



C-570-050
Investigation
POI: 1/1/15 – 12/31/15
Public Document
E&C/IV: RG

October 24, 2016

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

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination in the Countervailing Duty Investigation of
Ammonium Sulfate from the People's Republic of China

I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of ammonium sulfate (subject merchandise) 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 May 25, 2016, the Department received a countervailing duty (CVD) petition concerning imports of ammonium sulfate from the PRC, filed in proper form on behalf of PCI Nitrogen, LLC (Petitioner).¹ On June 14, 2016, the Department initiated a CVD investigation to determine

¹ See "Petition for the Imposition of Antidumping and Countervailing Duties: Ammonium Sulfate from the People's Republic of China," dated May 25, 2016 (Petition); *see also* Letter from Petitioner to Secretary of Commerce, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Ammonium Sulfate from the People's Republic of China: Supplemental Questions," dated June 1, 2016; Letter from Petitioner to Secretary of Commerce, "Ammonium Sulfate from the People's Republic of China/Petitioner's Submission of Revised Petitioner Exhibit I-10," dated June 9, 2016; Ammonium Sulfate from the People's Republic of China – CVD Investigation Initiation Checklist, dated June 14, 2016 (CVD Initiation Checklist).



whether producers/exporters of ammonium sulfate from the PRC received countervailable subsidies during the period of investigation (POI), *i.e.*, January 1, 2015 through December 31, 2015.²

We stated in the *Initiation Notice* that, if appropriate, we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.³ On June 22, 2016, we released CBP data to parties under the Administrative Protective Order (APO).⁴ On June 29, 2016, Petitioner submitted comments on the Department's selection of respondents, and included ship manifest data clarifying the quantity of merchandise exported by one of the companies listed in the CBP entry data.⁵ To confirm the accuracy of the data provided by Petitioner, the Department directly contacted CBP to obtain additional information on the entry in question. On July 7, 2016, CBP provided the Department with information confirming Petitioner's ship manifest data.⁶

Section 777A(e)(1) of the Act directs the Department to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, if the Department determines it is not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of producers/exporters accounting for the largest volume of subject merchandise exports that can reasonably be examined.

On July 14, 2016, the Department determined that it would individually examine Wuzhoufeng Agricultural Science & Technology Co. Ltd. (Wuzhoufeng AST) and Yantai Jiahe Agriculture Means of Production Co. Ltd. (Yantai AMP) in this investigation.⁷ On the same day, the Department issued its CVD questionnaire to the Government of the PRC (GOC) and instructed the GOC to forward the questionnaire to the two mandatory respondents.⁸ The Department also sent courtesy copies of the questionnaire directly to Wuzhoufeng AST, Yantai AMP and the GOC.⁹ The Department confirmed that both companies and the GOC received the

² See *Ammonium Sulfate From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 81 FR 40661 (June 22, 2016) (*Initiation Notice*); see also CVD Initiation Checklist.

³ See *Initiation Notice*, 81 FR at 40664.

⁴ See Memorandum to File, "Ammonium Sulfate from the People's Republic of China: Customs Data for Respondent Selection," dated June 22, 2016.

⁵ See Letter from Petitioner to Secretary of Commerce, "Ammonium Sulfate from the People's Republic of China: Petitioner's Comments on Respondent Selection," dated June 29, 2016.

⁶ See Memorandum to File, "Ammonium Sulfate from the People's Republic of China: Supplemental Customs Data for Respondent Selection," dated July 14, 2016.

⁷ See Memorandum from Robert Bolling to Christian Marsh, "Countervailing Duty Investigation of Ammonium Sulfate from the People's Republic of China: Respondent Selection," dated July 14, 2016 (Respondent Selection Memo).

⁸ See Letter from the Department to Liu Fang, First Secretary, Embassy of the People's Republic of China, "Countervailing Duty Investigation of Ammonium Sulfate from the People's Republic of China: Countervailing Duty Questionnaire," dated July 14, 2016.

