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Investigation
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June 27, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination: Countervailing Duty Investigation of Certain
Amorphous Silica Fabric from the People's Republic of China

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain amorphous silica fabric (silica fabric) from the People's Republic of China (PRC), as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On January 20, 2016, the Department received a countervailing duty (CVD) and antidumping duty (AD) petition concerning imports of silica fabric from the PRC, filed in proper form by Auburn Manufacturing, Inc. (Petitioner).¹ On February 16, 2016, the Department initiated the CVD investigation of silica fabric from the PRC.² The initial allegations and supplements to the Petition are described in the CVD Initiation Checklist.³

¹ See "Petition for the Imposition of Countervailing Duties on Imports of Certain Amorphous Silica Fabric from the People's Republic of China," dated January 20, 2016 (Petition).

² See *Certain Amorphous Silica Fabric Iron From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 81 FR 8909 (February 23, 2016) (CVD Initiation).

³ See Countervailing Duty Investigation Initiation Checklist: Certain Amorphous Silica Fabric From the People's Republic of China from the People's Republic of China (CVD Initiation Checklist), dated February 16, 2016.



In the *CVD Initiation*, we stated that, following the standard practice in CVD investigations, we would, where appropriate, select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of silica fabric during the period of investigation (POI).⁴ The Department obtained data for entries made for U.S. imports under the Harmonized Tariff Schedule of the United States (HTSUS) numbers 7019.59.4021, 7019.59.4096, 7019.59.9021, and 7019.59.9096 during the POI, and released the data to the interested parties for comment on February 17, 2016.⁵ On February 23, 2106, Access China Industrial Textile, Inc., doing business as ACIT (USA) Inc. (ACIT USA), a U.S. importer of subject merchandise, filed comments on the CBP data.⁶ On March 1, 2016, Petitioner also filed comments.⁷ Both ACIT USA and Petitioner asserted that the CBP data cannot be considered a complete or accurate basis on which to select mandatory respondents because HTSUS categories used in the data query were “basket categories” that included non-subject merchandise. Additionally, both ACIT USA and Petitioner stated that the CBP data did not include HTSUS categories listed in the scope of the investigation that parties may also use to import subject merchandise.⁸ Both parties urged the Department to use an alternative respondent selection methodology in this investigation.⁹

Based on the comments received from interested parties and our analysis of the CBP data, we determined that in this investigation the CBP data were not an appropriate basis on which to select respondents for individual examination.¹⁰ Accordingly, the Department determined that it would instead issue Quantity and Value (Q&V) questionnaires to the producers and exporters identified in the CVD Petition concerning imports of silica fabric from the PRC,¹¹ and would select respondents for individual examination based on data contained in the responses to those questionnaires.¹²

On March 4, 2016, the Department issued the Q&V questionnaire to the 81 companies identified in the Petition.¹³ Of the 81 companies to which the Department issued Q&V questionnaires, six companies timely and properly filed Q&V responses that indicated the quantity and value of subject merchandise shipped to the United States during the POI. We received improperly filed

⁴ See *CVD Initiation*, 81 FR at 8911.

⁵ See Letter to all interested parties, dated February 17, 2016.

⁶ See Letter from Access China Industrial Textile, Inc., doing business as ACIT (USA) Inc., “Re: Certain Amorphous Silica Fabric from and China: Comments on CBP Data and Request to Issue Quantity & Value Questionnaires,” dated February 23, 2016 (ACIT Comments).

⁷ See Letter from Petitioner, “Re: Certain Amorphous Silica Fabric from the People’s Republic of China: Petitioners’ Comments on Respondent Selection Methodology,” dated March 1, 2016 (Petitioner Comments).

⁸ See ACIT Comments at 2 – 3, 5 – 6; see also Petitioner Comments at 2 – 3, 5 – 6. The Department normally exercises its discretion by omitting HTSUS subheadings other than which those under subject merchandise is normally classified, *i.e.* subheadings under which subject merchandise may also enter under. For further discussion of the Department’s analysis of the CBP data for its selection of mandatory respondents, see Respondent Selection Memo at 3.

⁹ See ACIT Comments at 2; see also Petitioner Comments at 2-3.

¹⁰ See Memorandum to the File, “Selection of Quantity and Value Questionnaire Recipients,” dated March 7, 2016 (Q&V Respondent Selection Memorandum).

¹¹ See Petition.

¹² See Q&V Respondent Selection Memorandum.

¹³ *Id.*

responses from two additional Q&V questionnaire recipient companies, both of which we rejected.¹⁴

As outlined in the Department's Respondent Selection Memorandum, based upon the data contained in the Q&V responses, the Department selected ACIT Pinghu and Nanjing Tianyuan Fiberglass Material Co., Ltd. (Nanjing Tianyuan) (collectively, Respondents) as mandatory respondents.¹⁵ Consistent with section 777A(e)(2)(A)(ii) of the Act, ACIT Pinghu and Nanjing Tianyuan accounted for the largest volume of exports of the merchandise under consideration during the POI.

On April 5, 2016, the Department issued a CVD questionnaire to the Government of the PRC (GOC).¹⁶ On May 6, 2016, the Department issued a supplemental CVD questionnaire to the GOC.¹⁷ On April 20, 2016, ACIT Pinghu filed its affiliation questionnaire response,¹⁸ and on April 22, 2016, Nanjing Tianyuan filed its affiliation questionnaire response.¹⁹ On May 18, 2016, ACIT Pinghu, Nanjing Tianyuan, and the GOC filed responses to the Department's primary countervailing duty questionnaire.²⁰ Respondents and the GOC filed responses to additional supplemental questionnaires between May 24, 2016 and June 16, 2016, as discussed below.

On April 25, 2016, ACIT Pinghu submitted its response to the Department's supplemental questionnaire regarding ACIT Pinghu's ownership and affiliated companies.²¹ On May 4, 2016, Petitioner submitted rebuttal filings,²² indicating that ACIT Pinghu did not fully respond on behalf of all affiliated companies and owners in its supplemental response. On May 24, 2016, ACIT Pinghu submitted its response to the Department's supplemental questionnaire regarding

¹⁴ See Memorandum to the File, "Request to Take Action on Certain Barcodes," (March 29, 2016); *see also* Memo to the File, "Rejection of filing by Yuyao Tianyi Special Carbon Fiber Ltd., Company," (April 1, 2016).

¹⁵ See "Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Respondent Selection," dated April 5, 2016 (Respondent Selection Memorandum).

¹⁶ See "Countervailing Duty Questionnaire from the Department to Ms. Liu Fang, First Secretary, Embassy of the People's Republic of China, Washington, D.C.," dated April 5, 2016 (primary questionnaire).

¹⁷ See Letter from the Department to the GOC, dated May 6, 2016 (GOC First Supplemental Questionnaire).

¹⁸ See Letter from ACIT Pinghu, "Certain Amorphous Silica Fabric from the People's Republic of China: Affiliated Companies Response," dated April 20, 2016 (ACIT Pinghu AQR).

¹⁹ See Letter from Nanjing Tianyuan, "Amorphous Silica Fabric from the Peoples Republic of China: Response to Section III Identifying Affiliated Companies," dated April 22, 2016 (Nanjing Tianyuan AQR).

²⁰ See Letter from ACIT Pinghu, "Certain Amorphous Silica Fabric from the People's Republic of China: Sections III of Countervailing Duty Response," dated May 18, 2016 (ACIT Pinghu PQR), Letter from Nanjing Tianyuan, "Certain Amorphous Silica Fabric from the People's Republic of China: Section III Questionnaire Response," dated May 18, 2016 (Nanjing Tianyuan PQR), AND Letter from the GOC, "Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC Initial Response and Supplemental Response" dated May 18, 2016 (GOC PQR), respectively.

²¹ See Letter from ACIT Pinghu, "Re: Certain Amorphous Silica Fabric from China: Affiliated Companies Supplemental Questionnaire Response," dated April 25, 2016 (ACIT Pinghu SQR).

²² See Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Submission of Factual Information to Rebut, Clarify, or Correct Information Placed on the Record by ACIT (Pinghu) Inc.," dated May, 4 2016 (Petitioner Rebuttal of ACIT Pinghu SQR).

ACIT Pinghu's PQR and AQR.²³ On May 25, 2016, Petitioner submitted rebuttal filings, indicating that ACIT Pinghu did not fully respond in its AQR and SQR on behalf of former parent companies that held an ownership stake during the average useful life (AUL) period.²⁴ Also on May 25, 2016, Petitioner submitted rebuttal filings, indicating that certain deficiencies and inconsistencies existed in ACIT Pinghu's PQR.²⁵ On May 31, 2016, ACIT Pinghu submitted proposed benchmark prices for use in calculating benefits under the alleged program, "Government Provision of Land for LTAR in Special Economic Zones."²⁶ Also on May 31, 2016, Petitioner submitted proposed benchmark prices for calculating a benefit for the aforementioned program, in addition to the alleged program, "Government Provision of Electricity for LTAR," as well as currency conversion data and data relevant to discount rates.²⁷ On June 2, 2016, ACIT Pinghu submitted its response to the Department's second and third supplemental questionnaires,²⁸ to which Petitioner submitted rebuttal filings on June 8, 2016,²⁹ indicating that ACIT Pinghu continued to not properly disclose previous ownership information. On June 16, 2016, ACIT Pinghu submitted its response to the Department's fourth supplemental questionnaire.³⁰

As noted above, Nanjing Tianyuan submitted its response to the Department's primary questionnaire on May 18, 2016. On May 27, 2016, Petitioner submitted rebuttal information contending that Nanjing Tianyuan's responses in its PQR regarding financial statements, sales values, tax programs and alleged loan receipt, *inter alia*, were deficient and that the Department should request additional information. On June 1, 2016, Nanjing Tianyuan submitted its response to the Department's first supplemental questionnaire regarding, *inter alia*, general company information, financial statement and sales values, rental of factory space, electricity

²³ See Letter from ACIT Pinghu, "Re: Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Supplemental Questionnaire for ACIT Pinghu In.," dated May 24, 2016 (ACIT Pinghu 2SQR).

