**

- Citing section 776(a)(b) of the Act, Petitioners argue that the Department should apply adverse facts available with respect to the unreported grants at a rate of 0.58 percent *ad valorem* for each grant.<sup>269</sup>
- Petitioners contend that the grants were not “corrections to the record” as Dragon and Xingyu state because the grants were not previously on the record. Both companies submitted new information with voluminous supporting data.<sup>270</sup>
- Consistent with *Reiner Brach* and the Department’s practice, the Department stated that it will not accept new factual information at verification. The CIT found that it is the Department’s discretion to reject new factual information that is not timely.<sup>271</sup>
- Respondents submitted “other” grants received in the Department’s questionnaire, demonstrating the companies understood the Department’s request for information. It was not possible for the Department to discern the comprehensive state of the responses submitted prior to verification.<sup>272</sup>
- Petitioners contends that while respondents extensively cite *Maui Pineapple* to establish precedent for the Department to accept new information at verification, the CIT decision varies in that the Department stated it would accept new information only under certain circumstances and on a “case by case basis.” No such exception was made in the current case, thus the Department should continue to exercise discretion in rejecting the new factual information.<sup>273</sup>

---

<sup>269</sup> See Cold-Rolled Steel Prelim at 23.

<sup>270</sup> See Dragon Case Brief at 11 and Xingyu Case Brief at 12.

<sup>271</sup> See, e.g., *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1334 (CIT 2002); see also, e.g., *Micron Tech., Inc. v. United States*, 117 F.3d 1386, 1395 (Fed. Cir. 1997) (*Reiner Brach*).

<sup>272</sup> See Dragon Case Brief at 13 and Xingyu Case Brief at 13.

<sup>273</sup> See *Maui Pineapple* 264 F. Supp. 2d 1244 at 1257.

- The Department must disregard respondent claims as to the size, scope, or significance of the unreported grant programs as there is no record of evidence on the record to support these claims. The Department rejected such grant information at verification.<sup>274</sup>
- Petitioners contend that although respondents cite numerous cases where the Department accepted previously unreported grants, this is not contrary to the Department’s practice as the Department has stated it exercises discretion on a case-by-case basis.<sup>275</sup>
- Citing *Photovoltaic Cells from China* and *Supercalendered Paper from Canada*, Petitioners argue that the Department should not accept the grants presented at verification and only recognize the existence of the grants while applying an AFA rate.<sup>276</sup>
- Citing section 776(a)(2) of the Act and the CIT’s decision in *American Brake*, Petitioners argue that the Department should apply AFA to the five grants previously unreported as there is no information on the record to verify the grants.<sup>277</sup>
- Consistent with the CIT’s decision in *Shandong Huarong General Group Corp.*, Petitioners contend that Dragon’s and Xingyu’s presentation of unreported grants at verification does not prove the companies acted to the best of their abilities.<sup>278</sup>
- Petitioners argue that the Department has not verified program information that would allow the calculation of a benefit if the respondent failed to provide the information prior to verification. The unreported grant amounts were “clearly booked” in the accounting systems, therefore, the Department should apply AFA, consistent with past practice, at a rate of 0.58 percent *ad valorem* for each grant.<sup>279</sup>

### **Department’s Position:**

As explained above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we find that Dragon Group and Xingyu offered new factual information as minor corrections at verification in the form of assistance from previously unreported programs. While respondents cite to various cases in support of their argument that the Department should have accepted certain information as minor corrections, such decisions by the Department are made on case-by-case basis. Here, based on the facts on the record, we find that by not divulging the receipt of this unreported assistance prior to verification in their initial questionnaire response

---

<sup>274</sup> See Dragon Case Brief at 11-15 and Xingyu Case Brief at 12-18.

<sup>275</sup> See *Issues and decision Memorandum for the Final Results of the Countervailing Duty Administrative Review: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China* (July 7, 2015) (Photovoltaic Cells Review IDM), at 58; see also *Maui Pineapple*, 264 F. Supp. 2d 1244 at 1257.

<sup>276</sup> See, e.g., *Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Supercalendered Paper from Canada*, 80 FR 63535 (October 13, 2015) (Supercalendered Paper IDM).

<sup>277</sup> See *American Brake*, 264 F. Supp. 2d 1244 at 237.

<sup>278</sup> See *Shandong Huarong General Group Corp. v. United States*, Slip Op. 2003-135, 27 CIT 1568, 1585 (CIT 2003) (*Shandong Huarong General Group Corp.*).

<sup>279</sup> See, e.g., *Supercalendered Paper IDM* at 153-154; see also *Nan Ya Plastics Corp.* No.2015-1054, 23-24 (Fed. Cir. 2016).

and subsequent “other subsidies” response, Dragon Group and Xingyu precluded the Department from an adequate examination of the grants (*e.g.*, the Department was unable to issue a supplemental questionnaire to the GOC concerning the extent to which these programs constitute a financial contribution or are specific under sections 771(5)(D) and 771(5A) of the Act). Further, these grant programs are booked in accounts such as subsidy income ledgers, non-operational income ledger, and Construction-in-Progress account which the respondents should have examined prior to verification.<sup>280</sup> Consistent with *Supercalendered Paper Canada* and *Shrimp from PRC*, as AFA, we find each of the unreported grants meet the financial contribution and specificity criteria under these two provisions of the statute. Further, as AFA, we find that each of the three grant programs confers a benefit under section 771(5)(E) of the Act.

Section 775 of the Act states that if, during a proceeding, the Department discovers “a practice that appears to provide a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition,” the Department “shall include the practice, subsidy, or subsidy program if the practice, subsidy or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding.” Under 19 CFR 351.311(b), the Department will examine the practice, subsidy or subsidy program if the Department “concludes that sufficient time remains before the scheduled date for the final determination or final results of the review.”

As explained above in “Grants Rejected at Verification,” the Department reviewed the financial statements of Dragon Group and Xingyu and identified grants and funding from provincial and local governments which were not part of any of the other programs included in this investigation. Thus, the Department determined that it was necessary to issue supplemental questionnaires to Dragon Group, Xingyu, and the GOC regarding the information contained in the financial statements. Dragon Group, Xingyu, and the GOC provided information regarding the programs in supplemental responses to these questions. Therefore, in light of the information contained in the financial statements and based on the guidelines established under section 775 of the Act and 19 CFR 351.311(b), the Department acted well within its authority to examine the programs within this proceeding and seek additional information from Dragon Group, Xingyu, and the GOC. This approach is consistent with the Department’s practice.<sup>281</sup>

Further, as stated in 19 CFR 351.311(d), the Department will notify the parties of the proceeding of any subsidy discovered in any ongoing proceeding, and whether or not it will be included in the ongoing proceeding. Dragon Group, Xingyu, and the GOC were notified of the discovery of these programs, and their inclusion in the proceeding based on the issuance of the verification reports. Such notice is evident in the fact that parties commented on the issues surrounding these programs for the final results.

---

<sup>280</sup> See Xingyu VR at 2-3; Dragon Group VR at 2.

<sup>281</sup> The Department addressed these same arguments within the context of nearly identical fact patterns before. See *Steel Wheels from the PRC*, and accompanying Issues and Decision Memorandum at Comment 5; *Solar Cells from the PRC*, and accompanying Issues and Decision Memorandum at 23; and *Multilayered Wood Flooring from the People’s Republic of China*; Final Affirmative Countervailing Duty Determination, 76 FR 64313 (October 18, 2011), and accompanying Issues and Decision Memorandum at Comment 3.

#### **Comment 4: Whether to Adjust for Certain Ministerial Errors Made in the Preliminary Determination**

##### **Xingyu asserts the following:**

- Xingyu argues that if the Department continues to include non-producing input suppliers in its calculation, ministerial errors in the Xingyu Group’s POI Sales Chart must be corrected from the *Preliminary Determination*.<sup>282</sup>
- The Department should adjust certain calculations with regard to the PTA benchmark to correct errors made in when inputting sales denominators related to specific purchases.<sup>283</sup>
- The Department should adjust their formula used to calculate SFX Trading’s benefit of MEG for LTAR to correct for VAT inclusion misrepresented by the Department.<sup>284</sup>

We received no comments from Petitioners on this issue.

##### **Department’s Position:**

We agree with Xingyu’s argument concerning the sales chart errors and will make appropriate corrections for this final determination. The Department also incorrectly calculated the purchase price for a single PTA purchase with regard to constructing the PTA benchmark. Further, the Department inadvertently used the VAT rate of 17 percent rather than the actual VAT value when calculating the benefit received by SFX Trading with regard to the purchase of MEG for LTAR. These ministerial errors have been corrected for the final determination.<sup>285</sup>

#### **Comment 5: Whether The Department Should Apply AFA to Dragon’s Loans**

##### **Petitioners assert the following:**

- The Department must disregard unverifiable data for certain unreported loans that the Department did not accept as minor corrections at verification and apply AFA.
- The scope of Dragon Group’s reporting errors for loans calls into question the reliability of any reported loan data.
- The Department verified that Dragon Group failed to report any quarterly interest rate adjustments made to all variable rate loans held by the Dragon companies.
- Xingyu should not be considered a cooperating respondent and its rates should not be used as AFA for Dragon Group’s loan program rate. Using Xingyu’s rates would reward

---

<sup>282</sup> See Xingyu Preliminary Calculation at “POI Sales.”

<sup>283</sup> *Id.*, at “PTA W-A Benchmark Calc.”

<sup>284</sup> See Xingyu Preliminary Calculation Memorandum at “MEG FA Unknown Benefit Calcs.”

<sup>285</sup> See Xingyu Final Determination Calculation Memo and Attachment 1.

Dragon for its provision of inaccurate information and lack of compliance with the Department's requests.

- As AFA, the Department should apply a subsidy rate of 10.54 percent *ad valorem* for policy loans and 1.10 percent *ad valorem* for preferential export financing.

**Dragon and Xingyu assert the following:**

- Following the *Preliminary Determination*, Dragon Group made efforts to correct reported loans but the Department did not respond to Dragon Group's request to formally issue a questionnaire for the company to correct their misreported loans.<sup>286</sup>
- Parties should be lauded and encouraged to bring errors to the Department's attention. The Department merely spot checks data so it cannot maintain that there was no time to accept new loan spreadsheets.
- Preliminary margin estimates cannot be considered "verified or reliable" as the original reporting was incorrect.
- Consistent with *PVLT from China*, if the Department selects a FA CVD margin for the two loan programs, it should assign identical loan rates calculated for the other respondent, as both policy and export lending programs were found countervailable for Xingyu.<sup>287</sup>
- If the Department applies AFA to both lending programs, subsidy rates should only be applied to Dragon and its PTA and MEG producers/suppliers.