⁹ See Memorandum to the File, "Countervailing Duty Investigation of Ammonium Sulfate from the People's Republic of China: Delivery of Questionnaire to Mandatory Respondents and the Government of the People's Republic of China," dated September 16, 2016.

questionnaire.¹⁰ Neither Wuzhoufeng AST nor Yantai AMP responded to the Department's CVD questionnaire. Additionally, the GOC did not respond to the Department's CVD questionnaire.

B. Postponement of Preliminary Determination

On July 22, 2016, Petitioner filed a request that the Department postpone the preliminary determination in this investigation.¹¹ On August 3, 2016, the Department published its postponement of the deadline for the preliminary determination until no later than 130 days after the initiation of the investigation.¹² Therefore, the Department postponed the preliminary determination until October 24, 2016, in accordance with sections 703(c)(1)(A) and (2) of the Act and 19 CFR 351.205(f)(1).¹³

C. Period of Investigation

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

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments by July 5, 2016.¹⁴ We did not receive comments concerning the scope of the AD or CVD investigations of ammonium sulfate from the PRC.

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is ammonium sulfate in all physical forms, with or without additives such as anti-caking agents. Ammonium sulfate, which may also be spelled as ammonium sulphate, has the chemical formula $(\text{NH}_4)_2\text{SO}_4$.

The scope includes ammonium sulfate that is combined with other products, including by, for example, blending (*i.e.*, mixing granules of ammonium sulfate with granules of one or more other products), compounding (*i.e.*, when ammonium sulfate is compacted with one or more other products under high pressure), or granulating (incorporating multiple products into granules through, *e.g.*, a slurry process). For such combined products, only the ammonium sulfate component is covered by the scope of this investigation.

Ammonium sulfate that has been combined with other products is included within the scope regardless of whether the combining occurs in countries other than China.

¹⁰ *Id.*

¹¹ See Letter from Petitioner to the Secretary of Commerce, "Ammonium Sulfate from the People's Republic of China: Request For Postponement Of The Preliminary Determination," dated July 22, 2016.

¹² See *Ammonium Sulfate From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 81 FR 51187 (August 3, 2016).

¹³ *Id.*

¹⁴ See *Initiation Notice*, 81 FR at 40662.

Ammonium sulfate that is otherwise subject to this investigation is not excluded when commingled (*i.e.*, mixed or combined) with ammonium sulfate from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

The Chemical Abstracts Service (CAS) registry number for ammonium sulfate is 7783-20-2.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3102.21.0000. Although this HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

V. 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 July 14, 2016, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of ammonium sulfate from the PRC.¹⁵

VI. APPLICATION OF THE CVD DUTY LAW TO IMPORTS FROM THE PRC

On October 25, 2007, the Department published its final determination in *CFS from the PRC*,¹⁶ 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.¹⁷

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.¹⁸ Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that the Department has the authority to apply the CVD law to countries designated as

¹⁵ See *Ammonium Sulfate From China; Determinations*, 81 FR 45533 (July 14, 2016).

¹⁶ 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.

¹⁷ *Id.*

¹⁸ See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*) and accompanying IDM (CWP IDM) at Comment 1.

non-market economies under section 771(18) of the Act, such as the PRC.¹⁹ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.²⁰

Additionally, for the reasons stated in *CWP from the PRC*, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this CVD investigation.²¹

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Act provides 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.²²

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) of the Act 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.”²³ The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperating fully.”²⁴

¹⁹ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

²⁰ See Public Law 112-99, 126 Stat. 265 §1(b).

²¹ See, e.g., CWPIDM at Comment 2.

²² 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 antidumping and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. 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). The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation. *Id.*

²³ 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), and accompanying Issues and Decision Memorandum at “V. Use of Facts Otherwise Available and Adverse Inferences”; 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).

²⁴ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316,

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it 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.”²⁵ It is the Department’s practice to consider information to be corroborated if it has probative value.²⁶ 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.²⁷ However, the SAA emphasizes that the Department need not prove that the selected facts are the best alternative information.²⁸

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the Department considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects the “alleged commercial reality” of the interested party.²⁹

For the purposes of this preliminary determination, we are applying AFA with respect to Wuzhoufeng AST, Yantai AMP, and the GOC, as outlined below.