²⁴ See Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Failure to Provide Questionnaire Response for Certain Affiliates of ACIT Shanghai and Submission of Factual Information to Rebut, Clarify, or Correct Information Contained in the Producer Questionnaire Response," dated May 25, 2016 (Petitioner Second Rebuttal to ACIT Pinghu SQR).

²⁵ See Letter from Petitioner, "Re: Countervailing Duty Investigation on Certain Amorphous Silica Fabric from the People's Republic of China: Additional Comments Regarding the CVD Producer Response of ACIT," dated May 25, 2016 (Petitioner Rebuttal to ACIT Pinghu PQR).

²⁶ See Letter from ACIT Pinghu, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Benchmark Submission," dated May 31, 2016 (ACIT Pinghu Land Benchmark).

²⁷ See Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Benchmark Factual Information," dated May 31, 2016 (Petitioner Benchmark Submission).

²⁸ See Letter from ACIT Pinghu, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Certain Amorphous Silica Fabric from China: Second Supplemental Questionnaire Response," dated June 2, 2016 and Letter from ACIT Pinghu, Re: Certain Amorphous Silica Fabric from the People's Republic of China: Certain Amorphous Silica Fabric from China: Third Supplemental Questionnaire Response, dated June 2, 2016.

²⁹ See Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Comments on ACIT's Response to the Department's Third Supplemental Countervailing Duty Questionnaire," dated June 8, 2016.

³⁰ See Letter from ACIT Pinghu, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Certain Amorphous Silica Fabric from China: Second Supplemental Questionnaire Response," dated June 16, 2016 (ACIT Pinghu 4SQR).

use, and tax and grant programs.³¹ On June 9, 2016, Nanjing Tianyuan submitted its response to the Department's second supplemental questionnaire regarding financial statement and sales values, loan programs, electricity usage, and tax programs.³² On June 14, 2016, Petitioner submitted rebuttal information regarding Nanjing Tianyuan's response to our June 1, 2016, first supplemental questionnaire, in which Petitioner argued that Nanjing Tianyuan's PQR and SQR responses were deficient and that the Department should reject the latter response entirely. Finally, on June 14, 2016, Nanjing Tianyuan submitted its response to our third supplemental questionnaire regarding the unaudited 2015 financial statement the company originally submitted on June 1, 2016.³³

As indicated above, the GOC filed its response to the primary questionnaire and first supplemental questionnaire on May 18, 2016. On June 2, 2016, the GOC submitted its response regarding the Department's second supplemental questionnaire.³⁴ The GOC submitted its third supplemental questionnaire response on June 13, 2016.³⁵ Also on June 13, 2016, Petitioner submitted a rebuttal filing in which it objected to the GOC's request to the Department for a one-week extension to the Department's June 9, 2016 supplemental questionnaire. The GOC submitted its fourth supplemental questionnaire response on June 16, 2016.³⁶ On June 17, 2016, Petitioner submitted a rebuttal filing to that response in which it argued that the GOC's responses to questions regarding policy loans were uncooperative.³⁷ On June 23, the GOC submitted its fifth supplemental questionnaire response.³⁸

On May 24, 2016 and May 25, 2016, Petitioner submitted new subsidy allegations to the Department.³⁹ On May 31, 2016, ACIT Pinghu submitted a response to Petitioner's NSA Letter,⁴⁰ to which Petitioner submitted rebuttal information on June 2, 2016.⁴¹ On June 21, 2016,

³¹ See Letter from Nanjing Tianyuan, "Re: Amorphous Silica Fabric from the Peoples Republic of China: Supplemental CVD Questionnaire Response," dated June 1, 2016 (Nanjing Tianyuan SQR).

³² See Letter from Nanjing Tianyuan, "Re: Amorphous Silica Fabric from the Peoples Republic of China: Supplemental CVD Questionnaire Response," dated June 9, 2016 (Nanjing Tianyuan 2SQR).

³³ See Letter from Nanjing Tianyuan, "Re: Amorphous Silica Fabric from the Peoples Republic of China: Supplemental CVD Questionnaire Response," dated June 14, 2016 (Nanjing Tianyuan 3SQR).

³⁴ See Letter from the GOC, "Re: Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC Initial Response and Supplemental Response," dated June 2, 2016 (GOC 2SQR).

³⁵ See Letter from the GOC, "Re: Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC Initial Response and Supplemental Response," dated June 13, 2016 (GOC 3SQR).

³⁶ See Letter from the GOC, "Re: Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC Initial Response and Supplemental Response," dated June 16, 2016 (GOC 4SQR).

³⁷ See Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Rebuttal Factual Information in Response to GOC's 4th Supplemental Questionnaire Response," dated June 17, 2016.

³⁸ See Letter from the GOC, "Re: Certain Amorphous Silica Fabric from the People's Republic of China; CVD Investigation; GOC Initial Response and Supplemental Response," dated June 23, 2016 (GOC 5SQR).

³⁹ See Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's New Subsidy Allegations," dated May 24, 2016 (NSA Letter) and Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's New Subsidy Allegations," dated May 25, 2016 (NSA Supplement).

⁴⁰ See Letter from ACIT Pinghu, "Re: Certain Amorphous Silica Fabric from China: Response to Petitioner's New Subsidy Allegations," dated May 31, 2016.

⁴¹ See Letter from Petitioner, "Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Response to ACIT's Objection to Petitioner's New Subsidy Allegations," dated June 2, 2016.

the Department initiated an investigation of these new subsidy allegations and issued a new subsidy allegation questionnaire to ACIT Pinghu, Nanjing Tianyuan, and the GOC.⁴² As there is not sufficient time to fully analyze these responses prior to this preliminary determination, we intend to issue a post-preliminary analysis regarding these programs.

B. Postponement of Preliminary Determination

On March 15, 2016, the Department postponed the deadline for the preliminary determination to the full 130 days permitted under sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).⁴³

C. Period of Investigation

The POI is January 1, 2015, through December 31, 2015.

III. ALIGNMENT

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on Petitioner's request,⁴⁴ we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of silica fabric from the PRC. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than November 7, 2016, unless postponed.⁴⁵

⁴² See Memorandum to Scot Fullerton, Director, AD/CVD Enforcement, Office VI, Re: New Subsidy Allegations, dated June 14, 2016, (NSA Memorandum).

⁴³ Per Department practice, because the fully-extended preliminary determination date fell on Saturday, June 25, 2016, the Department tolled the preliminary determination deadline until Monday, June 27, 2016. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005); see also *Certain Amorphous Silica Fabric From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 81 FR 13771 (March 15, 2016); see also Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016. As explained in this memorandum, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days.

⁴⁴ See Letter from Petitioner, Re: Certain Amorphous Silica Fabric from the People's Republic of China: Petitioner's Request for Postponement of Date for Final Countervailing Duty Determinations to Align to the Date of the Final Antidumping Determination, dated June 9, 2016 (Petitioner's Alignment Request).

⁴⁵ We note that the current deadline for the final AD determination is August 14, 2016, which is a Sunday. Pursuant to the Department's practice, the signature date will be the next business day, which is Monday, August 15, 2016. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

IV. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,⁴⁶ we set aside a period of time in our *CVD Initiation* for parties to raise issues regarding product coverage, and we encouraged all parties to submit comments within 20 calendar days of the signature date of that notice.⁴⁷

We received comments concerning the scope of the AD and CVD investigations of silica fabric from the PRC. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigation, which is due for signature on August 24, 2016. We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination after considering any relevant comments submitted in case and rebuttal briefs.

V. SCOPE OF THE INVESTIGATION

The product covered by this investigation is woven (whether from yarns or rovings) industrial grade amorphous silica fabric, which contains a minimum of 90 percent silica (SiO₂) by nominal weight, and a nominal width in excess of 8 inches. The investigation covers industrial grade amorphous silica fabric regardless of other materials contained in the fabric, regardless of whether in roll form or cut-to-length, regardless of weight, width (except as noted above), or length. The investigation covers industrial grade amorphous silica fabric regardless of whether the product is approved by a standards testing body (such as being Factory Mutual (FM) Approved), or regardless of whether it meets any governmental specification.

Industrial grade amorphous silica fabric may be produced in various colors. The investigation covers industrial grade amorphous silica fabric regardless of whether the fabric is colored. Industrial grade amorphous silica fabric may be coated or treated with materials that include, but are not limited to, oils, vermiculite, acrylic latex compound, silicone, aluminized polyester (Mylar®) film, pressure-sensitive adhesive, or other coatings and treatments. The investigation covers industrial grade amorphous silica fabric regardless of whether the fabric is coated or treated, and regardless of coating or treatment weight as a percentage of total product weight. Industrial grade amorphous silica fabric may be heat-cleaned. The investigation covers industrial grade amorphous silica fabric regardless of whether the fabric is heat-cleaned.

Industrial grade amorphous silica fabric may be imported in rolls or may be cut-to-length and then further fabricated to make welding curtains, welding blankets, welding pads, fire blankets, fire pads, or fire screens. Regardless of the name, all industrial grade amorphous silica fabric that has been further cut-to-length or cut-to-width or further finished by finishing the edges and/or adding grommets, is included within the scope of this investigation.

Subject merchandise also includes (1) any industrial grade amorphous silica fabric that has been converted into industrial grade amorphous silica fabric in China from fiberglass cloth produced

⁴⁶ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁴⁷ See *CVD Initiation*, 81 FR at 8909.

in a third country; and (2) any industrial grade amorphous silica fabric that has been further processed in a third country prior to export to the United States, including but not limited to treating, coating, slitting, cutting to length, cutting to width, finishing the edges, adding grommets, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope industrial grade amorphous silica fabric.