**Dragon Group rebuts, as follows:**

- Dragon Group attempted to correct its loan programs once these errors were apparent in the *Preliminary Determination*. The Department's failure to request these errors is an arbitrary and abusive interpretation of 19 USC 1677m(d).
- The Department had time to evaluate the corrections. It could have spot checked the loans that Dragon wanted to correct, as Dragon requested in an *ex parte* meeting and by written request on September 30, 2015. The Department's receipt of other questionnaires from the respondents in mid-September is further evidence that the Department had ample time to accept and review Dragon's corrections.
- If the Department decides, as AFA, that Dragon Group's loans were unverifiable, then the rate calculated for Dragon Group's loan program should not be used for "benchmarking the adverse inference."<sup>288</sup> However, if the Department decides to use

---

<sup>286</sup> See Letter from Dragon, Re: "Certain Polyethylene Terephthalate Resin from the People's Republic of China- Request Supplemental Questionnaire (September 30, 2015).

<sup>287</sup> See *PVLT IDM* at 13.

<sup>288</sup> See *Dragon Rebuttal* at 3.

Dragon Group's preliminary loan rates, it should recognize that Xingyu's rates are similar to Dragon Group's.

- Finally, as argued elsewhere in Dragon Group's case brief, the Department should not make any attribution to Dragon Group based on these programs for entities that did not produce a direct input supplied to Dragon Group.

**Petitioners rebut, as follows:**

- Dragon Group's supplemental questionnaire request related to errors in certain columns for previously reported loans.<sup>289</sup>
- Dragon Group's failure to submit unreported loans prior to verification prevented the Department from verifying loans for Dragon and Xianglu CF, as well as policy loans for Xianglu PC ZZ.
- Petitioners argue that Dragon Group ignores its failure to report quarterly interest rate adjustments made to variable rate loans, further hindering the Department from verifying the loan information.<sup>290</sup>
- Citing section 776(a)(2)(A)(D) of the Act, Petitioners assert that the Department should apply facts available and adverse facts where appropriate with regard to 1) all of Dragon Group's and Xianglu CF's policy loans and export financing, Xianglu PC ZZ's policy loans—including policy and export loans not previously reported; and 2) any variable interest rate loans given to Dragon Group and its three cross-owned affiliates.
- Citing section 776(b) of the Act, Petitioners contends Dragon Group did not act to the best of its ability due to the lack of compliance with Department requests.
- In response to Dragon's request that the Department apply rates calculated for Xingyu with regard to policy loans and export financing programs, Petitioners assert that applying Xingyu's rates would result in lower final margins for Dragon Group than calculated in the *Preliminary Determination*.
- Consistent with the CAFC's decision in *Nan Ya Plastics Corp.*, the Department should apply the highest rate applied for the programs in another China CVD case.<sup>291</sup>
- Petitioners suggest a rate of 10.54 percent *ad valorem* for policy loans be applied to Dragon, Xianglu CF, Xianglu PC, and Xianglu PC ZZ.<sup>292</sup>

---

<sup>289</sup> See Dragon Case Brief at 31-32.

<sup>290</sup> See Dragon Group VR at 13.

<sup>291</sup> See *Nan Ya Plastics Corp. v. United States*, No. 2015-1054, at 23-24 (Fed. Cir. Jan. 19, 2016) (*Nan Ya Plastics Corp.*).

<sup>292</sup> See, e.g., *Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the People's Republic of China* (December 15, 2015) (Cold-Rolled Steel Prelim) at 22.

- Petitioners provide a rate of 1.10 *ad valorem* for preferential export financing to be applied to Dragon and Xianglu CF.<sup>293</sup>

### Department’s Position:

As described above, in the “Use of Facts Otherwise Available and Adverse Inference” section, at verification, we rejected certain loan corrections presented by Dragon Group as minor corrections because the scope of the reporting mistakes was not minor. Although Dragon Group did contact the Department to request a supplemental questionnaire to correct certain loan information, it did not characterize the mistake it made in reporting its loans as pertaining to missing loans.<sup>294</sup> Rather, Dragon Group stated that for information submitted by Xianglu PC ZZ and Xianglu CF, it erred in its reporting of “Total Number of Days Each Interest Payment Covers.”<sup>295</sup> Based on Dragon Group’s characterization of the error it made when reporting its loans, the Department determined it unnecessary to issue a supplemental questionnaire prior to verifying this information.

However, at verification, the error that Dragon Group attempted to present was much broader in scope than what it had previously described. Dragon Group made a methodological decision to not report any loans that it had paid off during the POI.<sup>296</sup> Because of the nature and scope of this error, we declined to accept the new loan information presented by Dragon Group as a minor correction.

Further, as described above, our decision to apply AFA to Dragon Group’s loan programs is also based, in part, on Dragon Group’s decision to report approximate, rather than actual interest expenses.<sup>297</sup> This decision impaired our ability to verify that Dragon correctly reported the interest expenses it incurred on its loans during the POI. Thus, we were unable to verify Dragon Group’s reported interest expenses.<sup>298</sup> Consequently, we were not able to verify lending for Dragon and its cross-owned affiliates. Thus, we find that necessary information is not available on the record, and Dragon Group withheld information requested by the Department, and we have based Dragon Group’s subsidy rate for the Policy Loans and Preferential Export Financing programs on AFA.

Dragon Group argues that the rate calculated for Dragon Group’s loan program in the *Preliminary Determination* should not be used for “benchmarking of the adverse inference” because the Department has determined the rate to be unreliable.<sup>299</sup> Instead, it submits that the

---

<sup>293</sup> See *Certain Alloy Steel Wire Rod from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 68858 (November 19, 2014) (*Wire Rod from China*) and accompanying Issues and Decision Memorandum (IDM) at 1-2 (Wire Rod IDM), at 9.

<sup>294</sup> See Letter from Dragon Group, dated September 30, 2015, Re: Certain Polyethylene Terephthalate Resin from the People’s Republic of China-Request Supplemental Questionnaire.

<sup>295</sup> *Id.*

<sup>296</sup> See Dragon Group VR at 1-2.

<sup>297</sup> *Id.* at 13.

<sup>298</sup> *Id.*

<sup>299</sup> See Dragon’s rebuttal at 3.

Department should not assign it a rate higher than Xingyu's final calculated benefit rate. However, the preliminary calculated rate for Dragon Group is unreliable because Dragon Group's information could not be verified.<sup>300</sup> Therefore, to disregard Dragon Group's preliminary calculated rate because of its unreliability due to Dragon Group's own failure to not provide the information requested to the Department would go against Congress's intent that a party not obtain a more favorable result by failing to cooperate than if it had cooperated fully.<sup>301</sup> In addition, following Dragon Group's suggested approach to FA would fail to come to terms with the reason for Dragon Group's failure, which is that it did not report to the Department all of the loans it was required to report, and therefore, if anything, the benefit accruing from the loans it did report would be understated. Accordingly, the Department finds that it is appropriate to take account of Dragon Group's preliminary calculated rate in selecting the appropriate rate as FA.

With regard to the selection of the AFA rate, in prior cases involving the use of AFA, for programs other than those involving income tax exemptions and reductions, we first sought to apply, where available, the highest above *de minimis* subsidy rate calculated for an identical program from this proceeding.<sup>302</sup> However, the highest above-*de minimis* rate for a lending program in this proceeding is 0.21 percent, which is the rate that was calculated for Xingyu. Insofar as the rate for the Dragon Group's policy lending in the *Preliminary Determination* was 7.21 percent *ad valorem*,<sup>303</sup> substituting a lower rate would undermine Congress's intent "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>304</sup> Similarly, there is no higher above *de minimis* subsidy rate calculated for a similar program from any segment of this proceeding. Therefore, consistent with our AFA hierarchy, we next sought the highest non-*de minimis* rate calculated for the same or similar program (based on the treatment of the benefit) in another PRC proceeding. For the Policy Lending program, this rate is 10.54 percent *ad valorem*, the policy lending rate from *Coated Paper from the PRC*.<sup>305</sup>

For the Preferential Export Lending program, Dragon Group's calculated rate in the *Preliminary Determination* was 2.84 percent.<sup>306</sup> As explained above, we first sought to apply the highest above *de minimis* subsidy rate calculated for an identical program from this proceeding. However, the highest above-*de minimis* rate for a lending program in this proceeding is 0.10 percent, which is the rate that was calculated for Xingyu. Insofar as the rate for the Dragon Group's preferential export lending in the *Preliminary Determination* was 2.84 percent *ad*

---

<sup>300</sup> See Dragon Group VR at 13.

<sup>301</sup> See SAA at 870.

<sup>302</sup> See, e.g., *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012) and accompanying IDM at 2-5.

<sup>303</sup> See *Preliminary Determination* at 21.

<sup>304</sup> See SAA at 870.

<sup>305</sup> See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from the PRC*), and accompanying Ministerial Error Memorandum at "Revised Net Subsidy Rate for the Gold Companies." This document is proprietary in nature. However, the public version states the revised subsidy rates which include, *infra*, the policy lending rate (for the Policy Loans to Coated Paper Producers and Related Pulp Producers from State-Owned Commercial Banks and Government Policy Banks program).

<sup>306</sup> See *Preliminary Determination* at 22.

*valorem*,<sup>307</sup> substituting a lower rate would undermine Congress’s intent “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>308</sup>

Similarly, there is no higher above *de minimis* subsidy rate calculated for a similar program from any segment of this proceeding. Therefore, consistent with our AFA hierarchy, we next sought the highest non-*de minimis* rate calculated for the same or similar program (based on the treatment of the benefit) in another PRC proceeding. We determine that for the Preferential Export Lending program, this rate is 10.54 percent *ad valorem*,<sup>309</sup> from *Coated Paper from the PRC*,<sup>310</sup> because for the purposes of this case, this rate is sufficiently adverse as to deter non-cooperation.