A. Application of AFA: Wuzhoufeng AST, Yantai AMP, and the GOC

As discussed in the “Initiation and Case History” section above, Wuzhoufeng AST and Yantai AMP were selected as mandatory respondents in this investigation but are not participating. Specifically, neither mandatory respondent responded to the Department’s original questionnaire. Similarly, the GOC is not participating in this investigation, as it also has not responded to the Department’s original questionnaire. Therefore, we preliminarily find that both mandatory respondents and the GOC withheld information that had been requested and failed to provide information within the deadlines established. By not responding to the questionnaire, both companies and the GOC significantly impeded this proceeding. Thus, in reaching a preliminary determination, pursuant to sections 776(a)(2)(A)-(C) of the Act, we based the CVD rates for the mandatory respondents on facts otherwise available.

Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA).

²⁵ See, e.g., *id.* at 870.

²⁶ *Id.* at 870.

²⁷ See, e.g., *id.* at 869.

²⁸ *Id.* at 869-870.

²⁹ See section 776(d)(3) 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 original questionnaire, Wuzhoufeng AST, Yantai AMP, and the GOC did not cooperate to the best of their ability to comply with the Department's requests for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted.

The Department is, therefore, finding all programs initiated upon in this proceeding to be countervailable—that is, they provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, confer a benefit within the meaning of section 771(5)(B) of the Act, and are specific within the meaning of section 771(5A) of the Act. Accordingly, all programs are included in the Department's calculation of an AFA rate for Wuzhoufeng AST and Yantai AMP.³⁰ The Department has previously countervailed many of these programs in prior proceedings.³¹

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. As Wuzhoufeng AST and Yantai AMP have 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 for each program.³²

Typically, when selecting AFA rates for each program, 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. However, we do not have a cooperating mandatory respondent in this investigation and, accordingly, there are no programs for which we calculate an above-zero rate. Therefore, for each program we determine if the identical program was used in another CVD proceeding involving the PRC, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).³³ 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 PRC, and apply the highest calculated above-*de minimis* rate for that program. Finally, where no such rate is available, we apply the highest

³⁰ See Appendix I; see also CVD Initiation Checklist.

³¹ See CVD Initiation Checklist.

³² 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").

³³ 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."

calculated above-*de minimis* rate from any program that could conceivably be used by the non-cooperating companies.³⁴

In determining the AFA rate we will apply to Wuzhoufeng AST and Yantai AMP, we are guided by the Department's methodology detailed above. First, we applied a subsidy rate for the following income tax reduction programs on which the Department initiated this investigation. We applied an adverse inference that each mandatory respondent paid no income tax during the POI, pursuant to the programs below:

- Preferential Income Tax Program for High-and New-Technology Enterprises (HNTes)
- Preferential Income Tax Program for HNTes in Designated Zones
- Preferential Deduction of Research and Development (R&D) Expenses for HNTes
- Preferential Income Tax for Comprehensive Utilization of Resources
- Preferential Income Tax Subsidies for Foreign Invested Enterprises (FIEs) – ‘Productive’ FIEs
- Preferential Income Tax Subsidies for FIEs – High or New Technology FIEs
- Preferential Income Tax Subsidies for FIEs – Export Oriented FIEs

The standard income tax rate for corporations in the PRC in effect during the POI was 25 percent.³⁵ 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 seven programs, combined, provide a 25 percent benefit). Consistent with past practice, the 25 percent AFA rate does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs because such programs may not affect the tax rate.³⁶

For all other programs not mentioned above, we are applying the highest above-*de minimis* subsidy rate calculated for the same or similar/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 or similar programs from other PRC CVD proceedings:

- Provision of Land to Enterprises in Encouraged Industries for Less Than Adequate Remuneration (LTAR)³⁷
- Provision of Land to State-Owned Enterprises (SOEs) for LTAR³⁸

³⁴ See Shrimp IDM at 13-14.

³⁵ See CVD Initiation Checklist at 11.

³⁶ See, e.g., *Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) and accompanying Issues and Decision Memorandum (Extrusions Investigation IDM) at “Application of Adverse Inferences: Non-Cooperative Companies.”