Excluded from the scope of the investigation is amorphous silica fabric that is subjected to controlled shrinkage, which is also called “pre-shrunk” or “aerospace grade” amorphous silica fabric. In order to be excluded as a pre-shrunk or aerospace grade amorphous silica fabric, the amorphous silica fabric must meet the following exclusion criteria: (1) the amorphous silica fabric must contain a minimum of 98 percent silica (SiO₂) by nominal weight; (2) the amorphous silica fabric must have an areal shrinkage of 4 percent or less; (3) the amorphous silica fabric must contain no coatings or treatments; and (4) the amorphous silica fabric must be white in color. For purposes of this scope, “areal shrinkage” refers to the extent to which a specimen of amorphous silica fabric shrinks while subjected to heating at 1800 degrees F for 30 minutes.⁴⁸

Also excluded from the scope are amorphous silica fabric rope and tubing (or sleeving). Amorphous silica fabric rope is a knitted or braided product made from amorphous silica yarns. Silica tubing (or sleeving) is braided into a hollow sleeve from amorphous silica yarns.

The subject imports are normally classified in subheadings 7019.59.4021, 7019.59.4096, 7019.59.9021, and 7019.59.9096 of the Harmonized Tariff Schedule of the United States (HTSUS), but may also enter under HTSUS subheadings 7019.40.4030, 7019.40.4060, 7019.40.9030, 7019.40.9060, 7019.51.9010, 7019.51.9090, 7019.52.9010, 7019.52.9021, 7019.52.9096 and 7019.90.1000. HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

VI. INJURY TEST

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On March 14, 2016, the ITC preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of silica fabric from the PRC.⁴⁹

⁴⁸ Areal shrinkage is expressed as the following percentage:

$$\frac{\text{Fired Area, cm}^2 - \text{Initial Area, cm}^2}{\text{Initial Area, cm}^2} \times 100 = \text{Areal Shrinkage, \%}$$

⁴⁹ See *Certain Amorphous Silica Fabric from China: Investigation Nos. 701-TA-555 and 731-TA-1310 (Preliminary)*, Publication 4598, March 2016; see also *Certain Amorphous Silica Fabric from China*, 81 FR 14128 (March 16, 2016).

VII. APPLICATION OF THE CVD LAW TO IMPORTS FROM THE PRC

On October 25, 2007, the Department published its final determination in *CFS from the PRC*, where we found that:

{G}iven 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.⁵⁰

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.⁵¹ Furthermore, on March 13, 2012, Public Law 112-99 was enacted which makes clear that the Department has the authority to apply the CVD law to countries designated as non-market economies (NMEs) under section 771(18) of the Act, such as the PRC.⁵² The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.⁵³

VIII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the AUL of renewable physical assets used in the production of subject merchandise.⁵⁴ In the April 5, 2016, questionnaire, we notified the respondents to this proceeding that the AUL period would be 11 years, on the basis of U.S. Internal Revenue Service Publication 946 (2013), "Appendix B - Table of Class Lives and Recovery Periods" (IRS Pub. 946).⁵⁵ The 11-year period corresponds to IRS Pub. 946 asset class, "22.2 "Manufacture of Yarn, Thread and Woven Fabrics." However, the GOC, ACIT Pinghu, and ACIT (Shanghai) Inc. (ACIT Shanghai), a cross-owned affiliated company, challenged this AUL period in its primary questionnaire response. According to the Respondents, a 9-year AUL period, which corresponds to IRS Pub. 946 asset class "Manufacture of Carpets and Dyeing, Finishing and Packaging of Textile Products, and Manufacture of Medical and Dental Supplies"⁵⁶ is more appropriate because it reflects the respondents' production process.⁵⁷ Petitioner did not submit comments regarding the

⁵⁰ See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decision Memorandum (CFS IDM) at Comment 6.

⁵¹ See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and accompanying Issues and Decision Memorandum (CWP IDM) at Comment 1.

⁵² Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

⁵³ See Public Law 112-99, 126 Stat. 265 §1(b).

⁵⁴ See 19 CFR 351.524(b).

⁵⁵ See U.S. Internal Revenue Service Publication 946 (2013), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

⁵⁶ See IRS Pub. 946 at Table B-2.

⁵⁷ See GOC PQR at 2-3.

appropriateness of a 9-year AUL period. Based on our review of Respondents' information, we preliminarily determine that a 9-year period reflects Respondents' production process and is appropriate to allocate benefits from non-recurring subsidies.

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

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide 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 more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

{T}he 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.⁵⁸

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) upheld the Department's authority to attribute subsidies based on whether a company

⁵⁸ See CVD Preamble at 65401.

could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.⁵⁹

ACIT Pinghu

ACIT Pinghu responded to the Department's original and supplemental questionnaires on behalf of itself and one cross-owned producer of subject merchandise, ACIT Shanghai.⁶⁰ These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).

Summary of Attribution of Subsidies to ACIT Pinghu

As discussed above, we selected ACIT Pinghu as a mandatory respondent. ACIT Pinghu was founded in 2012 by ACIT (USA) Inc. (ACIT USA) as a foreign-invested enterprise (FIE), and has been wholly owned by ACIT USA since its inception. During the POI, ACIT Pinghu produced silica fabric and woven fabric, as well as adhesive tapes and woven glass insulation tapes. The mandatory respondent is located in Pinghu, within the province of Zhejiang, China.

In its initial affiliation response, ACIT Pinghu identified two affiliated companies, ACIT Shanghai and ACIT USA, as meeting the criteria mentioned in Section A through D of Part I of Section III of the Primary Questionnaire.⁶¹ ACIT Shanghai was founded in 2002 as a joint venture funded by ACIT USA and a private corporation. In 2011, ACIT USA became the sole owner of ACIT Shanghai. During the POI, ACIT Shanghai was located in the Songjiang District of Shanghai, China, and although it ceased production in 2014, ACIT Shanghai sold silica fabric that it previously produced.

Mr. Jie AO, the president and owner of both ACIT Pinghu and ACIT Shanghai, is also the president and sole owner of ACIT USA. As stated in the Petition and in ACIT Pinghu's questionnaire responses, ACIT USA is located in the United States⁶² and, as such, we did not require a questionnaire response from ACIT USA. Petitioner submitted comments stating that an additional response was required from a parent company that maintained an ownership interest in ACIT Shanghai during the AUL, until 2011.⁶³ We preliminarily determine that no full questionnaire response is required from the former parent company at this time, and we intend to examine all company affiliations at verification.

As noted above, ACIT Pinghu and ACIT Shanghai are wholly-owned subsidiaries of ACIT USA. Both ACIT Pinghu and ACIT Shanghai were directly involved in the production and exportation of subject merchandise. Therefore, for subsidies that were received by ACIT Pinghu and ACIT Shanghai, we attributed the benefit to the combined sales of ACIT Pinghu and ACIT Shanghai, pursuant to the attribution rule at 19 CFR 351.525(b)(6)(ii).

⁵⁹ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁶⁰ See ACIT AQR. ACIT Pinghu noted that ACIT USA (ACIT USA) also meets the cross-ownership criteria. ACIT USA is located in the United States, and, as such, we did not require a questionnaire response.

⁶¹ *Id.*

⁶² *Id.*

⁶³ See Letter from Petitioner, Re: Certain Amorphous Silica Fabric from the People's Republic of China: Failure to Provide Questionnaire Response for Certain Affiliates of ACIT Shanghai and Submission of Factual Information to Rebut, Clarify, or Correct Information Contained in the Producer Questionnaire Response, dated May 25, 2016.

Nanjing Tianyuan

As discussed above, we selected Nanjing Tianyuan as a mandatory respondent. The company is a small, private, domestically-owned producer and exporter of subject merchandise and other similar products. It was founded in 2012 and operates from a single location, the Binjiang Development Zone, Jiangning District, Nanjing, Jiangsu Province, China. The company states that it currently has three owners, all of whom have neither invested in nor established any other companies.⁶⁴ Nanjing Tianyuan adds that it did not purchase all or substantially all of the assets of another company during the AUL.⁶⁵

Summary of Attribution of Subsidies to Nanjing Tianyuan

In its affiliated company response, Nanjing Tianyuan stated that there are no affiliated companies of the producer within the meaning of 771(33) of the Act.⁶⁶ Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Nanjing Tianyuan to its own sales.

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). Where the program has been found to be contingent upon export activities, we used the recipient's total export sales as the denominator. All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, *see* the preliminary calculation memoranda.⁶⁷

IX. BENCHMARKS AND INTEREST RATES

The Department is investigating loans received by the ACIT Pinghu and ACIT Shanghai from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies received by both mandatory respondents.⁶⁸ The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

⁶⁴ See Nanjing Tianyuan PQR at 3.

⁶⁵ *Id.*

⁶⁶ See Nanjing Tianyuan AQR at 2.

⁶⁷ See Memorandum, "Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Preliminary Determination Calculations for ACIT (Pinghu)," dated concurrently with this memorandum (ACIT (Pinghu) Preliminary Calculation Memorandum); Memorandum, "Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Preliminary Determination Calculations for Nanjing Tianyuan Fiberglass Material Co., Ltd.," dated concurrently with this memorandum (Nanjing Tianyuan Preliminary Calculation Memorandum).

⁶⁸ See 19 CFR 351.524(b)(1).

A. Renminbi-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.⁶⁹ 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.”⁷⁰

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.⁷¹ Because of this, any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department 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.⁷²

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *CFS from the PRC* and later updated in *Thermal Paper from the PRC*.⁷³ 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 between income and interest rates. For 2003 through 2009, the PRC fell in the lower-middle income category.⁷⁴ Beginning in 2010, however, the PRC was classified in the upper-middle income category and

⁶⁹ See 19 CFR 351.505(a)(3)(i).