### **Comment 6: The Department Should Apply AFA to Dragon’s VAT Refunds for FIEs for Domestically-Produced Equipment**

#### **Petitioners argue, as follows:**

- In the *Preliminary Determination*, the Department determined Dragon Group did not receive a measurable benefit for this program.
- At verification, the Department found two purchases, of the six randomly selected accounting entries, for which Dragon Group did not pay VAT.
- Dragon Group officials did not provide an explanation for the unreported purchases.
- The Department similarly could not tie the amount of Xianglu PC’s purchases to the invoices because the related VAT invoices covered multiple associated purchases and services.
- The Department’s review of Xianglu PC’s accounting system revealed a significant discrepancy in the timing of when such purchases were booked.
- The Department should apply a subsidy rate of 9.71 percent *ad valorem* for Dragon Group and Xianglu PC’s use of this program.

#### **Dragon Group asserts the following:**

- The Department should treat the program as verified and that no benefit was provided, therefore, not apply any facts available rate in the final determination.

---

<sup>307</sup> *Id.*

<sup>308</sup> See SAA at 870.

<sup>309</sup> See *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014), and accompanying IDM (Citric Acid AR IDM) at 18 (“Export Seller’s Credit for High-and New-Technology Products”).

<sup>310</sup> See *Coated Paper from the PRC* and accompanying Ministerial Error Memorandum at “Revised Net Subsidy Rate for the Gold Companies.” This document is proprietary in nature. However, the public version states the revised subsidy rates which include, *infra*, the policy lending rate (for the Policy Loans to Coated Paper Producers and Related Pulp Producers from State-Owned Commercial Banks and Government Policy Banks program).

- Dragon Group explains that their accounting staffs are not centralized and are not necessarily familiar with all aspects of questions arising in verification. Additionally, few areas of accounting are more complicated than Chinese VAT accounting.
- During verification, Dragon Group counsel was instructed to not to offer their own explanations to the Department and not to confer with company officials to clarify explanations given through the translator.
- The Department created the conditions for apparent chaos by “muzzling” counsel, preventing a quicker explanation to the question.
- Dragon asserts that as certain invoices do not contain VAT, they are not eligible for a VAT refund. Fixed assets that did not qualify as VAT-Applicable purchases were not reported to the Department. Dragon provided a “VAT Invoice” and an “Ordinary Invoice” to compare the purchase invoices described above.<sup>311</sup>
- The documentation of a third purchase could not be found despite Dragon’s best efforts, but the company’s records were overwhelmingly verified as reliable so there is no reason to doubt the previously reported figure.
- Dragon states that if the purchases in question are added to the program calculation, the benefit would be expensed in the year of receipt and the program rate would remain *de minimis*.

**Petitioners rebut, as follows:**

- The Department should continue to apply AFA to Dragon Group’s VAT refund program as the Department was unable to successfully verify the reported purchase information.<sup>312</sup>
- The inability for Dragon Group to verify purchases questions the validity of Dragon’s database.
- Dragon Group’s focus on the scale of the misreported purchases detracts from the actual issue of the accuracy of its accounting system and records.<sup>313</sup>
- Under the Trade Preferences Extension Act of 2015 and consistent with *Wire Rod from China*, the Department should apply an AFA rate of 9.71 percent *ad valorem* for this program.<sup>314</sup>

---

<sup>311</sup> See Dragon VR at 17-18.

<sup>312</sup> *Id.*

<sup>313</sup> See Dragon Case Brief at 27-30.

<sup>314</sup> See Wire Rod IDM at 10.

### **Dragon rebuts, as follows:**

- Only a small number of invoices and values were affected by Dragon Group’s omission.
- Dragon Group fully explained the circumstances and demonstrated that, even if all the invoices were included in the program alleged, the result would have been *de minimis*.
- Dragon Group had a good faith reason why it did not believe the invoices fell under the program because no VAT was due on these sales. This was a methodological decision that was reasonable under the circumstances.
- The Department can include the value of these purchases in the numerator of the calculation for the final determination as facts available.
- Petitioners’ suggestion that the Department apply a 9.71 percent *ad valorem* rate is punitive and unlawful.<sup>315</sup>
- In the case that Petitioners rely upon for the 9.71 percent *ad valorem* rate, the respondent informed the Department that it was withdrawing entirely from the investigation.<sup>316</sup> Unlike the respondent in *Wire Rod from China*, Dragon has fully cooperated and its responses were verified and the data was collected for this program.
- In the worst case, the Department could use the data as AFA or increase the reported amounts by 33 percent.

### **Department’s Position:**

To test the completeness of Dragon’s reporting for this program, we selected six entries from the account where Dragon recorded its fixed assets purchases.<sup>317</sup> Of the six selected entries, we discovered that two were for purchases that were not reported to the Department and for which Dragon did not pay VAT.<sup>318</sup> We asked Dragon to explain why these were not reported. Dragon explained that they chose not to report purchases that were not eligible for the VAT refund as no VAT was due.<sup>319</sup>

As explained in the “Use of Facts Available and Adverse Inferences” section, above, we find that Dragon’s omission of these purchases warrants application of AFA, as a significant portion of the accounting entries that the Department selected at verification were not reported in the questionnaire response. We disagree with Dragon’s characterization concerning the verification of this program and its allegation that the Department “muzzl{ed}” Dragon Group’s local

---

<sup>315</sup> See *Gallant Ocean (Thail.) Co. v. United States*, 602 F.3d 1319, 1323 (Fed. Cir. 2010).

<sup>316</sup> See *Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 68858 (Nov. 19, 2014) and accompanying Issues and Decision Memorandum (IDM) at 1-2 (“*Wire Rod from China*”).

<sup>317</sup> See Dragon VR at 17-18.

<sup>318</sup> *Id.*

<sup>319</sup> *Id.*

counsel. The verification report is an accurate reflection of what occurred. To the extent that Dragon Group argues that the Department “muzzl{ed} counsel,” this characterization is inaccurate and misleading. It is the Department’s practice to employ official interpreters to assist the Department in overcoming the language barrier and to conduct the verification in an efficient manner. During the conduct of the verification, the Department verifies the accuracy of a respondent’s questionnaire response with the company officials that were responsible for preparing the questionnaire response. For this purpose, the Department’s practice is to communicate directly with the company officials through the official interpreter. Consistent with its practice, the Department asked the company official about the reporting of this program in the company’s response which is reflected in the Department’s verification report. Specifically, we reviewed original invoices for domestic purchases of equipment where VAT was not paid, and we specifically asked why the company had not reported these purchases in its questionnaire response.<sup>320</sup> The Department followed up with another question to clarify the company official’s statement.<sup>321</sup> It is the Department’s practice at verification to verify the company’s response by meeting and discussing the reported information with the company officials that were responsible for putting together the company’s response from original source documentation.

For this program, after requesting clarification at least four times, it became evident to the Department’s verifiers from the discussions that the company official could not provide any additional information beyond the official’s statement that Dragon Group did not pay VAT for these purchases.<sup>322</sup> While the Department recognizes the role of company’s counsel at verification is an important one for the company, counsel’s role does not extend to supplementing the Department’s official interpreter’s translations. To the extent that counsel began to re-interpret the meaning of the company’s official answers, instead of permitting the official interpreter to interpret the statements made by the company official, the Department appropriately requested that local Chinese counsel stop engaging in re-interpretations of the company official’s statements. Therefore, not only was local counsel not prohibited from representing its client at verification, but if Dragon Group’s counsel believed further clarification was necessary, or that a different translation was necessary, it had an opportunity to provide clarification in its comments.

We also disagree with Dragon Group’s assertion that, unlike in *Wire Rod from China*, its response for this program was verified and application of the 9.71 percent *ad valorem* AFA rate would be unnecessarily punitive. We found at verification that Dragon did not report all domestic purchases for which it received VAT exemptions. Therefore, we did not verify Dragon’s completeness of reporting its subsidies for this program. Consistent with our practice, and for the reasons explained above in the “Use of Facts Otherwise Available and Adverse Inference” section, we are following the Department’s AFA hierarchy to assign a rate for this program.

---

<sup>320</sup> See Dragon VR at Exhibit 11.

<sup>321</sup> *Id.* at 17-18.

<sup>322</sup> *Id.*

With regard to the verification of this program for Xianglu PC, we were able to verify the accuracy of the company's purchases.<sup>323</sup> Because of the way the company maintained its accounting entries, and the timing of these entries, the spot checking of additional purchases was more complicated and required review of numerous invoices.<sup>324</sup> Based on the information that was presented to the Department at verification and our review of that information, there is no basis to find that Xianglu PC wrongly omitted reporting of certain purchases, as the company, "provided VAT invoices that it said related to this purchase."<sup>325</sup> Thus, for Xianglu PC, we continue to calculate a rate based on reported program use.

## **Comment 7: Whether The Department should apply AFA to Dragon Aromatics**

### **Petitioners assert, as follows:**

- Verified record evidence demonstrates that Dragon Aromatics is a cross-owned input supplier to Dragon. Given the record of this investigation and the information obtained by the Department at verification, the Department should apply total AFA with respect to Dragon Aromatics.
- Record information concerning Dragon Aromatic's operations was disproved at verification. Dragon Aromatics provided no reasonable explanation for withholding the requested information with the Department, not only in its questionnaire response, but in person as well.
- Dragon Aromatics should be included as a cross-owned company for the final determination, but Dragon should not benefit from uncooperative behavior and intentional delay. The Department should apply total AFA to Dragon Aromatics.
- The Department should apply AFA to Dragon Aromatics' import duty rebates on imported equipment because it found at verification that Dragon Aromatics does not record imported equipment in its financial accounts. This impeded the Department's verification of accurate reporting of these purchases.
- The Department should include an AFA benefit for Dragon Aromatics' consumption tax refund because it verified that Dragon Aromatic's benefited from a consumption tax refund during the POI. There is no record evidence that it did not benefit from the tax refund in 2013.
- The Department should apply AFA to determine that loans received by Dragon Aromatics are countervailable because at verification, the company stated it could not reconcile its loans because of time constraints. There is no evidence on the record to suggest Dragon Aromatics properly adjusted its variable interest rate for loans. As AFA for this program, the Department should not rely on Xingyu's rate because it is not a cooperating respondent and its loan rate is not reflective of the Dragon Group companies'

---

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> *Id.*

countervailable benefit. Instead, the Department should apply an AFA subsidy rate of 10.54 percent *ad valorem* for Dragon Aromatics' policy loans.