³⁷ See *Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) and accompanying Issues and Decision Memorandum (OTCG IDM) at 20-22.

³⁸ 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) and accompanying Issues and Decision Memorandum (Sacks IDM) at “2. Government Provision of Land for Less Than Adequate Remuneration.”

- Provision of Land to Enterprises in Industrial Zones for LTAR³⁹
- Provision of Electricity for LTAR⁴⁰
- Value Added Tax (VAT) and Tariff Exemptions for Imported Equipment⁴¹
- Provision of Coal for LTAR⁴²
- Provision of Natural Gas for LTAR⁴³
- Provision of Ammonia for LTAR⁴⁴
- Provision of Freight for LTAR⁴⁵
- Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment⁴⁶
- VAT Refunds for FIEs Purchasing Domestically-Produced Equipment⁴⁷
- VAT Exemptions for Certain Nitrogen Fertilizers⁴⁸
- VAT Rebates Related to the Comprehensive Utilization of Resources and Other Products⁴⁹
- Exemptions from Administrative Charges for Companies in Industrial Zones⁵⁰
- Policy Loans to the Ammonium Sulfate Industry⁵¹

³⁹ See Extrusions Investigation IDM at “T. Provision of Land-Use Rights and Fee Exemptions To Enterprises Located in the ZHITDZ for LTAR.” Note that this program is combined with the program titled “Exemptions from Administrative Charges for Companies in Industrial Zones” in the Department’s application of an AFA rate. See Appendix I.

⁴⁰ 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 21-22.

⁴¹ See *New Pneumatic Off-the-Road Tires From the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268 (October 19, 2010) (*OTR Tires AR Preliminary*) and accompanying Preliminary Decision Memorandum (*OTR Tires PDM*) (“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) (*OTR Tires AR Final*).

⁴² See *Certain Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 57444 (September 21, 2010) and accompanying Issues and Decision Memorandum at 30-32 (“Provision of Coking Coal for LTAR”).

⁴³ See *Isos IDM* at 21-22 (“Electricity for LTAR”).

⁴⁴ See *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review*; 2013, 80 FR 77318 (December 14, 2015) and accompanying Issues and Decision Memorandum at “Comment 1: Caustic Soda.”

⁴⁵ See *Calcium Hypochlorite From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 74064 (December 15, 2014) and accompanying Issues and Decision Memorandum at 3 (“Shipping for LTAR”).

⁴⁶ See *Certain Steel Grating from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32362 (June 8, 2010) and accompanying Issues and Decision Memorandum at 14.

⁴⁷ See *Carbon and Certain Alloy Steel Wire Rod From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 68858 (November 11, 2014) and accompanying Issues and Decision Memorandum at 10.

⁴⁸ *Id.* (“VAT Rebates on FIE Purchases of Chinese-Made Equipment”).

⁴⁹ See *Isos IDM* at 18-19.

⁵⁰ See Extrusions Investigation IDM at “T. Provision of Land-Use Rights and Fee Exemptions To Enterprises Located in the ZHITDZ for LTAR.” Note that this program is combined with the program titled “Provision of Land to Enterprises in Industrial Zones for LTAR” in the Department’s calculation of an AFA rate. See Appendix I.

⁵¹ Consistent with recent investigations, we are using a single AFA rate for “Policy Loans” and “Preferential Loans to SOEs,” because an analysis of the relevant allegations reveals that they would apply to the same loans provided by state-owned commercial banks (SOCBs). See, e.g., *Certain Cold-Rolled Steel Flat Products From the People’s*

- Preferential Loans for SOEs⁵²
- Preferential Export Financing⁵³
- Preferential Loans for Key Projects and Technologies⁵⁴
- Loans and Interest Forgiveness for SOEs⁵⁵
- Reduction in, or Exception from, Fixed Assets Investment Orientation Regulatory Tax⁵⁶
- Income Tax Benefits for Domestically-Owned Enterprises Engaged in R&D⁵⁷
- Stamp Exemption on Share Transfer Under Non-Tradeable Share Reform⁵⁸
- State Key Technology Renovation Project Fund⁵⁹
- Environmental Protection Special Fund⁶⁰
- Grants to Cover Legal Fees in Trade Remedy Cases⁶¹
- Special Fund for Energy Saving Technology Reform⁶²
- Clean Production Technology Fund⁶³
- Grants for Listing Shares⁶⁴
- The Fertilizer Off-Season Commercial Reserve Program⁶⁵
- Exemption from Payments to the Railway Construction Fund for Agriculture-Use Fertilizers⁶⁶