⁷⁰ See 19 CFR 351.505(a)(3)(ii).

⁷¹ See CFS IDM at Comment 10.

⁷² See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: *Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Lumber from Canada*), and accompanying Issues and Decision Memorandum at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

⁷³ See CFS IDM at Comment 10; see also *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.

⁷⁴ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups> (“World Bank Country Classification”); see also ACIT (Pinghu) Preliminary Calculation Memorandum; Memorandum, Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China: Interest Rate Benchmark Memorandum” dated concurrently with this memorandum (Interest Rate Benchmark Memorandum).

remained there from 2011 to 2014.⁷⁵ Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2014. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.⁷⁶

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.

In each of the years from 2003-2009 and 2011-2014, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.⁷⁷ For 2010, however, the regression does not yield that outcome for the PRC's income group.⁷⁸ 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 2011-2014. 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 (IMF), 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 2010-2014 and "lower middle income" for 2001-2009.⁷⁹ First, we did not include those economies that the Department considered to be NMEs 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 remove any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with

⁷⁵ See World Bank Country Classification.

⁷⁶ 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) (*Shrimp from the PRC*)).

⁷⁷ See Interest Rate Benchmark Memorandum.

⁷⁸ *Id.*

⁷⁹ *Id.*

aberrational or negative real interest rates for the year in question.⁸⁰ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.⁸¹

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.⁸²

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.⁸³ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁸⁴

The resulting inflation-adjusted benchmark lending rates are provided in the ACIT Pinghu Preliminary Calculation Memorandum.

B. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the GOC provided non-recurring subsidies.⁸⁵ The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the ACIT Pinghu Preliminary Calculation Memorandum and the Nanjing Tianyuan Preliminary Calculation Memorandum.

X. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.⁸⁶

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *See, e.g.,* Thermal Paper IDM at 10.

⁸³ *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.

⁸⁴ *See* Interest Rate Benchmark Memorandum.

⁸⁵ *See* ACIT Pinghu Preliminary Calculation Memorandum; *see also* Interest Rate Benchmark Memorandum.

⁸⁶ On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c)

Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from among 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. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, the Department's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."⁸⁷ 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."⁸⁸

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."⁸⁹ It is the Department's practice to consider information to be corroborated if it has probative value.⁹⁰ In analyzing whether information has probative value, it is the Department's practice to examine the reliability and relevance of the information to be used.⁹¹ However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.⁹²

Finally, under the new section 776(d) of the Act, the Department may use any 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 CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would

of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 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 the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *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). Therefore, the amendments apply to this investigation.

⁸⁷ *See, e.g., Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from the PRC*); *see also 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).

⁸⁸ *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA') at 870.

⁸⁹ *See, e.g., SAA* at 870.

⁹⁰ *See SAA* at 870.

⁹¹ *See, e.g., SAA* at 869.

⁹² *See SAA* at 869-870.

have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁹³

For purposes of this preliminary determination, we are applying AFA in the circumstances outlined below.

A. Application of AFA: Non-Responsive Companies to the Q&V Questionnaire

As noted in the “Initiation and Case History” section above, the Department issued 81 Q&V questionnaires to companies identified in the Petition.⁹⁴ We issued all Q&V questionnaires *via* Federal Express, to those companies for which Petitioner provided sufficiently detailed contact information and/or where there was sufficient contact information reasonably available to the Department.⁹⁵ We confirmed that 53 of the questionnaires were delivered, while 27 were undeliverable.⁹⁶ Five of the 53 questionnaire recipients timely and properly responded to our request for information. Accordingly, we preliminarily determine that the 48 non-responsive companies withheld necessary information that was requested of them, failed to provide information within the deadlines established, and significantly impeded this proceeding. Thus, the Department will rely on facts otherwise available in making our preliminary determination with respect to these non-responsive companies, pursuant to sections 776(a)(2)(A)-(C) of the Act. Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to the Q&V questionnaire, each of these companies did not cooperate to the best of their ability to comply with the requests for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that these companies do not obtain a more favorable result by failing to cooperate than if they had fully complied with our requests for information.

We have included all programs upon which the Department initiated in this investigation to determine the AFA rate. We are adversely inferring from the non-responsive companies’ decision not to participate in this investigation that they, in fact, used these programs during the POI.

It is the Department’s practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.⁹⁷ When selecting AFA rates, section 776(d) of the

⁹³ See section 776(d)(3) of the Act.

⁹⁴ See Q&V Respondent Selection Memo.

⁹⁵ See Respondent Selection Memorandum at 3.

⁹⁶ *Id.*; see also Memorandum to the File from John Corrigan, International Trade Compliance Analyst, “Re: Quantity and Value Questionnaire Shipment Results,” dated April 1, 2016.

⁹⁷ See, e.g., *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009) and accompanying Issues and Decision Memorandum at “Application of Facts Available, Including the Application of Adverse Inferences”); see also *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty*

Act provides that the Department may use any countervailable subsidy rate applied for the same or similar program in a countervailable duty 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 administering authority considers reasonable to use, including the highest of such rates.⁹⁸ Accordingly, when selecting AFA rates, if we have cooperating respondents, as we do in this investigation, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).⁹⁹ If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.¹⁰⁰

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."¹⁰¹ The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.¹⁰²

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.¹⁰³ Furthermore, 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.¹⁰⁴

Determination, 76 FR 18521 (April 4, 2011), and accompanying Issues and Decision Memorandum ("Aluminum Extrusions IDM") at "Application of Adverse Inferences: Non-Cooperative Companies."

⁹⁸ See, e.g., *Shrimp from the PRC*, and accompanying Issues and Decision Memorandum ("Shrimp IDM") at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

⁹⁹ For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

¹⁰⁰ See Shrimp IDM at 13-14.

¹⁰¹ See SAA at 870.

¹⁰² *Id.*

¹⁰³ *Id.*, at 869-870.

¹⁰⁴ See section 776(d) of the Act.

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.¹⁰⁵

In determining the AFA rate we will apply to each of the non-responsive companies, we are guided by the Department's methodology detailed above. We begin by selecting, as AFA, the highest calculated program-specific above-zero rates determined for the cooperating respondents in the instant investigation. Accordingly, we are applying the highest applicable subsidy rate calculated for ACIT (Pinghu) or Nanjing Tianyuan for the following programs:¹⁰⁶

- Policy Loans to the Silica Fabric Industry
- Provision of Electricity for Less Than Adequate Remuneration (LTAR)

To calculate the program rate for the following income tax reduction programs on which the Department initiated an investigation, we applied an adverse inference that each of the non-responsive companies paid no income tax during the POI:

- Income Tax Reduction for High and New Technology Enterprises (HNTEs)
- Income Tax Reduction for Research & Development (R&D) under the Enterprise Income Tax Law (EITL)
- Income Tax Reduction/Exemption for HNTEs for Geographic Location
- City Construction Tax and Education Fees Exemptions for FIEs

The standard income tax rate for corporations in the PRC in effect during the POI was 25 percent.¹⁰⁷ Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the five programs, combined, provide a 25 percent benefit). Consistent with past practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.¹⁰⁸

¹⁰⁵ See, e.g., *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

¹⁰⁶ We note that respondents benefited from additional programs that were reported or discovered during the course of this proceeding. For the purposes of calculating the AFA rate, however, we are only referencing those programs on which we initiated this investigation.

¹⁰⁷ See CVD Initiation Checklist at 20.

¹⁰⁸ See, e.g., Aluminum Extrusions IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

For all other programs not mentioned above, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a PRC CVD investigation or administrative review. For this preliminary determination, we are able to match, based on program names, descriptions, and benefit treatments, the following programs to the same programs from other PRC CVD proceedings:

- Preferential Export Financing¹⁰⁹
- Preferential Loans to State-Owned Enterprises (SOEs)¹¹⁰
- Export Seller's Credits¹¹¹
- Export Buyer's Credits¹¹²
- Export Credit Insurance¹¹³
- Provision of Land for LTAR in Special Economic Zones (SEZs)¹¹⁴
- Provision of Fiberglass Yarn for LTAR¹¹⁵
- Provision of Services at LTAR through Demonstration Bases and Common Service Platform Programs¹¹⁶

¹⁰⁹ See *Coated Paper Investigation Amended Final* and accompanying Ministerial Error Memorandum (MEM) at “Revised Net Subsidy Rate for the Gold Companies” (regarding “Preferential Lending to the Coated Paper Industry”).

¹¹⁰ Consistent with recent investigations, we are using a single AFA rate for “Government Policy Lending” and “Preferential Loans to SOEs,” because an analysis of these two allegations in this investigation reveals that they would apply to the same loans provided by SOCBs. See, e.g., *Grain-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014), and accompanying Issues and Decision Memorandum (GOES IDM) at 7; see also *Coated Paper Investigation Amended Final* and accompanying MEM at “Revised Net Subsidy Rate for the Gold Companies” (regarding “Preferential Lending to the Coated Paper Industry”).

¹¹¹ See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011), and accompanying IDM at 12; *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 Investigation Amended Final*), and accompanying MEM at “Revised Net Subsidy Rate for the Gold Companies” (discussing revised subsidy rate for “Preferential Lending to the Coated Paper Industry”). This document is proprietary in nature. However, the public version, which has been placed on the record of this investigation, identifies the revised subsidy rate on which we are relying.

¹¹² See *Coated Paper Investigation Amended Final* and accompanying MEM at “Revised Net Subsidy Rate for the Gold Companies” (regarding “Preferential Lending to the Coated Paper Industry”); see also *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) (*Passenger Tires from the PRC*), and accompanying IDM (Passenger Tires IDM) at 17 (“Export Buyer's Credit from State-Owned Banks Program”).