- The Department should apply AFA to Dragon Aromatics' grants during the POI at the AFA rate of 0.58 percent *ad valorem*.
- The Department should apply AFA to Dragon Aromatics for the Provision of Electricity for LTAR because Dragon Aromatics states that it purchased a small amount of electricity when its self-generation was insufficient. As AFA, the Department should apply the Dragon Group's calculated rate of 4.92 percent *ad valorem* for this program.
- The Department should not have accepted Dragon Aromatics' 2013 tax return at verification. Reviewing the return for the first time at verification, particularly after the company withheld such evidence, rewards Dragon Aromatics' recalcitrance. Providing data at verification for the first time is in direct conflict with the purpose of verification. Without data to review, the Department should apply AFA to presume that Dragon Aromatics received a subsidy in the form of an income tax exemption specific to companies in the stage of pilot production, countervailable at the AFA rate of 25 percent *ad valorem*.

**Dragon rebuts, as follows:**

- Dragon Aromatics provided a full response in a timely manner to the Department's supplemental questionnaires. Thus, the Department was fully aware that Dragon Aromatics was producing and selling merchandise in the POI in advance of verification.
- Whether characterized as a "trial" or not, the figures were reported and Dragon Aromatics fully cooperated.
- The Department's decision to investigate Dragon Aromatics once verification commenced increased the burden on the companies by 25 percent, which affected the appearance of the companies' overall organization and presentation of all the responses. Considering the lack of lead time, reading the verification report as a whole, a reasonable reviewer would conclude that Dragon Aromatics passed the verification, apart from loan reporting issues common to all the companies' general methodology.
- Dragon Aromatic's situation is odd in that it was treated as non-operational under Chinese law and accounting principles. The company provided, on the last day of verification, a full staff of accountants to Dragon Aromatics, and was able to show the "live" version of Dragon's accounting system by logging in remotely.
- The Department should not include Dragon Aromatics in its final calculations because it only supplied an upstream input that is not under investigation, *i.e.*, paraxylene (PX). Further, Dragon Aromatics is not currently, nor is it foreseeably, in operation, due to a dramatic explosion at the plant. Finally, there are major impediments to Dragon

Aromatic's resumption of operation, including plant repair and acquiring GOC permission to resume production.

- Dragon Aromatics can only contribute numerator benefits and no sales denominator, so countervailing any benefits would be extremely and unduly punitive.<sup>326</sup> Also, Dragon Aromatics is incapable of supplying any upstream inputs for the foreseeable future. Thus, there is no legal link to support the Department's inclusion of Dragon Aromatics in the calculations.
- Faced with a comparable situation in a recent investigation of *Steel Nails from Malaysia*.<sup>327</sup> There, the Department assigned a plant that was affiliated with the respondent the "all-others" investigation rate.

### **Department's Position:**

As described above, in the "Use of Facts Available and Adverse Inferences" section, the Department determines it is appropriate to apply AFA, in part, to DAC for the following programs: Policy Loans, Preferential Export Financing, Import Tariff and Value-Added Tax (VAT) Exemptions on Imported Equipment in Encouraged Industries, and Income Tax Exemptions.

We disagree with Petitioners that Dragon Group's reporting for DAC merits application of total AFA. Dragon Group did submit a complete questionnaire response for DAC, which, except for the above programs, we were able to verify.<sup>328</sup> Therefore, we are applying AFA, in part, to the information that was unverifiable (Policy Loans, Preferential Export Financing, and Import Tariff and Value-Added Tax (VAT) Exemptions on Imported Equipment in Encouraged Industries) and information that was missing (an official income tax return for the POI). Excepting the above programs, we were able to verify DAC's questionnaire response.

Dragon Group's assertion that it did not have lead time or notice that the Department would include DAC in the verification is inaccurate and does not reflect the steps the Department took to ensure that Dragon Group was on notice about the information to be verified, as reflected in the documentation on the record. In the verification outline that the Department issued to Dragon Group in advance of verification, we instructed Dragon Group as follows: "Be prepared to demonstrate that none of Dragon Group's other affiliated companies, including Dragon Aromatics (Zhangzhou) Co., Ltd., provided inputs for the production of PET resin or otherwise would fall under our attribution regulations."<sup>329</sup> Due to Dragon Group's consistent claim in its responses to the Department that DAC did not fall under our attribution regulations in its questionnaire responses, and its inaccurate characterization of the significance of DAC's activities, the Department did not include DAC in the *Preliminary Determination* as a

---

<sup>326</sup> See *Gallant Shrimp*, *supra*.

<sup>327</sup> See *Certain Steel Nails from Malaysia: Final Determination of Sales at Less Than Fair Value*, 80 FR 28969 (May 20, 2015) ("*Steel Nails from Malaysia*"); *Certain Steel Nails From Malaysia: Initiation of Antidumping Duty Changed Circumstances Review*, 80 FR 71772 (November 17, 2015).

<sup>328</sup> See *Dragon VR* at 4-6.

<sup>329</sup> See *Verification Outline for Dragon Group* (October 29, 2015) at 6.

cross-owned input supplier. This decision was based on claims made by Dragon Group, such as, DAC was, “still being established and was not actually operating during the POI,”<sup>330</sup> and DAC “has had no commercial operations throughout the POI.”<sup>331</sup> However, the verification outline clearly gave notice to Dragon Group that we would verify its characterization of DAC’s activities, as well as factual information relating to its questionnaire response. Dragon Group’s decision to not prepare any materials relating to DAC in advance of verification was a choice made by the company despite the Department’s notice.

Further, we disagree with Dragon Group’s assertion that it provided a full response in a timely manner, notwithstanding our finding above that for the response provided, the Department was able to verify that information. As detailed in the above section at “Use of Facts Available and Adverse Inferences,” Dragon Group was provided opportunities in its questionnaire response and at verification to provide an officially filed copy of its 2014 tax return. It did not do so. The company did provide, on the last day of verification, access to Dragon’s accounting system, which allowed us to verify some programs.<sup>332</sup> However, certain programs, as detailed above, could not be verified.

We find that Dragon Group’s reference to *Steel Nails from Malaysia* is misplaced. In the *Steel Nails from Malaysia* proceeding,<sup>333</sup> the Department determined that the affiliated company was “not yet able to produce subject merchandise, and did not make any sales during the POI.”<sup>334</sup> Here, on the other hand, at verification, Dragon Group officials explained that DAC began trial production in 2014, and the PX that was produced during the trial period was sold to both Xianglu PC ZZ and sold domestically.<sup>335</sup> Therefore, because we verified that DAC produced and sold inputs during the POI,<sup>336</sup> the facts of the case differ from *Steel Nails from Malaysia*.

#### **Comment 8: The Department Should Apply Total AFA to Xingyu**

##### **Petitioners assert, as follows:**

- Xingyu’s admissions concerning its financial statements, which came one week before the *Preliminary Determination*, cast doubt on the accuracy and reliability of Xingyu’s responses in this investigation.
- Xingyu’s responses to the Department’s requests for information represent a pattern of delay and lack of transparency. For example, Xingyu did not submit complete information concerning its MEG purchases until its fourth supplemental response, one week before the *Preliminary Determination*, despite the Department’s repeated requests for these data.

---

<sup>330</sup> See Dragon Group’s May 18, 2015 questionnaire response at 2.

<sup>331</sup> See Dragon Group’s June 1, 2015 Letter to the Department at 1-2.

<sup>332</sup> See Dragon VR at 4-6.

<sup>333</sup> See Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Steel Nails from Malaysia, and the accompanying decision memorandum at 10–13 (December 17, 2014); unchanged in the final determination, 80 FR 28969 (May 20, 2015) and Amended Final.

<sup>334</sup> *Id.*

<sup>335</sup> See Dragon VR at 5.

<sup>336</sup> *Id.*

- Over the course of the investigation, Xingyu's responses to the Department's inquiries revealed significant issues that were not addressed at verification, including discrepancies in the company's 2013 and 2014 financial statements; an inadequate explanation for a RMB 6.6 million income tax refund, and no evidentiary support for a statement relating to certain funds received by SFX Group.
- The material discrepancies and unresolved questions, combined with the admissions concerning financial statements, call into question the veracity and reliability of Xingyu's response. The Department should apply total AFA to the company.
- If the Department declines to use total AFA with respect to Xingyu, it should apply AFA to four grants previously unreported by Xingyu but presented at verification. These grants were not accepted as minor corrections. The AFA rate for the grants is 0.58 percent ad valorem for each grant.

**Xingyu rebuts, as follows:**

- Xingyu cooperated to the best of its ability, submitting 16 responses containing thousands of pages of information.
- Regarding its financial statements, Xingyu recognized this inadvertent error prior to the Preliminary Determination and submitted the correct statements and explained the discrepancy. Further, the Department verified the accuracy of Xingyu's financial statements and found no discrepancies.
- Regarding the grants, Xingyu addressed these in its case brief. The programs at issue are minor corrections to record information. Should the Department find it necessary to apply facts available for an estimate of the amount of the grants, the Department should use Xingyu Group's own data for identical or comparable grants and Xingyu's sales data for calculating the benefit received from the grants.

**Department's Position:**

We disagree with Petitioners that Xingyu's responses merit application of total AFA. The Department reviewed the evidence submitted by Xingyu and determined that there was no reason to suspect Xingyu's financial statements were unreliable for purposes of this countervailing duty investigation. Xingyu itself recognized the error prior to the *Preliminary Determination* and submitted the correct statements and explained the discrepancy.<sup>337</sup> We were able to verify the information concerning Xingyu's sales and receipt of subsidies.<sup>338</sup> Xingyu was responsive to many of the Department's requests for information throughout this investigation, which encompassed a large number of cross-owned companies.

---

<sup>337</sup> See Xingyu 4<sup>th</sup> SQR (July 28, 2015) at 2.

<sup>338</sup> See Xingyu VR.

For the grants at issue, they pertain to minor corrections presented at verification. As noted above in the “Application of Adverse Facts Available” section, the Department has determined that it is appropriate to apply AFA to certain of these grants.

### **Comment 9: Whether the Department Should Consider Chinese Producers of MEG and PTA as Authorities**

#### **The GOC asserts that:**

- In the *Preliminary Determination*, the Department concluded producers of MEG and PTA are “authorities” within the meaning of section 771(5)(B) of the Act as an application of AFA. These findings are in violation of two recent Appellate Body decision at the WTO.<sup>339</sup>
- The decision to apply AFA is not supported by substantial evidence that demonstrated that the GOC made tremendous efforts to obtain the Department’s requested information.
- Due to a lack of centralized information system, the GOC cannot provide information regarding CCP affiliations. Moreover, the record contains evidence that CCP affiliation is not relevant as to whether the supplier is an authority.
- The presence of CCP officials in company leadership is irrelevant to the Department’s determination of whether a company is an “authority” within the meaning of the statute.