Based on the methodology described above, we preliminarily determine the countervailable subsidy rate for Wuzhoufeng AST and Yantai AMP to be 216.37 percent *ad valorem*.⁶⁷

Republic of China: Final Affirmative Countervailing Duty Determination and Final Partial Affirmative Critical Circumstances Determination, 81 FR 32729 (May 24, 2016) and accompanying Issues and Decision Memorandum (Cold-Rolled IDM) at 12.

⁵² *Id.*

⁵³ See *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin From the People's Republic of China: Final Affirmative Determination*, 81 FR 13337 (March 14, 2016) and accompanying Issues Decision Memorandum at "Dragon Group—Policy Loans and Preferential Export Financing."

⁵⁴ See *Certain Magnesite Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010) and accompanying Issues and Decision Memorandum (Bricks IDM) at "Preferential Loans and Directed Credit to the Magnesite Carbon Bricks Industry."

⁵⁵ See *Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) and accompanying Issues Decision Memorandum at 13.

⁵⁶ See *OTR Tires AR Preliminary*, 75 FR at 64275 ("C. VAT and Import Duty Exemptions on Imported Material"), unchanged in *OTR Tires AR Final*, 76 FR at 23286.

⁵⁷ *Id.* ("VAT and Import Duty Exemptions on Imported Material").

⁵⁸ *Id.* ("VAT and Import Duty Exemptions on Imported Material").

⁵⁹ See *Isos IDM* at 13-14 ("Special Fund for Energy Saving Technology").

⁶⁰ *Id.* ("Special Fund for Energy Saving Technology").

⁶¹ *Id.* ("Special Fund for Energy Saving Technology").

⁶² *Id.* ("Special Fund for Energy Saving Technology").

⁶³ *Id.* ("Special Fund for Energy Saving Technology").

⁶⁴ *Id.* ("Special Fund for Energy Saving Technology").

⁶⁵ *Id.* ("Special Fund for Energy Saving Technology").

⁶⁶ *Id.* ("Special Fund for Energy Saving Technology").

⁶⁷ See Appendix I.

B. Corroboration

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it 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.”⁶⁸ The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.⁶⁹ 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 are the best alternative information.⁷⁰

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. We find the AFA rates applied here to be reliable based on their calculation and application in previous CVD proceedings pertaining to the PRC, and because no information on the record calls their reliability into question. 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.⁷¹

In the absence of record evidence concerning Wuzhoufeng AST’s and Yantai AMP’s usage of the subsidy programs at issue, due to the respondents’ decision not to participate in the investigation, the Department reviewed information concerning PRC subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this investigation. The relevance of these rates is that they are actual calculated CVD rates for PRC programs, from which Wuzhoufeng AST and Yantai AMP could actually receive a benefit. Due to the lack of participation by the mandatory respondents and the GOC, and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to use as AFA to the extent practicable for this preliminary determination.

VIII. CALCULATION OF THE ALL-OTHERS RATE

Section 703(d)(1)(A)(ii) of the Act states that if the Department limits its investigation to particular respondents in accordance with section 777A(e)(2)(B) of the Act, the Department will

⁶⁸ See SAA at 870.

⁶⁹ *Id.*

⁷⁰ *Id.* at 869-870.

⁷¹ See, e.g., *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

determine a single estimated country-wide subsidy rate applicable to all exporters and producers. Section 705(c)(5)(A)(i) of the Act states that the all-others rate shall be an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any rates that are zero or *de minimis* or any rates determined entirely on facts otherwise available. However, section 705(c)(5)(A)(ii) of the Act states that if the countervailable subsidy rates for all exporters and producers individually investigated are zero or *de minimis* rates, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted-average countervailable subsidy rates determined for the exporters and producers individually investigated.