¹¹³ See *Chlorinated Isocyanurates From the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014) (*Isos from the PRC*) and accompanying Issues and Decision Memorandum (Isos IDM) at 13-14 (“Special Fund for Energy Saving Technology”).

¹¹⁴ See *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) (*Sacks from the PRC*), and accompanying Issues and Decision Memorandum at “2. Government Provision of Land for Less Than Adequate Remuneration.”

¹¹⁵ 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 Issues and Decision Memorandum at 24-27 (“Provision of Calcium Carbonate for LTAR”).

¹¹⁶ *Id.*

- Other VAT Subsidies¹¹⁷
- Import Tariff and Value-Added Tax (VAT) Exemptions on Imported Equipment in Encouraged Industries¹¹⁸
- GOC and Sub-Central Government Programs to Promote Famous Export Brands and China World Top Brands¹¹⁹
- International Market Exploration Fund (SME Fund)¹²⁰
- Science and Technology Awards¹²¹

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for each of the AFA Companies to be 104.10 percent *ad valorem*. The Appendix contains a chart summarizing our calculation of this rate.

B. Application of AFA: Nanjing Tianyuan

Financial Statements and Sales Value Reconciliations

As described in part “C. Denominators” of the “Subsidies Valuation” section above, the Department considers the basis for respondents’ receipt of benefits under each program. Where the program has been found to be countervailable as a domestic subsidy, we use the recipient’s total sales as the denominator. Where the program has been found to be contingent upon export activities, we use the recipient’s total export sales as the denominator. We, therefore, require that respondents in CVD investigations provide both total sales values and total exports for the POI and, normally at a minimum, for the two years prior to the POI. The Department cannot directly calculate countervailable subsidy rates without this requisite sales information, regardless of any additional information respondents may or may not provide in other sections of their CVD questionnaire responses.

In our initial questionnaire to Nanjing Tianyuan, we requested that the company provide complete audited financial statements for the last three fiscal years, *i.e.*, for 2013 through 2015.¹²² The Department’s request stated that a complete audited financial statement would include: income statement; balance sheet; cash flow statement; statement of change in equity; all notes thereto; and the auditor’s opinion. In its initial questionnaire response, Nanjing Tianyuan

¹¹⁷ See Isos IDM at 13-14 (“Special Fund for Energy Saving Technology”).

¹¹⁸ 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 Review*, 76 FR 23286 (April 26, 2011) (*Tires from the PRC Final Results*); see also *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin From the People’s Republic of China: Final Affirmative Determination*, 81 FR 13337 (March 14, 2016) (*PET Resin from the PRC Final Results*) and accompanying Issues and Decision Memorandum at 17.

¹¹⁹ See Isos IDM at 13-14 (“Special Fund for Energy Saving Technology”).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² See Letter from Brian C. Davis, Acting Program Manager, Office VI, to Nanjing Tianyuan, “Countervailing Duty Investigation of Certain Amorphous Silica Fabric: Supplemental Questionnaire for Nanjing Tianyuan Fiberglass Material Co., Ltd.,” dated May 24, 2016 (Nanjing Tianyuan SQ).

failed to provide an audited financial statement for 2015, stating that PRC law does not require the company to have an audited financial statement until July 2016.¹²³ The company added that, “...during the week of May 9, 2016, the outside auditor/accountant discovered a problem with the unaudited quarterly financial statement with the company’s books and records.”¹²⁴ Moreover, according to the company, “The outside accountant/auditor is also concerned that there may be other issues with the internal financial statement.”¹²⁵ Nanjing Tianyuan therefore claimed that no sales and factors reconciliations could be timely submitted with its initial response, that its outside accountant was aware of the Department’s deadlines, and that it would submit its audited 2015 financial statement and sales reconciliations to the Department in “June,”¹²⁶ *i.e.*, at a minimum 14 calendar days and maximum 43 calendar days after this information was due to the Department, the latter of which would occur after the statutory deadline by which the Department is obligated to make its preliminary determination.

Nanjing Tianyuan did not submit a written extension request to the Department to receive additional time to submit information it asserts that it was unable to include as part of a complete PQR, either alongside its initial questionnaire response or at any other point in this proceeding. The company therefore failed to comply with the Department’s instructions included with the initial questionnaire and each of the three supplemental questionnaires we issued to it thereafter. Specifically, in each questionnaire the Department issued, we stated to Nanjing Tianyuan:

“If you are unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, you must notify the official in charge and submit a request for an extension of the deadline for all or part of the questionnaire response. If you require an extension for only part of your response, such a request should be submitted separately from the portion of your response filed under the current deadline. Statements included within a questionnaire response regarding a respondent’s ongoing efforts to collect part of the requested information, and promises to supply such missing information when available in the future, do not substitute for a written extension request.”¹²⁷

With respect to the Department’s request for complete audited financial statements for 2013 and 2014, Nanjing Tianyuan submitted these materials, in part, with its initial questionnaire response.¹²⁸ The submitted 2013 financial statement was comprised of only a balance sheet and income statement and, therefore, was incomplete as it lacked multiple components of the requested financial statement sections, as listed above (*i.e.*, income statement; balance sheet; cash flow statement; statement of change in equity; all notes thereto; and the auditor’s opinion). We therefore requested, for a second time, that the company provide its complete audited 2013 financial statement in our second supplemental questionnaire. Nanjing Tianyuan stated in its

¹²³ See Nanjing Tianyuan PQR at 7.

¹²⁴ *Id.*

¹²⁵ *Id.*, at 8.

¹²⁶ *Id.*, at 7.

¹²⁷ See, *e.g.*, Nanjing Tianyuan SQ.

¹²⁸ *Id.*, at Exhibit CVD-2.

response that the 2013 financial statement it initially provided was, in fact, not audited.¹²⁹ This statement contradicted the company's earlier assertion in its initial questionnaire response that, "Attached in Exhibit CVD-2 are the audited financial statements though 2014."¹³⁰ Nanjing Tianyuan provided no explanation in its second supplemental questionnaire response as to why it could not provide a complete 2013 financial statement, as requested, beyond stating that, "Under PRC law, it is not required to have an audited financial statement."¹³¹

As discussed further below, in addition to Nanjing Tianyuan's failure to timely submit, or request an extension of time to submit, its 2015 audited financial statements and its failure to submit a complete 2013 financial statement, Nanjing Tianyuan's sales figures reported in its 2014 financial statement are inconsistent with 2014 sales information that Nanjing Tianyuan reported as part of its first supplemental questionnaire response.

In our initial questionnaire, we requested that Nanjing Tianyuan provide information regarding total sales, sales of subject merchandise, total exports, total exports to the United States, exports of subject merchandise, and exports to the United States of subject merchandise for years 2013 through 2015. Additionally, we requested that the company explain, by providing a worksheet, how its sales of subject merchandise are recorded in its financial records, *i.e.*, its financial statements. In its initial questionnaire response, Nanjing Tianyuan submitted 2015 sales figures by quantity, in meters and kilograms, and value, in Chinese Renminbi (RMB) and U.S. dollars.¹³² Nanjing Tianyuan did not provide 2013 and 2014 sales values, as requested, and therefore neither reconciled those years' sales to their respective financial statements nor did it provide any explanation for its failure to provide the requested information. Nanjing Tianyuan stated only that it could not reconcile its 2015 sales figures because it was not yet in possession of an audited 2015 financial statement.¹³³ Thus, at the time the Department received Nanjing Tianyuan's primary questionnaire response, the Department possessed only sales values for the POI that were unsupported by additional record evidence.

Therefore, we requested, for the second time, that Nanjing Tianyuan provide 2013 and 2014 sales figures in our first supplemental questionnaire. The company complied with this request.¹³⁴ As described above, the Department uses either a respondent's total sales or total exports as a denominator in its CVD calculations, depending upon whether or not the subsidy in question is export contingent. To this end, the Department requests that respondents reconcile reported sales with audited financial statements to ensure that the calculation denominator is fully corroborated by multiple components of companies' financial records. In this instance, Nanjing Tianyuan's 2013 and 2014 sales figures both exceed total reported income from those years' respective financial statements, and did not reconcile to the 2013 and 2014 financial statements themselves. This divergence in sales figures is particularly large for 2014, in which Nanjing Tianyuan's reported total sales are nearly double "Sales from main operations" indicated at note 16 of the

¹²⁹ See Nanjing Tianyuan 2SQR at 2.

¹³⁰ See Nanjing Tianyuan PQR at 7.

¹³¹ See Nanjing Tianyuan 2SQR at 2.

¹³² See Nanjing Tianyuan PQR at Exhibit CVD-4. Total sales and sales of subject merchandise are reported in RMB only.

¹³³ *Id.*, at 9.

¹³⁴ See Nanjing Tianyuan SQR at Exhibit CVD-S1.

company's 2014 financial statement. Nanjing Tianyuan offered no explanation for these discrepancies.

Therefore, in our second supplemental questionnaire to Nanjing Tianyuan, we requested, for the second time, that the company provide a worksheet reconciling the total reported sales values for 2013 through 2015 to those years' respective financial statements. The company replied that it would provide this information for 2013 through 2015 when its audited financial statement for 2015 was prepared by its auditor.¹³⁵ Nanjing Tianyuan failed to provide this information per our instructions, nor did it request an extension, thereby rendering the Department unable to identify or use denominators based on Nanjing Tianyuan's total sales and export sales, reconciled with its audited financial statements, for the purpose of calculating a CVD rate. Further, in its response to our second supplemental questionnaire, Nanjing Tianyuan failed to comply with the Department's request to provide its year-ending 2015 trial balance, citing its lack of access to an audited 2015 financial statement.¹³⁶ Finally, in its response to the Department's question as to how sales of subject merchandise are recorded in its financial records, Nanjing Tianyuan stated, "The sales of subject merchandise are recorded as operating revenue."¹³⁷

In sum, Nanjing Tianyuan did not comply with the Department's requests for information by:

- Failing to timely file its audited POI financial statement.
- Failing to reconcile its POI sales, and sales from 2013 to 2014 during which it reported receiving subsidies, to its audited financial statements.