#### **Petitioners rebut, as follows:**

- The GOC’s explanations as to why the CCP information is missing from the record does not change the fact that the Department requested the information multiple times and the GOC failed to provide it.<sup>340</sup> The Department explained at the Preliminary Determination that it found the GOC did not make a sufficient effort to collect the information through contacting the CCP or consulting other sources. The GOC has successfully provided CCP affiliation information in other proceedings.<sup>341</sup> The GOC also failed to explain its efforts to the Department. Thus, it has failed to act to the “best of its ability.”
- Citing section 776 (b) of the Act, the GOC failed to act to the best of their ability by not explaining efforts to attain the CCP affiliation information or propose alternative information, warranting application of AFA.
- There is no basis for the Department to depart from prior findings that the Company Law of China, on which the GOC relies to assert that government officials cannot hold

---

<sup>339</sup> See GOC February 3, 2016 case brief at 3-4.

<sup>340</sup> See *QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir 2011).

<sup>341</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).

concurrent positions in private enterprises, does not apply to CCP officials.<sup>342</sup>

- The Department’s policy and practice with respect to “public bodies” in China is well-settled, and the role and functions of CCP officials within Chinese enterprises is relevant to the Department’s analysis.
- The Department should continue to presume for the final determination that certain producers of inputs for which the GOC failed to identify whether board of directors, owners, or senior managers were CCP officials, are “authorities” within the meaning of the statute.

### **Department’s Position:**

We continue to find companies that PRC companies that supplied Dragon Group and Xingyu with inputs, specifically, MEG and PTA producers, are “authorities” within the meaning of section 771(5)(B) of the Act.<sup>343</sup>

As explained in the *Preliminary Determination*, in order to do a complete analysis of whether producers of inputs are “authorities” within the meaning of section 771(5)(B) of the Act, we sought information regarding whether any individual owners, board members, or senior managers were government or CCP officials and the role of any CCP primary organization within the companies.<sup>344</sup> Specifically, to the extent that the owners, managers, or directors of a producer are CCP officials or otherwise influenced by certain entities, the Department requested information regarding the means by which the GOC may exercise control over company operations and other CCP-related information. The Department explained its understanding of the CCP’s involvement in the PRC’s economic and political structure in the current and past PRC CVD proceedings, including why it considers the information regarding the CCP’s involvement in the PRC’s economic and political structure to be relevant.<sup>345</sup>

Despite the importance of the information requested in the Input Producer Appendix, the GOC provided none of the requested information with regard to CCP officials and CCP primary organizations. Instead, the GOC asserted 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>346</sup> We asked again for the requested information in a supplemental questionnaire, and the GOC referred back to its original response, saying it had no further information to provide.<sup>347</sup>

---

<sup>342</sup> See GOC’s February 3, 2016 case brief at 6-7.

<sup>343</sup> The Department’s practice for determining whether an entity is an “authority” (Public Body) is fully consistent with WTO rulings on this issue, as reflected in the Public Bodies Memorandum.

<sup>344</sup> See *Preliminary Determination* at 16-17.

<sup>345</sup> *Id.*, at 17.

<sup>346</sup> *Id.*, at 16.

<sup>347</sup> *Id.*

Contrary to the GOC's assertions and objections to our questions, it is the prerogative of the Department, not the GOC, to determine what information is relevant to our analysis.<sup>348</sup> As noted, the Department considers information regarding the CCP's involvement in the PRC's economic and political structure to be essential because public information demonstrates that the CCP may exert significant control over activities in the PRC.<sup>349</sup> The CCP Memorandum and Public Body Memorandum support the Department's determination that CCP membership is relevant to companies—including private companies—in the PRC.<sup>350</sup>

Specifically, the Department has determined that “available information and record evidence indicates that the CCP meets the definition of the term ‘government’ for the limited purpose of applying the U.S. CVD law to China.”<sup>351</sup> Further, publicly available information indicates that Chinese law requires the establishment of CCP organizations “in all companies, whether state, private, domestic, or foreign-invested” and that such organizations may wield a controlling influence in the company's affairs.<sup>352</sup>

In the *2012 Citric Acid Review*, the Department rejected the GOC's assertion that it cannot obtain information on CCP officials and CCP organization. In that proceeding, the GOC provided official government documentation, *i.e.*, stamped originals of election notification from the CCP Committee of Lijiexiang Town, that the owner of two input producers did not serve as Secretary for the Party Committee of Liujiadu Village in the PRC during the POR and that the village does not geographically overlap with the locations of the producers' operations.<sup>353</sup> Because in this proceeding the GOC did not provide the information we requested regarding this issue, we have no basis to revise the Department's AFA finding that certain calcium carbonate and caustic soda producers are “authorities” within the meaning of section 771(5)(B) of the Act.

Finally, we disagree with the GOC's assertion that our “authorities” analysis for the majority government owned MEG and PTA producers was based solely on state ownership. Rather, as explained in the Public Body Memorandum, we found that majority SOEs in the PRC possess, exercise, or are vested with governmental authority.<sup>354</sup> Our finding is based on the GOC exercising 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.<sup>355</sup> Therefore, we continue to determine that these entities are “authorities” within the meaning of section 771(5)(B) of the Act, and that the respondent

---

<sup>348</sup> See *NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) (“NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that ‘it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.’”); see also *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (stating that “{i}t is Commerce, not the respondent, that determines what information is to be provided”).

<sup>349</sup> See Memorandum from Ilissa Kabak Shefferman, International Trade Compliance Analyst to the File, “Placement of information onto the record” (August 7, 2015), which includes Public Body Memorandum, and its attachment CCP Memorandum.

<sup>350</sup> See CCP Memorandum; Public Body Memorandum; *Drawn Sinks* and accompanying IDM at Comment 1.

<sup>351</sup> *Id.*, at CCP Memorandum at 33.

<sup>352</sup> *Id.*, at Public Body Memorandum at 35-36, and sources cited therein.

<sup>353</sup> See *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012, 2012 79 FR 78799* (December 31, 2014) (*2012 Citric Acid Review*) and accompanying IDM at Comment 2.

<sup>354</sup> See Public Bodies Memorandum at 11-37.

<sup>355</sup> *Id.*

companies received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act. Further, the GOC has not placed information on the record that contradicts our findings in the Public Body Memorandum.

**Comment 10: Whether the Department Should Find the MEG and PTA Markets Are Distorted Because Domestic Production Based Upon Unreliable Data, and Whether to Revise the Input Benchmarks**

**Petitioners assert, as follows:**

- The Department’s discussions with CCFA and the GOC at verification make clear that CCFA data regarding the Chinese domestic MEG and PTA markets are unreliable.
- The MEG domestic market has been called into question because the Department could not verify the data directly with the independent consulting firm that gathered the data. Further, there is record evidence that state-owned enterprises produced 75.1 percent by volume and value of domestic Chinese MEG during the POI. As FA, the Department should determine that the Chinese MEG market is distorted by the GOC. Further, because the Department could not verify the CCFA data, the use of AFA is appropriate, and the Department should determine that all unknown producers that supplied MEG to the respondents are government authorities.
- The PTA domestic market data is similarly untrustworthy. When reporting GOC-ownership interests, the GOC did not consider government management as a criterion for determining government ownership. The Department’s policy and practice with respect to “public bodies” establishes that the role and functions of CCP officials within Chinese enterprises is relevant to the Department’s public body analysis. Accordingly, the Department should apply AFA to conclude that, in addition to market distortion, all unknown producers that supplied PTA to the respondents are government authorities within the meaning of the statute.
- Because the Department could not verify with the GOC that the input markets are not distorted by government involvement, it should use external tier-two benchmarks to measure the benefit of the provision of MEG and PTA to Dragon and Xingyu for LTAR.

**The GOC asserts that:**

- The GOC confirms that the record MEG data is reliable because it was sourced from the annual report of the CCFA.
- The GOC cites to *Chinese Crystalline Silicon Photovoltaic Products CVD Investigation* in support of the proposition that there is no requirement that the GOC independently verify or “quality-test” the third-party data.
- The GOC’s reporting that imports accounted for a vast majority of China’s MEG consumption was corroborated by data submitted by Respondents, which shows the

Respondents sourced almost 90 percent of their MEG from imports.

**Dragon and Xingyu rebut, as follows:**

- There is no record information to doubt the reported levels of government ownership in the MEG and PTA markets. To the contrary, the Department verified this reported information.
- The Department should not revise the input benchmarks. However, if it does look to tier-two benchmarks, Dragon supports the arguments Xingyu made in its Pre-Preliminary comments with respect to the most appropriate world prices.<sup>356</sup> Petitioners' submitted benchmarks are inconsistent with the Department's statutory and regulatory obligations with no explanation of why the Department should depart from its normal practice.

**Petitioners rebut that:**

- There is nothing on the record to confirm the GOC's claims that CCFA obtains MEG production data from CCFEI "on a regular basis and confirms the accuracy of these data." GOC officials acknowledged that they had no idea how CCFEI collected its data, nor did the GOC do its own research to make sure reported domestic MEG production actually covers all Chinese MEG producers.
- The GOC is mistaken in stating that it provided a breakdown of China's 2014 MEG production and capacity by producer at verification.
- The GOC's assertion that almost 90 percent of MEG supplied to the respondents was imported from foreign markets is questionable given 1) both Dragon and Xingyu were unable to identify all input suppliers, and 2) purchases of MEG through bonded warehouses should be treated as domestic purchases rather than imports because verification clarified that raw materials sourced from bonded warehouses may be of either Chinese or foreign origin.<sup>357</sup>
- The GOC conceded that 75.1 percent, by volume and value, was produced by state-owned or managed enterprises during the POI. With no reliable record evidence as to Chinese MEG production, and the GOC's acknowledgement that SOEs control the domestic market, the Department must, at a minimum apply a facts available analysis to determine that Chinese MEG market is distorted by the GOC. Additionally, because the GOC provided the Department with unreliable data from CCFA that could not be verified, AFA is appropriate.<sup>358</sup>

**The GOC rebuts that:**

---

<sup>356</sup> See *Xingyu Pre-Preliminary Comments* (July 22, 2015).

<sup>357</sup> See Letter from Mayer Brown to Secretary of Commerce, the Ministry of Commerce of the People's Republic of China Case Brief at 12 (February 3, 2016) (GOC Case Brief); *see also* GOC Verification Report at 7.

<sup>358</sup> See 19 USC 1677e(b).