In this investigation, all rates for individually investigated respondents are based entirely on facts otherwise available. Accordingly, we are using “any reasonable method” to establish the all-others rate. We find that it is reasonable to use an average of the weighted-average countervailable subsidy rates established for mandatory respondents Wuzhoufeng AST and Yantai AMP as the all-others rate (*i.e.*, 216.37 percent). The statute expressly states that when the rates for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may average the weighted-average countervailable subsidy rates for the individually investigated exporters and producers. The Department has taken this approach to calculating the all-others rate in other CVD investigations.⁷²

IX. 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.

X. PUBLIC COMMENT

Case briefs may be submitted to Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than 30 days after the publication of this preliminary determination in the *Federal Register*, 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.⁷³

⁷² 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 at Comment 1.

⁷³ See 19 CFR 351.309(c)(1)(i) and (d)(1).

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.⁷⁴ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.⁷⁵ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing. Issues raised in the hearing will be limited to those raised in the respective case briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS. Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,⁷⁶ on the due dates established above.

XI. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

October 24, 2016

Date

⁷⁴ See 19 CFR 351.309(c)(2) and (d)(2).

⁷⁵ See 19 CFR 351.310(c).

⁷⁶ See 19 CFR 351.303(b)(1).

Appendix I

PROGRAM NAME	RATE
Tax Programs	
Income Tax Benefits for Domestically-Owned Enterprises Engaged in Research and Development (R&D)	9.71
Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment	1.68
Preferential Deduction of R&D Expenses for High- and New-Technology Enterprises (HNTEs)	25
Preferential Income Tax for Comprehensive Utilization of Resources	
Preferential Income Tax Program for HNTEs	
Preferential Income Tax Program for HNTEs in Designated Zones	
Preferential Income Tax Subsidies for Foreign Invested Enterprises (FIEs) – Export Oriented FIEs	
Preferential Income Tax Subsidies for FIEs – High or New Technology FIEs	
Preferential Income Tax Subsidies for FIEs – ‘Productive’ FIEs	
Reduction in, or Exception from, Fixed Assets Investment Orientation Regulatory Tax	9.71
Stamp Exemption on Share Transfer Under Non-Tradeable Share Reform	9.71
Value Added Tax (VAT) and Tariff Exemptions for Imported Equipment	9.71
VAT Exemptions for Certain Nitrogen Fertilizers	9.71
VAT Rebates Related to the Comprehensive Utilization of Resources and Other Products	0.06
VAT Refunds for FIEs Purchasing Domestically-Produced Equipment	9.71
Land for Less Than Adequate Remuneration (LTAR)	
Provision of Land to Enterprises in Encouraged Industries for LTAR	2.55
Provision of Land to Enterprises in Industrial Zones for LTAR	4.97
Exemptions from Administrative Charges for Companies in Industrial Zones	
Provision of Land to SOEs for LTAR	13.36
Inputs for LTAR	
Provision of Ammonia for LTAR	11.72
Provision of Coal for LTAR	5.51
Provision of Electricity for LTAR	20.06
Provision of Freight for LTAR	5.34
Provision of Natural Gas for LTAR	20.06
Loan Programs	
Policy Loans to the Ammonium Sulfate Industry	10.54
Preferential Loans for State-Owned Enterprises (SOEs)	
Preferential Export Financing	10.54
Preferential Loans for Key Projects and Technologies	10.54
Loans and Interest Forgiveness for SOEs	2.32
Grants and Other Programs	
Clean Production Technology Fund	0.58

Environmental Protection Special Fund	0.15
Exemption from Payments to the Railway Construction Fund for Agriculture-Use Fertilizers	0.58
Fertilizer Off-Season Commercial Reserve Program	0.58
Grants to Cover Legal Fees in Trade Remedy Cases	0.58
Grants for Listing Shares	0.58
Special Fund for Energy Saving Technology Reform	0.58
State Key Technology Renovation Project Fund	0.58
Total AFA Rate 206.72	