We preliminarily determine that necessary information, *i.e.*, reconciled total and export sales values, is not on the record and that Nanjing Tianyuan has withheld information that was requested of it. Given Nanjing Tianyuan's failure to comply with multiple requests for information from the Department, the Department must therefore rely on "facts available" in making its preliminary determination with respect to certain countervailable subsidy programs that Nanjing Tianyuan could have used, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Specifically, we rely for this preliminary determination on facts available for the following subsidy programs: Government Provision of Electricity for LTAR; all tax programs; and the four "other subsidies" that Nanjing Tianyuan reported in its PQR.¹³⁸ All of these programs, and the Department's reasons to rely on "facts available" in making our preliminary determination, are discussed further below within this section.

Moreover, we preliminarily determine that Nanjing Tianyuan failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, an adverse

¹³⁵ See Nanjing Tianyuan 2SQR at 2. On June 15, 2016, Nanjing Tianyuan submitted its audited 2015 financial statement to the Department. As this submission was not timely filed, and Nanjing Tianyuan did not submit a written request to submit this information following its due date of May 18, 2016, as discussed above, the Department rejected this submission in its entirety. See Memorandum to the File from John Corrigan, International Trade Compliance Analyst, Office VI, "Re: Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Request to Take Action on Certain Barcodes," dated June 28, 2016.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ See Nanjing Tianyuan PQR at 21 – 22.

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 Nanjing Tianyuan benefited from the each of the above mentioned programs unless the record evidence made it clear that Nanjing Tianyuan could not have benefitted from that program because, for example, the company's responses to our requests for information sufficiently demonstrated non-use, or because we have found the program to be not countervailable.¹³⁹

When selecting AFA rates, section 776(d) of the Act provides that the Department may use any countervailable subsidy rate applied for the same or similar program in a countervailing duty 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 administering authority considers reasonable to use, including the highest of such rates.

Where Nanjing Tianyuan has failed to participate in this investigation, consistent with section 776(d) of the Act and our established practice, we selected the highest calculated rate for the same or similar program as AFA.¹⁴⁰ When selecting rates, if we have a cooperating mandatory respondent in the investigation, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program above zero calculated for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).¹⁴¹ If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any program that could conceivably be used by the non-cooperating companies.¹⁴² Discussion of the AFA rate we applied to programs about which we are applying an adverse inference appears below in program-specific sections.

¹³⁹ See, e.g., *Certain Cold-Rolled Carbon Steel Flat Products From Korea: Final Affirmative CVD Determination*, 67 FR 62102 (October 3, 2002) and accompanying IDM at "Methodology and Background Information;" and *CFS from the PRC*, 72 FR at 60645, 46-47.

¹⁴⁰ See, e.g., *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from the PRC*), and accompanying Issues and Decision Memorandum (Shrimp IDM) at 13-14; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

¹⁴¹ For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

¹⁴² See *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC*), and IDM at "Application of Adverse Inferences: Non-Cooperative Companies" section; see also *Thermal Paper from the PRC*, and Thermal Paper IDM at "Selection of the Adverse Facts Available Rate" section, and *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009), and accompanying IDM at "SGOC Industrial Policy 2004-2009."

Provision of Electricity for LTAR

In our initial questionnaire to Nanjing Tianyuan, we asked the company to provide specific information regarding its electricity user category and voltage class. In its response, Nanjing Tianyuan identified its electricity provider and stated that it pays “the normal rate” set by the electricity supplying company, but failed to specify its user category and voltage class, as requested by the Department.¹⁴³

In our initial questionnaire, the Department also requested copies of Nanjing Tianyuan’s March and August 2015 electricity bills. The company failed to provide the requested bills, but instead submitted VAT invoices for those two months, addressed directly to Nanjing Tianyuan from its power supplier, Nanjing Power Supply Company of Jiangsu Province Electric Power Company.¹⁴⁴ These two single-page VAT invoices do not indicate Nanjing Tianyuan’s user category or voltage class.

We, therefore, again asked Nanjing Tianyuan to provide its user category. In response, Nanjing Tianyuan stated, “The electricity utilization category is industrial.”¹⁴⁵ This response did not meet the level of specificity the Department requires regarding electricity utilization categories for use in selecting appropriate electricity rate benchmarks, as there are multiple utilization categories which include the term “industrial.” Furthermore, we again requested that Nanjing Tianyuan provide its March and August 2015 electricity bills and noted in our request that Nanjing Tianyuan’s May 18, 2016, response contained VAT invoices instead of the electricity bills we requested. In its response, the company referred to the previously submitted VAT invoices and added that it paid its electricity bills to its lessor, which then transferred payment to Nanjing Power Supply Company of Jiangsu Province Electric Power Company and applied for issuance of the VAT invoices.¹⁴⁶ We find that Nanjing Tianyuan’s narrative response indicates that its electricity bills were reasonably available to it in some form, or it could not know what to pay the lessor and the lessor could not know what it is owed by Nanjing Tianyuan. Per the contract between Nanjing Tianyuan and the lessor, Nanjing Tianyuan bears electricity fees and is required to “...reserve all relevant receipts and deliver them to Party A {the lessor}.”¹⁴⁷ However, Nanjing Tianyuan provided no further information in its response to our second request for its electricity bills as to why it failed to furnish this information.

We cannot select appropriate electricity rate benchmarks without Nanjing Tianyuan’s electricity user category and voltage class. Because Nanjing Tianyuan has failed to provide this information after having been informed of the deficiency in its response and provided with another opportunity to provide this information, we find that it is necessary to rely on the facts otherwise available, within the meaning of section 776(a)(2)(A) of the Act.

¹⁴³ See Nanjing Tianyuan PQR at 17 – 18.

¹⁴⁴ *Id.*, at Exhibit CVD-6.

¹⁴⁵ See Nanjing Tianyuan SQR at 2.

¹⁴⁶ See Nanjing Tianyuan 2SQR at 4.

¹⁴⁷ See Nanjing Tianyuan SQR at Exhibit CVD-S2 at “5. Other Fees.”

Further, we find that Nanjing Tianyuan has failed to cooperate by not acting to the best of its ability to comply with our requests for information, *i.e.*, by not providing information pertaining to its electricity user category and voltage class. Consequently, we find that an adverse inference is warranted in the application of facts available within the meaning of section 776(b) of the Act. Additionally, as discussed in section “C. Application of AFA: Provision of Electricity for LTAR” below, the Department has determined as AFA that the GOC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. As AFA, and within the meaning of section 776(b)(1)(A) of the Act, we are applying a countervailable subsidy rate applied for the same or similar program in the instant investigation, which is the 0.93 percent *ad valorem* rate for this same program calculated for the other mandatory respondent, ACIT Pinghu.¹⁴⁸

Income Tax Programs

In our initial questionnaire to Nanjing Tianyuan, we requested that the company provide a copy of its complete, translated tax returns filed during the POI, *i.e.*, its tax year 2014 income tax returns, and preferably tax returns stamped by the government. Further, we stated that the company should include all schedules, attachments, and applicable amendments included with that tax return. Nanjing Tianyuan did not include any tax return documentation in its initial questionnaire response, and stated only that “Nanjing Tianyuan does not apply for {a} tax return. The VAT refunding is done while declaration of paying VAT.”¹⁴⁹ Nanjing claimed non-use of all six income tax programs in its initial questionnaire response,¹⁵⁰ and stated in the Income Tax Programs Appendix, “Nanjing Tianyuan does not apply for any reduction and exemption on income tax.”¹⁵¹ Therefore, the company’s initial questionnaire response contained only Nanjing Tianyuan’s unsupported assertion that it did not use any of the six tax programs the Department is investigating.

In our first supplemental questionnaire issued to Nanjing Tianyuan, we repeated our request for Nanjing Tianyuan’s tax return from the initial questionnaire, and noted that the tax return was required regardless of whether or not the company reported use of alleged tax programs. In its response, Nanjing Tianyuan provided a copy of its income tax return for 2015, rather than the requested tax year 2014 return that was filed during the POI.¹⁵² We, therefore, requested the company’s tax return a third time in the second supplemental questionnaire. In response, Nanjing Tianyuan submitted an incomplete 2014 income tax return.¹⁵³ The document provided by Nanjing Tianyuan appears to indicate that it was required to file additional attachments with the GOC to support its tax reductions. However, Nanjing Tianyuan did not provide those attachments in its supplemental questionnaire response. Further, the Chinese version of the company’s 2014 tax return does not appear to be a copy of the official, stamped return that was

¹⁴⁸ See ACIT Pinghu Preliminary Calculation Memorandum.

¹⁴⁹ See Nanjing Tianyuan PQR at 8.

¹⁵⁰ *Id.*, at 19 – 20.

¹⁵¹ *Id.*, at 29.

¹⁵² See Nanjing Tianyuan SQR at Exhibit CVD-S3.

¹⁵³ See Nanjing Tianyuan 2SQR at Exhibit CVD2-S4.

filed with the GOC.¹⁵⁴ Without an official copy of Nanjing Tianyuan's income tax return, or an audited 2015 financial statement against which to compare the company's responses that it did not use any tax programs, we preliminarily determine that the incomplete 2014 income tax return Nanjing Tianyuan provided to the Department is insufficient to assess the company's tax program use.