- Citing the GOC Verification Report, the GOC states that Petitioners’ argument for questioning the PTA data does not accurately interpret the events at verification.
- The GOC asserts that the production data were accurately collected on a regular basis and reported on questionnaire responses submitted to the Department.
- The GOC states that a reasonable interpretation of the CCFA official’s claim with regard to data collection is that calls are made annually to check the data submitted annually, and that conferences are held as needed. Therefore, the narrative answers are not conflicting.
- The CCFA official never stated there were “large discrepancies,” but rather, the GOC asserts, differences that exist between data sets does not disqualify use of the respective data. Further, there is no record evidence that shows CCFA and CCFEI PTA production data are different for the respective years.
- Whether or not a producer of PTA is a member of the PTA subdivision was not on the verification outline, and thus the CCFA official may not have known the answer when the Department asked the question.
- A breakdown of national PTA producers that included members and non-members of CCFA exemplifies that CCFA was not trying to mislead the Department.

**Department’s Position:**

As detailed above, in the “Use of Facts Otherwise Available” section, because the Department was unable to verify the accuracy of the MEG market data provided by the GOC, as AFA, we are finding that the Chinese MEG market is distorted. The GOC did not disclose prior to verification that it relied on an independent, third-party consultant to source its market data.<sup>359</sup> At verification we were unable to speak with the consulting firm that gathered the data, and, thus, could not determine how the data was gathered.<sup>360</sup> Because we were unable to verify the accuracy of the market data, we do not have reliable record information of the volume and value of MEG that can be attributed to SOE PRC producers. Consequently, we are treating all purchases for which the respondents reported the producer as “unknown” as attributable to GOC authorities. Thus, all purchases of MEG that were reported as being bought from “unknown” producers are now included in the benefit calculation for Dragon and Xingyu.

We find the GOC’s cite to *Chinese Crystalline Silicon Photovoltaic Products CVD Investigation* in support of the proposition that there is no requirement that the GOC independently verify or “quality-test” the third-party data distinguishable from the issue at hand in this investigation. The third-party data that the GOC submitted in the *Chinese Crystalline Silicon Photovoltaic Products CVD Investigation* was publically available, published information from the U.S. International Trade Commission and a prospectus published by the Hong Kong Exchange and

---

<sup>359</sup> See GOC IQR, generally.

<sup>360</sup> See GOC VR at 4-6.

Clearing Limited.<sup>361</sup> The reliability of this data is not discussed as an issue in the *Chinese Crystalline Silicon Photovoltaic Products CVD Investigation*. Parties did not raise it as a comment in the *Chinese Crystalline Silicon Photovoltaic Products CVD Investigation*; therefore, the reliability of the data was not an issue. That is not the case in this investigation, where the Department's questions concerning the data source and reliability were not sufficiently addressed by the GOC at verification and the parties have argued this issue in their case briefs.

Where we find that the government provides the majority, or a substantial portion of the market for a good, prices for such goods in the country may be considered significantly distorted by the government's presence in that market and may not be an appropriate basis of comparison for measuring the adequacy of remuneration.<sup>362</sup> Therefore, we find that the use of an external benchmark is warranted for calculating the benefit for the provision of MEG for LTAR. As explained above, in the "Benchmarks and Discount Rates" section, we agree with Xingyu and Dragon Group that Petitioners' submission of world prices are not suitable as benchmarks, and are instead relying on GTA data that the Department placed on the record on February 18, 2016.<sup>363</sup>

However, with respect to the PTA market, we disagree with Petitioners' assertion that the market data provided by the GOC is unverified in this proceeding. At verification, we spoke with representatives from the China Chemical Fiber Association (CCFA).<sup>364</sup> These CCFA representatives were able to explain how the PTA data was gathered and what the CCFA did to verify the accuracy of this data.<sup>365</sup> Further, the CCFA explained that it investigated any discrepancies that existed between its own PTA data and the PTA data gathered by the independent consulting firm.<sup>366</sup> GOC officials explained at verification that, when the manufacturers apply to join the CCFA, the manufacturers report their ownership, relying upon the business licenses' ownership descriptions.<sup>367</sup> In the *Preliminary Determination*, we determined that the domestic market for PTA was not distorted by the presence of government entities.<sup>368</sup>

With regard to the GOC's rebuttal that the verification of the PTA domestic market data at MOFCOM was not untrustworthy, and not conflicting, we agree. We verified the PTA market data, and we continue to find, based on the record information in this proceeding, that distortion does not exist in this market during the POI. Where the Department does not find that a market is distorted by the government's role and presence in that market, as is the case for the PTA market, we will use market prices from actual transactions within the country under investigation (*i.e.*, tier-one benchmarks).<sup>369</sup>

---

<sup>361</sup> See *Chinese Crystalline Silicon Photovoltaic Products CVD Investigation* IDM at 69.

<sup>362</sup> See *CVD Preamble* at 65377.

<sup>363</sup> See Memorandum from Emily Maloof to File, "Countervailing Duty Investigation of Certain Polyethylene Terephthalate from the People's Republic of China: Submitting Benchmark Information," (February 18, 2016).

<sup>364</sup> See GOC VR at 4-7.

<sup>365</sup> *Id.*

<sup>366</sup> *Id.*

<sup>367</sup> See GOC VR at 6.

<sup>368</sup> See *Preliminary Determination* PDM at 12-13.

<sup>369</sup> See Dragon Group Final Calculation Memorandum and Xingyu Final Calculation Memorandum.

## **Comment 11: Whether Inputs Purchases Through Bonded Warehouses Should Be Treated As Domestic Goods**

### **Petitioners assert that:**

- In the *Preliminary Determination*, the Department included “bonded goods” without an identified producer in its calculation of the import-transaction benchmark, instead of treating these purchases as Chinese-produced.
- Xingyu has argued that goods from bonded warehouses are always foreign-produced. Contradicting this position, Dragon Group has argued that when a Chinese manufacturer was identified for PTA and MEG sourced from bonded warehouses, the Department erred in treating those purchases as domestic purchases rather than imports.
- At verification, the GOC clearly stated that not all raw materials sourced from bonded warehouses are foreign goods.
- As AFA, the Department should include all unknown inputs suppliers as domestic manufacturers. In particular, all of Xingyu’s and its cross-owned companies’ purchases of MEG and PTA through bonded warehouse, without identification of a foreign producer as Chinese manufactured goods.

### **Dragon asserts that:**

- These purchases are similar to inward processing, and the bonded warehouse sales are not an alleged program under investigation. Any forbearance of import duty or VAT is not granted by the producer of the input but rather is afforded by separate laws not under investigation. As such, it is not appropriate to countervail any inputs purchases from a bonded warehouse.

### **Xingyu asserts that:**

- Xingyu could not identify producers of a majority of MEG purchases. Xingyu discovered a public notice on Changjiang International Bonded Area business website, which indicates only goods/products manufactured overseas are allowed to be stored in its facility. It submitted a screenshot of the website in its questionnaire response. The GOC’s response was general to all bonded warehouses in China, but it did not specifically address Changjiang International Bonded Area or Xingyu’s responses. The GOC’s response should not trump publically available information submitted by Xingyu.

### **Department’s Position:**

Dragon submitted Ministerial Error Allegations in July 2015 that included assertions that the Department incorrectly included certain purchases through bonded warehouses in its calculations. The Department responded on September 16, 2015 and explained that the inclusion of certain purchases as imports was a methodological decision, therefore, they are included in the

calculation of the program “Provision of Inputs for LTAR.”<sup>370</sup> We continue to find that these purchases are not imports and thus, have been included in the calculations for the final determination.<sup>371</sup>

This determination is based on questionnaire responses submitted by Dragon Group and Xingyu, and the discussions with the GOC at verification, as discussed below. At verification, a Customs Official of the GOC explained that there is no restriction regarding the origin of goods that enter a bonded warehouse in the PRC.<sup>372</sup> Further, Dragon Group reported purchases of inputs through bonded zones that were produced in the PRC.<sup>373</sup> We find that this record evidence is probative and supports our finding that the relevant inputs were domestically-produced and that it outweighs the information from the screenshot submitted by Xingyu,<sup>374</sup> which was for Changjiang International Bonded Area.

Thus, we will continue to treat domestically produced purchases through a bonded warehouse as domestic purchases in our subsidy calculation for the MEG and PTA inputs for LTAR program. Further, for PTA, we will treat input purchases that were sourced from “unknown” producers according to our practice of including in the benefit calculation a percentage of purchases from “unknown” producers that is representative of the GOC’s presence in the input market. For MEG purchases, as discussed above, because we were unable to verify the market data, we will include all purchases from “unknown” producers because we are missing information about what percentage of domestically produced MEG is attributable to GOC authorities.

## **Comment 12: Whether the Department Should Revise the Sales Denominator to Attribute Subsidy Program Benefits**

### **Dragon Group and Xingyu assert the following:**

- Xingyu and Dragon Group argue that for certain calculations only benefitting producers of the subject merchandise, the Department used a denominator that included the total sales of the cross-owned producers of subject merchandise and improperly excluded inter-company sales between both companies’ cross-owned suppliers and additionally, Xingyu’s parent company.<sup>375</sup>
- Citing to *Passenger Tires from China*, Xingyu and Dragon Group assert that the Department’s exclusion of certain inter-company sales between the non-producing

---

<sup>370</sup> See Re: Dragon Ministerial Error Allegations at 3.

<sup>371</sup> See Dragon Final Calculation Memorandum.

<sup>372</sup> See GOC VR at 7.

<sup>373</sup> See Dragon Final Calculation Memorandum.

<sup>374</sup> See Xingyu IQR at Exhibit 12.

<sup>375</sup> See 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 Certain 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) at Exhibit 1 and Xingyu Preliminary Calculation Memorandum at Exhibit 1.

cross-owned suppliers and the parent company when such entities are not included in the numerator is inconsistent with its practice, as previously alleged as ministerial errors.<sup>376</sup>

- Dragon Group argues that exclusion of inter-company sales that do not appear in the sales denominator artificially inflate the countervailing duty rate.
- Citing 19 CFR 351.525(b)(6)(iv), Dragon Group states that the regulation does not explain attribution of subsidies for more than one cross-owned supplier and/or producer of the subject merchandise. Therefore, the Department should attribute subsidies received by each input supplier to the combined sales of the producer and all input suppliers, net of intercompany sales, consistent with *1,1,1,2-Tetrafluoroethane*.<sup>377</sup>
- Dragon Group asserts that calculating subsidies separately contradicts the Department's treatment of cross-owned suppliers as a collapsed entity by attributing all companies' benefits to Dragon.

**Petitioners assert, as follows:**

- The Department should use Dragon Group's and Xingyu's corrected sales values, as reported at verification.
- For Dragon Group, where the Department does not apply AFA, it should ensure that the export denominator includes only the combined sales of the subject merchandise producer and the one cross-owned input producer that received the subsidy.
- The Department should find that Xingyu's Overseas Investment Discount grant from Jiangsu Province DOC was tied and amend its preliminary calculations, accordingly.

**Dragon rebuts, as follows:**

- As argued in its case brief, the Department should exclude and not attribute any benefits from Xianglu CF because it was not a producer of the input it supplied.
- As argued in its case brief, because the Department has collapsed these entities and made holdings inferring that they could each use the assets of the others as their own, it is only logical that all denominators be grouped together as one.

**Xingyu rebuts as follows:**

---

<sup>376</sup> See "Allegation of Significant Ministerial Errors in the Preliminary Determination of the Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China" (December 19, 2014) at 3.

<sup>377</sup> See Dragon Ministerial Error Allegations, dated August 20, 2015; see also *1,1,1,2-Tetrafluoroethane From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014) (*1,1,1,2-Tetrafluoroethane from China*), and accompanying Issues and Decision Memorandum (IDM) at Comment 17 (*1,1,1,2-Tetrafluoroethane IDM*).

- Petitioners fail to mention the key issue is that these loans do not benefit the export of subject merchandise to the United States. As explained in its case brief, Xingyu reported that the eligibility prerequisite for receiving funds for this program is the carrying out of overseas investment. The application documents for this program clearly show that this is specifically for the purpose of SFX Group’s overseas investment in a Singapore company.

**Petitioners rebut, as follows:**

- Consistent with 19 CFR 351.525(b)(6)(vi) and the Department’s practice, Petitioners contend that subsidies received by Dragon’s cross-owned input suppliers were appropriately attributed to the combined sales of Dragon and the input supplier, net of intercompany sales.<sup>378</sup>

**Department’s Position:**

With regard to Dragon’s and Xingyu’s claims that certain inter-company sales were incorrectly calculated, we have updated the total sales values and amended the exclusion of inter-company sales to properly exclude inter-company sales of the companies that only received the program benefit. The amended attribution of benefits for input suppliers, input producers, subject merchandise producers, and parent companies is described above under “Attribution of Subsidies.”

Dragon further claims that subsidies received by each input supplier should be attributed to the combined sales of the producer and all input suppliers, net of intercompany sales, consistent with *1,1,1,2-Tetrafluoroethane from the PRC*. We disagree. Consistent with the Department’s response to Dragon Group’s Preliminary Ministerial Error Comments and pursuant to 19 CFR 351.525(iv)-(v), the appropriate denominator to attribute subsidies received by cross-owned input producers is the combined sales of only the subject merchandise producer and the one input producer that received the subsidy.<sup>379</sup>

With respect to Petitioners’ request that the Department use the corrected sales values for the respective company for the final determination, the Department agrees and has corrected sales values.

With regard to Xingyu’s Overseas Investment Discount grant from Jiangsu Province DOC, see Comment 3 above and Xingyu’s Final Calculation Memorandum as not information is available for public disclosure.

Dragon additionally requests that the Department exclude any benefits received by Xianglu CF from Dragon’s net subsidy rate as the company does not produce the subject merchandise. The Department agrees, in part. As discussed in “Attribution of Subsidies,” we have amended our

---

<sup>378</sup> See Dragon Group Preliminary Calculation Memo at 5; see also *1,1,1,2-Tetrafluoroethane* IDM at Comment 17.

<sup>379</sup> See Dragon Ministerial Error Allegations; See also Letter from Yasmin Nair, “Response to Ministerial Error Comments filed by Dragon Special Resin (Xiamen) Co., Ltd,” (September 16, 2015).

attribution of subsidies to attribute the benefits of subsidies received by input suppliers that relate to the inputs of subject merchandise.

**Comment 13: The Department Should Correct Errors on the GOC's Policy Loans to Xingyu**

**Petitioners assert, as follows:**

- The Department should use the 2014 benchmark interest rates, instead of using 2013 data.
- The Department should correct certain calculations for loans reported by SFX Group, Xingye Poly, and Hailun.

**Xingyu rebuts, as follows:**

- Petitioners suggested revisions are not merited. The Department should rely upon the 2013 benchmarks because, to the extent that the loan rates were set in a previous period, the rate should be measured against the benchmark in the year of the loan's establishment.
- Petitioners' assertion that the Department failed to include particular interest payments in the preliminary benefit calculation applies to payments made at the beginning of 2014 and included some of the payable interest covering days at the end of 2013. As such, Xingyu submits that this issue of the bridge month on each end of the POI would balance out the benefits that Petitioners claim were excluded from the preliminary calculations. The Department cannot reasonably adjust one end of the POI without adjusting the other.
- Regarding the loans for Xingye Poly, these were addressed in Xingyu's Fourth Supplemental Questionnaire submitted on July 20, 2015. It explains that the loan contracts are all syndicated loans. Some interest payment information remained blank because those reported interest payments have no one-to-one correspondence with one single loan contract in the syndicated loans. Rather, they were calculated based upon the whole group of related syndicated loans. Xingye Poly's loan information was verified and there is no basis on which to add additional benefits to the loan calculations.

**Department's Position:**

With respect to Petitioners' request to use the 2014 benchmark, the Department disagrees. The 2014 benchmark interest rate data has not been fully verified for the purpose of this final determination. Therefore we will continue to use the 2013 data to measure the benefit of countervailable lending provided by the GOC to Dragon and Xingyu.<sup>380</sup>

The Department agrees with Petitioners' request to include certain payments made on policy loans during the POI that were granted to SFX. These were inadvertent errors made in the

---

<sup>380</sup> See *Certain Uncoated Paper from the PRC*, and accompanying IDM at 8.

*Preliminary Determination* that have been corrected. *See* Xingyu Final Calculation Memo for Further, we agree with Petitioners with regard to including certain loans that Xingyu paid interest on in 2014. These calculations have been amended for this final determination.<sup>381</sup>

**Comment 14: Whether the Department Should Continue to Include VAT and Import Duties in Determining the Monthly Benchmark for PTA and MEG for LTAR**

**Petitioners assert that:**

- The Department added import duty and VAT to derive monthly benchmark price, and it should continue to do so for the final, regardless of whether actual transactions or world market price benchmarks are used. This is consistent with the CVD statute, regulations, and the Department’s established past practice.

**The GOC asserts that:**

- In the Preliminary Determination, when calculating benefits for the MEG and PTA for LTAR program for MEG and PTA originating in China and re-imported from a bonded zone, the Department compared the benchmark price calculated on a delivered term with the import price the respondents actually paid without adding the exempted import duty and VAT. This decision is contrary to U.S. law.
- Since the actual prices that the respondents paid for MEG and PTA did not include import duty and VAT, the Department did not consider them delivered prices. By comparing a benchmark price, calculated on delivered terms, with the price the respondents actually paid, which was not on a delivered term, the Department acted inconsistent with its own CVD Regulations and statute.

**Dragon and Xingyu assert the following:**

- Xingyu and Dragon assert that VAT and import duty exemptions are incorrectly included as part of the benefit for purchasing PTA at LTAR because the Department improperly calculated purchases that were imports under the inward processing trade. The Department should correct these errors through a calculation adjustment made to all purchases subject to inward processing.<sup>382</sup>

**Petitioners rebut that:**

- The suggestion that import duties should be added to domestic purchases of PTA and MEG defies law, Department precedent, and logic. There are no import duties on any internal Chinese market transactions, regardless of how they were sourced.

---

<sup>381</sup> *See* Xingyu Final Calculation Memorandum and Attachment 1 at “Policy Loans SFX Group.”

<sup>382</sup> *See* Xingyu’s July 23, 2015 Supplemental Questionnaire Response (Xingyu July 23 SQR) at 3; *See also* Dragon Preliminary Calculation Memorandum at “Dragon-PTA” and Letter to the Secretary from DeKieffer & Horgan, PPLC, Re: Dragon Ministerial Error Allegations (August 20, 2015) (Dragon Ministerial Error Allegations) at 5-6 and Exhibit 3.

- In presenting this argument, the GOC claims that the Department used delivered prices for the benchmark without using delivered prices for the subject producers' purchases. However, the subject producers' actual reported purchases were used in the comparison, and thus reflect the true costs to the companies – effectively, delivered prices.
- Respondents cannot offer any legal support or case precedent for making such adjustments to their actual transaction prices.
- While the CVD statute, regulations, and the Department's practice demonstrate inclusion of import duty and VAT in the benchmark price, modifying the input prices has no basis in law, and thus the Department should not alter input prices for the final determination.<sup>383</sup>

**Dragon Group and Xingyu rebut, as follows:**

- In case of inward processing transactions, it is not a prevailing market condition to add VAT and import duties because none occurred on such purchases. For these imports, the Department should not add VAT and import duties to amounts paid, so that the benchmark is comparable to domestic prices.

**Department's Position:**

We agree with Petitioners. Consistent with the Department's practice, the Department concludes that both import duties and VAT should be included in the benchmark prices in order to make an appropriate level of price comparability between domestic purchase prices and benchmark prices.<sup>384</sup> Dragon Group and Xingyu have not presented any new arguments to lead the Department to reconsider the derivation of the MEG and PTA benchmark prices used in the companies' benefit calculations for the "Provision of Inputs for LTAR."<sup>385</sup>

With regard to the GOC's argument that including VAT and import duties is contrary to U.S. law, we disagree. The Department has determined that 19 CFR 351.511(a)(2)(iv) of the regulations is clear in its requirement to use delivered prices which include all delivery charges and import duties when determining whether the provision of a good provides a benefit.<sup>386</sup> In *Hot Rolled Steel from India*, the Department explained that, in keeping with the regulation, "delivery charges and import duties would include all shipping, handling and related charges (e.g., foreign inland freight, local inland freight, and ocean freight) that would be incurred in delivering the product to the respondents' factory gate, as well as duties and taxes (e.g., VAT, normal customs duties, antidumping and countervailing duties) applicable to that product."<sup>387</sup> As such, Dragon Group's and Xingyu's assertions that VAT and import duties are not required to

---

<sup>383</sup> See GOC Case Brief at 8, Letter from deKieffer & Horgan to Secretary of Commerce, Dragon Case Brief, at 24 (February 3, 2016) (Dragon Case Brief) and Letter from deKieffer & Horgan to Secretary of Commerce, Xingyu Case Brief at 35-36 (February 3, 2016) (Xingyu Case Brief).