Specifically, Nanjing Tianyuan's 2014 income tax return indicates that the company's normal tax ratio is 25 percent. The 2014 income tax return also indicates that the company paid no income tax in 2014 because Nanjing Tianyuan carried forward the prior year's losses and deducted that amount from its 2014 profit after adjustments. As noted above, Nanjing Tianyuan failed to provide any attachments to this tax return. Therefore, we are unable to verify the exact manner in which Nanjing Tianyuan carried forward losses it claims it incurred in 2013 in order to earn a tax exemption for 2014. Additionally, while the non-operation income reported in Nanjing Tianyuan's 2014 tax return matches the amount the company states it received from three subsidy programs,¹⁵⁵ and corresponds with subsidy income reported in its audited 2014 financial statement,¹⁵⁶ Nanjing Tianyuan's incomplete 2014 tax return does not adequately substantiate the company's claims that it did not make use of any of the six alleged income tax programs.

Because Nanjing Tianyuan failed to provide a complete copy of its 2014 income tax return as requested on three separate occasions, and after having been informed of the deficiency and provided second and third opportunities to remedy its response, we preliminarily find that it is necessary to rely on the facts otherwise available, within the meaning of section 776(a)(2)(A) of the Act. Further, we preliminarily find that Nanjing Tianyuan failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we preliminarily find that an adverse inference is warranted within the meaning of section 776(b) of the Act.

Because Nanjing Tianyuan failed to act to the best of its ability in this investigation, as discussed above, we made an adverse inference that the company benefitted from each tax program examined. To calculate the program rate for the four alleged income tax programs pertaining to either the reduction of income tax paid or the payment of no income tax, we applied an adverse inference that Nanjing Tianyuan paid no income tax during the POI. The standard income tax rate for corporations in the PRC in effect during the POI was 25 percent.¹⁵⁷ Thus, the highest possible benefit for these four income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the four programs combine to provide a 25 percent benefit). Consistent with past practice, the 25 percent AFA rate does not apply to the tariff and VAT exemption programs because such programs may not affect the tax rate.

¹⁵⁴ *Id.* Specifically, the cover page of the Chinese version of the 2014 tax return appears not to include the following: signature of legal representative and date of that signature; taxpayer's seal; financial manager; filing date; agent company's seal; responsible person; registered number of responsible person; agent filing date; competent tax authorities seal; accept person; and accept date.

¹⁵⁵ See Nanjing Tianyuan PQR at 21.

¹⁵⁶ *Id.*, at Exhibit CVD-2, 2014 Financial Statement, Note 20.

¹⁵⁷ See Exhibit 59 of the *Petition*.

Other Subsidies

As discussed above, Nanjing Tianyuan reported in its PQR that it received four other subsidies during the AUL.¹⁵⁸ However, as discussed in the *Financial Statements and Sales Value Reconciliations* section above, because the company did not submit requested financial information, including reconciled sales values upon which to base our measurement of benefit provided by these subsidies, we preliminarily determine that information necessary to measure benefit is not available on the record and that Nanjing Tianyuan has withheld information that was requested of it. Thus, the Department must rely on “facts available” in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act.

Moreover, we preliminarily determine that Nanjing Tianyuan 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. Additionally, as discussed in the “Application of AFA: Provision of “Other Subsidies” as Specific” section below, the Department has determined as AFA 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 and constitute a financial contribution pursuant to section 771(5)(D) of the Act. As AFA, and within the meaning of section 776(d)(1)(A)(i) of the Act, we are applying a countervailable subsidy rate applied for the same or similar program in a countervailing duty proceeding involving the same country for each of these four programs, which is the 0.58 percent *ad valorem* rate calculated for a similar program in *Isos from the PRC*.¹⁵⁹ Consequently, the combined CVD rate for the four “other subsidies” Nanjing Tianyuan reported is 2.32 percent *ad valorem*.

C. Application of AFA: Provision of Electricity for LTAR

GOC

The GOC did not provide complete responses to the Department’s questions regarding the alleged provision of electricity for LTAR. These questions requested information needed 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 order for the Department to analyze the financial contribution and specificity of this program, we request in our Primary Questionnaire that the GOC provide a detailed explanation of certain information for each province in which a respondent is located. In particular, we requested that the GOC explain: (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

¹⁵⁸ See Nanjing Tianyuan PQR at 21 – 22.

¹⁵⁹ See *Isos IDM* at 13-14 (Special Fund for Energy Saving Technology).

across the province and across tariff end-user categories. In the GOC PQR, the GOC did not adequately address these questions.¹⁶⁰ The GOC did not explain how cost elements in the price proposals led to retail price increases. The GOC did not provide any details on how much each of these factors weighed in its decision-making process. Additionally, the GOC reported that

“{C}ost elements that are considered are not derived from any complicated calculation, but instead are obtained directly from the data provided by the power generating companies and grid companies. Importantly, the price for fuel and coal, which are the main inputs to power generation, is completely determined by the market (including international market forces). The interests of the power generation, transmission and distribution enterprises are adequately considered, and the capacity of users and residents is also taken into account. This makes the electricity rates fully reflective of the changes in the supply and demand of the market, and further the international commitments and government policies made by the GOC for energy conservation and emission reduction.”¹⁶¹

The GOC provided this general theoretical outline of the cost elements, but provided no practical examples of their application to the provincial rates during the POI. Further, the GOC did not explain how the cost elements in the price proposals led to retail price increases for electricity for the provinces where the mandatory respondents are located.¹⁶² The GOC did not provide such information when given a second opportunity.¹⁶³

Consequently, we preliminarily determine that the GOC withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, the Department must rely on “facts available” in making our preliminary determination.¹⁶⁴ Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. The GOC did not adequately answer the questions, nor did the GOC ask for additional time to gather and provide such information. As such, an adverse inference is warranted in the application of facts available.¹⁶⁵ 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 is specific within the meaning of section 771(5A) of the Act. Because the GOC refused to provide information concerning the relationship (if any) between provincial tariff schedules and cost, we also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.¹⁶⁶ The benchmark rates we selected are derived from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* the “Provision of Electricity for LTAR” section.

¹⁶⁰ *See* GOC PQR at 21-25.

¹⁶¹ *Id.*, at 24.

¹⁶² *Id.*, at 22.

¹⁶³ *See* GOC 5SQR.

¹⁶⁴ *See* section 776(a)(2)(A) of the Act.

¹⁶⁵ *See* section 776(b) of the Act.

¹⁶⁶ *See* section 776(b)(4) of the Act.

D. Application of AFA: Policy Loans to the Silica Fabric Industry

GOC

We reviewed the national and provincial policy plans submitted by the GOC in its questionnaire responses to determine whether preferential lending was provided to silica fabric producers during the AUL. We noted that many of the plans included language regarding the encouragement of industries that could have included silica fabric producers. For example, the “11th Five-Year Plan for the National Economic and Social Development of the People’s Republic of China” (11th FYP), Chapter 14, states “Encourage the Light and Textile Industry to Improve Manufacturing Level,” and “Encourage the Textile Industry to Increase added Value.”¹⁶⁷ The “12th Five Year Plan for the National Economic and Social Development of the People’s Republic of China,” at Section 1: Promoting the Structural Adjustment of Key Industries identifies the textile industry, and Chapter 10: Nurturing and Developing the Strategic and Emerging Industries states that, “new materials industry will focus on developing new functional materials, advanced structural materials, high-performance fibers and their compound materials, . . .”¹⁶⁸ The “11th and 12th Five-Year Plans for Economic and Social Development of Jiangsu Province” under Part III Develop Priority and Policy Direction also identifies “Modern Textile Industry” as a concentrated area for development.¹⁶⁹

Further, the “Major Industries, Products and Technologies Encouraged for Development in China (2000) lists “Manufacturing of Special Textiles for Industrial Use” as an encouraged industry.¹⁷⁰ The “Guidance on Industrial Structural Adjustment (2011) (Revised 2013)” also lists the following as encouraged: “Development and production of organic and inorganic high-performance fibers and products, high-strength glass fiber, high-grade textiles fabrics by using enzyme treatment. . . and other dyeing and finishing and clearer production technologies and water and oil proofing, antifouling, inflaming retarding, . . . and other functional finishing technologies, production of industry textiles which meet the demand of national economic in various fields.”

In supplemental questionnaires, we asked the GOC to identify the industry to which silica fabric production belongs, to provide a complete copy of each national industrial plan/policy that includes the silica fabric industry, and whether silica fabric is included in any of the industries promoted under the submitted policy plans: textile, industrial textile, high-tech, high tensile glass fiber, glass fiber, new materials, new functional materials, high-performance fibers, high performance glass fiber, high-strength glass fiber, non-metal mineral products processing.¹⁷¹ This information was required to determine whether the policy lending program is specific to silica fabric producers.

¹⁶⁷ See GOC PQR at Exhibit 6.

¹⁶⁸ See GOC SQR2 at Exhibit S2-1.

¹⁶⁹ *Id.*, at Exhibit S2-2.

¹⁷⁰ See GOC PQR at Exhibit 13.

¹⁷¹ See May 24, 2016 and June 9, 2016 Supplemental Questionnaires to the GOC.