<sup>384</sup> See, e.g., Line Pipe IDM at Comment 8; Wind Towers IDM at Comment 19.

<sup>385</sup> *Id.*

<sup>386</sup> *Id.*

<sup>387</sup> See *Hot Rolled Steel from India*, and accompanying IDM at Comment 4.

adjustments to the benchmark prices to reflect the delivered price a firm would pay, are baseless.

In *Steel Cylinders from the PRC*, the Department discussed that domestic inputs purchased by a firm are delivered prices which include all delivery charge and VAT. Therefore, in order to ensure an appropriate “apples-to-apples” comparison between domestic input purchases and the world-market benchmark, the regulations require the use of delivered prices for the benchmark, which include import duties and VAT.<sup>388</sup>

Further, to suggest that the Department should compare a domestic delivered input price inclusive of VAT to a non-delivered, VAT-exclusive benchmark price results in a distorted benefit calculation and is inconsistent with the requirements of 19 CFR 351.511(a)(2)(iv). The domestically-produced PET resin inputs would compete with world-market inputs based on delivered prices that would include all delivery charges, taxes and duties required for sale within the PRC market, *i.e.*, prevailing market conditions.

The Department has previously addressed and rejected arguments that case specific adjustments should be made to reflect the price a firm actually paid or would pay. In *OCTG from the PRC*, we explained the Department’s position on this issue when addressing the derivation of benchmark prices with regard to freight:

Although Jianli contends that the benchmark should reflect prices Jianli itself would have paid, 19 CFR 351.511(a)(2)(iv) directs the Department to adjust the price for freight “to reflect the price a firm actually paid or would pay if it imported the product” (emphasis added). Thus, so long as the ocean freight costs are reflective of market rates for ocean freight, and representative of the rates an importer—and not necessarily the respondent specifically—would have paid, then the prices are appropriate to include in our benchmark. Additionally, these prices are for shipping steel articles from the locations included in our benchmark to the PC, thus the pricing series are appropriate to include in our benchmark.<sup>389</sup>

With regard to Dragon Group’s and Xingyu’s assertion that the Department incorrectly did not account for purchases through inward processing, this issue is discussed in Comment 11 above.

For the reasons stated above, we continue to include VAT and import duties in the MEG and PTA benchmark prices, which are delivered prices as required by 19 CFR 351.511(a)(2)(iv), used to calculate Dragon Group’s and Xingyu’s benefit under the program “Provision of Inputs for LTAR.”

**Comment 15: If the Department Does Not Use World Market Prices as Benchmarks in the Final Determination, It Must Correct Certain Errors in the Monthly Benchmark for the MEG for LTAR Program.**

**Petitioners assert that:**

- Certain monthly benefit calculations for SFX Group for MEG purchases include incorrect

---

<sup>388</sup> See *Steel Cylinders from the PRC*, and accompanying IDM at Comment 9.

<sup>389</sup> See OCTG IDM at Comment 13.

benchmarks.

No other parties commented on this issue.

**Department's Position:**

This issue is moot as we are now relying on tier-two, world market prices as benchmark to measure the adequacy of remunerations, as explained *infra*.

**Comment 16: Whether A Program of Policy Lending for PET Resin Exists**

**The GOC asserts that:**

- The Department's conclusion that China has a policy to support the PET Resin industry is not supported by substantial evidence, as either the policy has been superseded, or the Department's conclusion was based on an overly broad reading of the GOC's policies/plans.
- The 11<sup>th</sup> FYP covered only 2006-2010, thus, any loans extended between 2011 and 2014 were not covered by this plan. The Department made no finding concerning the 12<sup>th</sup> FYP.
- The GOC explained at verification that the Guidance Catalogue on Industrial Structural Adjustment (2011), as revised in 2013 (Guidance Catalogue), lists PET resin as a permitted industry, and not an encouraged industry. Additionally, this plan provides direction as to what technology is encouraged but it does not provide for a preferential policy.
- 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) (List of the Encouraged Industries), which the Department found identified the ethylene industry as an Encouraged Industry, was abolished in 2005.
- The GOC explained at verification that the Temporary Provisions on Promoting Industrial Structure Adjustment (Decision No. 40) was implemented through the Guidance Catalogue, which does not list PET resin as encouraged. The Department's finding that Chapter 2 of Decision No. 40, which lists petrochemical and ethanol, is only intended as a generalized summary of the policies. As the Guidance Catalogue was the implementing measure for Decision No. 40, the fact the PET Resin was not identified in the Guidance Catalogue as encouraged indicated that the industry was not an encouraged industry under Decision No. 40.

**Petitioners rebut, as follows:**

- The GOC is incorrect that the Five-Year Plans did not call for financial support for the petrochemicals industry, since these plans call for optimizing the development of “basic chemical materials” and “actively develop fine chemical industry.”
- Loans from SOCBs and government policy banks to subject producers are outstanding for a number of years. To entirely disregard the impact of the 11<sup>th</sup> Five-Year Plan after 2010 as the GOC insists is too simplistic.
- The 12<sup>th</sup> Five-Year Plan urges petrochemical industries to “emphasize development of high-end petrochemical products. . . and promote quality improvement of petroleum-based products. . .” The GOC offers no evidence rebutting this support for downstream petrochemical products like PET resin in the 12<sup>th</sup> Five Year Plan.
- The GOC’s claim at verification that local government implementation of the national five-year plans conflicts with record evidence in this investigation and the Department’s findings in other cases. Decision No. 40 calls upon all provincial, region, and municipal governments to, “speed up the formulation and amendment of policies on public finance, taxation, credit, land, import and export, etc. . . .” The GOC’s administrative system ensures that provincial and local policy goals and objectives are in conformity with the central government’s policy goals and objectives.
- Fujian Provinces 12<sup>th</sup> Five-Year Plan for Economic and Social Development (2011-2015) encourages the petrochemical sector and downstream petrochemical industries as major centers of development, and promotes the continued expansion and development of petrochemical production. The record demonstrates the central government’s ongoing support for the petrochemical industry during the 12<sup>th</sup> Five-Year Plan, including the POI, and shows that Chinese provincial governments’ policies are consistently aligned with the central government’s prioritization and encouragement of the petrochemical industry and concomitant preferential policies.
- In *1,1,1,2-Tetrafluoroethane from China*, the Department found that the GOC’s identification of the subject merchandise as disfavored in the Kyoto Protocol irrelevant to the Department’s finding of policy lending.<sup>390</sup> Thus, the GOC’s “permitted” designation of the subject merchandise should not affect the Department’s finding that the PET resin industry was encouraged under the GOC’s policy loans.

### **Department’s Position:**

We disagree with the GOC that the Department’s finding of a Policy Loans program is not supported by the record evidence. As Petitioners correctly point out, 12<sup>th</sup> Five-Year Plan urges petrochemical industries to “emphasize development of high-end petrochemical products. . . and promote quality improvement of petroleum-based products. . . .”<sup>391</sup> The GOC offers no evidence rebutting this support for downstream petrochemical products like PET resin in the 12<sup>th</sup> Five

<sup>390</sup> See *1,1,1,2 Tetrafluoroethane From China* and accompanying IDM at 40.

<sup>391</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) at Exhibit PRC-2, Ch. 9, Sec. 1.

Year Plan. Further, the support established in the 11<sup>th</sup> Five-Year Plan for preferential lending did not evaporate at the end of the 11<sup>th</sup> Five-Year period.<sup>392</sup> Depending on repayment, loans that were bequeathed to PET resin producers during the Five-Year period were potentially still outstanding as loans that extended into the next Five-Year period. The record demonstrates continued local support and expansion of China’s petrochemical production from 2011-2015, and provincial governments’ policies are consistently aligned with the central government’s industrial prioritization and encouragement.<sup>393</sup>

Although we did not rely upon the 12<sup>th</sup> FYP for our Preliminary Determination of Policy Lending, that does not preclude us from considering the plan for this final determination.<sup>394</sup> In the Department’s verification outline to the GOC, we requested that the GOC discuss the broad range of fiscal incentives and enforcement powers at the national and regional level that are in place to support the government’s industrial policy objectives, as outlined in the plans that included the 10<sup>th</sup>, 11<sup>th</sup>, and 12<sup>th</sup> FYPs, as well as sections that pertained to local provinces.<sup>395</sup> At verification, the GOC argued that the central plans provide an instructive direction, but that plan implementation is not mandatory.<sup>396</sup> However, the GOC provided no evidence to rebut these plans, in so far as they extended to supporting Petitioners’ claims of a policy lending program.<sup>397</sup>

We disagree that a program of Policy Lending to the PET resin industry did not exist because PET resin was not identified in the “Encouraged” category in the Guidance catalog. Other national and local plans, such as the 11<sup>th</sup> and 12<sup>th</sup> national FYPs and the Fujian Province 12th Five-Year Plan for Economic and Social Development, existed that supported preferential lending policies to industries that encompass PET resin.<sup>398</sup> In *1,1,1,2-Tetrafluoroethane from China*, the Department rejected the GOC’s argument that the subject product’s identification as “disfavored” affected the Department’s analysis of other GOC policy documents.<sup>399</sup> Thus, the absence of PET resin in the “Encouraged” category of the Guidance Catalog does not affect our finding that the PET resin industry was encouraged under the GOC’s policy loans. Consistent with our *Preliminary Determination*, we continue to find that a program of policy lending for PET resin producers exists.

---

<sup>392</sup> *Id.*, at Exhibit PRC-1., Ch. 13, Sec. 2.

<sup>393</sup> *Id.*, at Exhibit PRC-18, Ch. 3, Sec. 1.

<sup>394</sup> *Id.*, at Exhibit PRC-2.

<sup>395</sup> See Department’s Verification Outline issued to the GOC (October 29, 2015).

<sup>396</sup> See GOC VR at 3.

<sup>397</sup> *Id.*

<sup>398</sup> *Id.*

<sup>399</sup> See *1,1,1,2-Tetrafluoroethane from China* IDM at 40.

**VII. RECOMMENDATION**

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register*.

✓  
Agree

\_\_\_\_\_  
Disagree

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

4 MARCH 2016  
Date