In its first response, the GOC stated, “To the best knowledge of the GOC, there are no regulations or laws in China that specifically define to which industry silica fabric belongs. Therefore, this question is not applicable.”¹⁷² The GOC’s response did not address whether silica fabric is included in any of the submitted policy plans. We therefore asked again, to which the GOC replied, “since (as the GOC has pointed out) there are no laws or regulations in China that specifically define to which industry the amorphous silica fabric subject to this proceeding belongs, the GOC is unable to confirm the exact industry association(s), if any, to which manufacturers of amorphous silica fabric would belong.”¹⁷³

In a supplemental questionnaire, we asked that the GOC explain whether it uses an Industry Classification System in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data relating to the business economy.¹⁷⁴ Further, we asked the GOC to identify the classification system and the agency by which it was developed, and submit any manuals that existed from the AUL through the POI for the industry classification system that provide industry identifications and definitions. The GOC submitted the National Economic Industrial Classification (GB/T4754-2011), which provides the standard industrial classifications and codes of the industrial activities/sectors in China.¹⁷⁵ The GOC explained that the National Economic Industrial Classification was developed by the National Bureau of Statistics of China. The GOC provided an English-translation of the classification codes ascribed to the textile industry, within which are eight sub-categories of various textile products.¹⁷⁶

The GOC’s statements that the relevant industry definitions are not laid out in law or regulation notwithstanding, the GOC has not explained or demonstrated that the information we have requested is not reasonably available to the GOC. For example, the GOC has not explained how it is that the relevant GOC ministries and agencies that develop and issue policies and plans for particular sectors or industries would not be able to provide additional information on which particular industries are encompassed within the particular sector they are seeking to target with a specific plan or policy. The GOC likewise has not described any efforts it undertook to contact *e.g.*, other government agencies that publish statistical data based on China’s national economic industrial classification system, or industry associations to help determine what sectors or industry groupings encompass silica fabric. Therefore, we preliminarily determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that the Department must rely on “facts available” in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we find that the policy loans to the silica fabric industry program

¹⁷² See GOC SQR at 1.

¹⁷³ See GOC SQR4 at 1.

¹⁷⁴ See June 9, 2016 Supplemental Questionnaire to the GOC.

¹⁷⁵ See GOC SQR4 at 4 and Exhibit S4-1.

¹⁷⁶ See GOC SQR4 at Exhibit S4-1.

constitutes a financial contribution within the meaning of section 771(5)(D) of the Act is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

E. Application of AFA: Provision of “Other Subsidies” as Specific

GOC

In response to Nanjing Tianyuan’s self-reporting of “Other Subsidies” in its initial questionnaire response, 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, stating, “The Department has requested information on various programs in this investigation according to allegations made out in a petition and as initiated by the Department. The GOC has cooperated with respect to the Department’s requests. In 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.”¹⁷⁷ When asked a second time to respond, the GOC provided the same answer.¹⁷⁸

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

XI. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined To Be Countervailable

1. Policy Loans to the Silica Fabric Industry

As explained above under “Use of Facts Otherwise Available and Adverse Inferences,” we requested information related to this program from the GOC twice. The GOC failed to provide adequate responses to our questions both times. As a result, necessary information is not on the record. In cases where an interested party withholds information that has been requested or

¹⁷⁷ See GOC PQR at 43.

¹⁷⁸ See GOC SQR at 5.

where there is not enough information on the record for us to determine whether a program is specific, we use facts otherwise available.¹⁷⁹ Furthermore, an adverse inference is warranted where a party fails to cooperate by not acting to the best of its ability to comply with a request for information from the Department.¹⁸⁰ Therefore, as discussed above, we determine, as AFA, that this program is specific to silica fabric producers.

We also determine that loans under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. They provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.¹⁸¹

ACIT Pinghu and ACIT Shanghai reported outstanding loans from SOCBs and policy banks during the POI. To calculate the benefit under the policy loans for silica fabric program, we used the benchmarks described under the “Loan Benchmarks” section above. For the loans to ACIT Pinghu and ACIT Shanghai, we divided the interest savings during the POI by the consolidated sales of ACIT during the POI, (exclusive of intercompany sales), pursuant to 19 CFR 351.525(b)(6)(ii).

To calculate the benefit from this program, we used the benchmarks discussed under the “Subsidy Valuation Information” section.¹⁸² On this basis, we preliminarily determine a subsidy rate of 3.43 percent *ad valorem* for ACIT Pinghu. We preliminarily determine that Nanjing Tianyuan did not use this program.

2. Provision of Electricity for LTAR

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

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

Consistent with our approach in *Wind Towers from the PRC*,¹⁸³ we first calculated the respondents’ variable electricity costs by multiplying the monthly kilowatt hours (kWh)

¹⁷⁹ See sections 776(a)(1) and 776(a)(2)(A) of the Act.

¹⁸⁰ See section 776(b) of the Act.

¹⁸¹ See section 771(5)(E)(ii) of the Act.

¹⁸² See 19 CFR 351.505(c).

¹⁸³ See *Utility Scale Wind Towers From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from the PRC*), and accompanying IDM (*Wind Towers IDM*).

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.¹⁸⁴ Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by the respondent during the POI from the monthly benchmark variable electricity costs.

To measure whether ACIT Pinghu or Nanjing Tianyuan 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.¹⁸⁵

To calculate the net subsidy rates attributable to ACIT Pinghu, we divided the benefit by total POI sales of respondent producers as described in the "Subsidies Valuation Information" section above. On this basis, we preliminarily determine that ACIT Pinghu received a countervailable subsidy rate of 0.93 percent *ad valorem*. As noted above, in the "Application of AFA: Nanjing Tianyuan" section, we are also applying this rate, as AFA, to Nanjing Tianyuan.

B. Programs Preliminarily Determined To Be Not Used by, or Not to Confer a Measurable Benefit to, ACIT Pinghu and Nanjing Tianyuan

1. Preferential Export Financing
2. Preferential Loans to SOEs
3. Export Seller's Credits
4. Export Buyer's Credits
5. Export Credit Insurance
6. Provision of Land for LTAR in SEZs
7. Provision of Fiberglass Yarn for LTAR
8. Provision of Services at LTAR through Demonstration Bases and Common Service Platform Programs
9. Income Tax Reduction for HNTEs
10. Income Tax Reduction for R&D under the EITL
11. Income Tax Reduction/Exemption for HNTEs for Geographic Location
12. Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries
13. City Construction Tax and Education Fees Exemptions for FIEs
14. Other VAT Subsidies

¹⁸⁴ See Wind Towers IDM at 21-22.

¹⁸⁵ See ACIT Pinghu Preliminary Calculation Memorandum.

15. GOC and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
16. International Market Exploration Fund (SME Fund)
17. Science and Technology Awards

XII. ITC NOTIFICATION

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

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

XIII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹⁸⁶ Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.¹⁸⁷

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁸⁸ This summary should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.¹⁸⁹ Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and

¹⁸⁶ See 19 CFR 351.224(b).

¹⁸⁷ See 19 CFR 351.309(c)(1)(i) and (d)(1).

¹⁸⁸ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁸⁹ See 19 CFR 351.310(c).

location to be determined. Prior to the date of the hearing, the Department will contact all parties that submitted case or rebuttal briefs to determine if they wish to participate in the hearing. The Department will then distribute a hearing schedule to the parties prior to the hearing and only those parties listed on the schedule may present issues raised in their briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.¹⁹⁰ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹⁹¹ on the due dates established above.


XIII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the factual information submitted by the GOC, ACIT Pinghu, and Nanjing Tianyuan.

XIV. CONCLUSION

We recommend that you approve the preliminary findings described above.

 _____
Agree Disagree

 _____
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

27 JUNE 2016
(Date)

¹⁹⁰ See 19 CFR 351.303(b)(2)(i).

¹⁹¹ See 19 CFR 351.303(b)(1).

APPENDIX

AFA Rate Calculation

| | Program Name | AFA Rate | Source |
|-----|--|----------|--|
| 1. | Policy Loans to the Silica Fabric Industry | 2.27% | Calculated – ACIT Pinghu |
| 2. | Preferential Export Financing | 10.54% | Highest Rate for Similar Program Based on Benefit Type |
| 3. | Preferential Loans to SOEs | 10.54% | Highest Rate for Similar Program Based on Benefit Type |
| 4. | Export Seller's Credits | 4.25% | Highest Rate for Similar Program Based on Benefit Type |
| 5. | Export Buyer's Credits | 10.54% | Highest Rate for Similar Program Based on Benefit Type |
| 6. | Export Credit Insurance | 0.58% | Highest Rate for Similar Program Based on Benefit Type |
| 7. | Provision of Land for LTAR in SEZs | 2.55% | Highest Rate for Similar Program Based on Benefit Type |
| 8. | Provision of Fiberglass Yarn for LTAR | 22.32% | Highest Rate for Similar Program Based on Benefit Type |
| 9. | Provision of Electricity for LTAR | 0.93% | Calculated—ACIT Pinghu |
| 10. | Provision of Services at LTAR through Demonstration Bases and Common Service Platform Programs | 2.55% | Highest Rate for Similar Program Based on Benefit Type |
| 11. | Income Tax Reduction for HNTes | 25.00% | Highest Rate for Similar Program Based on Benefit Type |
| 12. | Income Tax Reduction for R&D under the EITL | | Highest Rate for Similar Program Based on Benefit Type |
| 13. | Income Tax Reduction/Exemption for HNTes for Geographic Location | | Highest Rate for Similar Program Based on Benefit Type |
| 14. | City Construction Tax and Education Fees Exemptions for FIEs | | Highest Rate for Similar Program Based on Benefit Type |
| 15. | Import Tariff and VAT Exemptions on Imported Equipment in Encouraged Industries | 9.71% | Highest Rate for Similar Program Based on Benefit |

| | | | |
|-----|--|-------|--|
| | | | Type |
| 16. | Other VAT Subsidies | 0.58% | Highest Rate for Similar Program Based on Benefit Type |
| 17. | GOC and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands | 0.58% | Highest Rate for Similar Program Based on Benefit Type |
| 18. | International Market Exploration Fund (SME Fund) | 0.58% | Highest Rate for Similar Program Based on Benefit Type |
| 19. | Science and Technology Awards | 0.58% | Highest Rate for Similar Program Based on Benefit Type |

Total AFA Rate:

104.10%