



C-570-913
Administrative Review
POR: 1/1/15-12/31/15
Public Document
E&C Office VII: The Team

DATE: October 2, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the
Countervailing Duty Administrative Review of Certain New
Pneumatic Off-The-Road Tires from the People's Republic of
China; 2015

I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain new pneumatic off-the-road tires (OTR tires) from the People's Republic of China (PRC). The period of review (POR) is January 1, 2015, through December 31, 2015. The mandatory respondents are Guizhou Tyre Co., Ltd. (Guizhou Tyre) and Xuzhou Xugong Tyres Co. Ltd. (Xuzhou Xugong). We preliminarily find that Guizhou Tyre received countervailable subsidies from certain programs during the POR. In addition, we preliminarily applied total adverse facts available with regard to Xuzhou Xugong.

If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), we will issue the final results no later than 120 days after the publication of these preliminary results.

II. BACKGROUND

In September 2008, the Department published in the *Federal Register* a CVD order on OTR tires from the PRC.¹ On September 8, 2016, the Department published in the *Federal Register* a notice of opportunity to request an administrative review of the *OTR Tires CVD Order* for the period January 1, 2015, through December 31, 2015 (POR).² On September 30, 2016, we received a timely request to conduct an administrative review of the *OTR Tires CVD Order* from Titan Tire Corporation (Titan) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (the USW) (collectively, the petitioners) covering 112 companies.³ On September 30, 2016, we also received a timely request to conduct an administrative review from the Zhongce Rubber Group Company Limited (Zhongce).⁴

On November 9, 2016, in accordance with 19 CFR 351.221(c)(1)(i), the Department published in the *Federal Register* a notice of initiation of an administrative review of the *OTR Tires CVD Order* from China for 112 Chinese exporters for the current POR.⁵ On November 18, 2016, Trelleborg Wheel Systems (Hebei) Co., Ltd., reported that it made no exports, sales, shipments, or entries of any subject merchandise into the United States during the POR.⁶ Caterpillar Paving Products Xuzhou Ltd. also reported that it had no exports, sales, or entries of subject merchandise to the United States during the POR on December 7, 2017.⁷

We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on CBP entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the CVD Order. On February 7, 2017, Zhongce timely filed a request to withdraw from this administrative review.⁸ On February 10, 2017, we released CBP import data under the Administrative Protective Order (APO) and invited interested parties to submit comments with respect to the selection of respondents for individual examination.⁹ We received timely comments from the petitioners requesting the selection of

¹ See *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Countervailing Duty Order*, 73 FR 51627 (September 4, 2008) (*OTR Tires CVD Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 81 FR 62096 (September 8, 2016).

³ See letter from the petitioners, "Administrative Review of the Countervailing Duty Order on New Pneumatic Off-The-Road Tires from China (C-570-913): Titan and the USW's Request for Administrative Review," (September 30, 2016).

⁴ See letter from Zhongce, "New Pneumatic Off-the-Road Tires from the People's Republic of China: Request for Review – 2015 Review Period," (September 30, 2016).

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 78778 (November 9, 2016) (*Initiation Notice*).

⁶ See letter from Trelleborg Wheel Systems (Hebei) Co., Ltd., "Trelleborg Wheel Systems (Hebei) Co. Ltd Statement of No Shipments during the POR: Countervailing Duty Administrative Review of New Pneumatic Off-the-Road Tires from the People's Republic of China," (November 18, 2016).

⁷ See letter from Caterpillar Paving Products Xuzhou Ltd., "New Pneumatic Off-The-Road Tires from People's Republic of China: No Shipment Letter," (December 7, 2016).

⁸ See letter from Zhongce, "New Pneumatic Off-the-Road Tires from the People's Republic of China: Withdrawal of Request for Administrative Review – 2015 Review Period," (February 7, 2017)

⁹ See Memorandum to the File, "Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-The-Road Tires from the People's Republic of China; U.S. Customs and Border Protection Entry Data," (February 10, 2017) (*CBP Entry Data Memorandum*).

certain companies as mandatory respondents for this review.¹⁰ No other parties submitted comments. On March 10, 2017, the Department selected as mandatory respondents Guizhou Tyre and Xuzhou Xugong, the two producers/exporters accounting for the largest entries of subject merchandise during the POR based on CBP import data.¹¹

On March 20, 2017, the Department sent out an initial questionnaire to the Government of the People's Republic of China (GOC) seeking information regarding the alleged subsidies, instructing the GOC to forward the questionnaire to the mandatory respondents.¹² In a letter dated April 11, 2017, Xuzhou Xugong notified the Department that it would not be participating in this review.¹³ The GOC and Guizhou Tyre submitted responses to the original questionnaire on May 3, 2017 and April 3, 2017, respectively.¹⁴ The petitioners submitted deficiency comments regarding the GOC's and Guizhou Tyre's initial questionnaire responses on May 17, 2017.¹⁵ On June 7, 2017, the Department issued supplemental questionnaires to the GOC and Guizhou Tyre.¹⁶ The GOC and the Guizhou Tyre responded to these supplemental questionnaires on June 26, 2017.¹⁷ On May 22, 2017, the Department extended the deadline for the preliminary results by 60 days to August 1, 2017.¹⁸ The petitioners submitted pre-preliminary comments on July 21, 2017.¹⁹ On July 28, 2017, the Department further extended

¹⁰ See letter from the petitioners, "Eighth Administrative Review of the Countervailing Duty Order on New Pneumatic Off-The-Road Tires from China – Titan and the USW's Respondent Selection Comments," (February 17, 2017).

¹¹ See Memorandum to Edward Yang, Office Director, AD/CVD Operations Office VII, "Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from China: Selection of Respondents for Individual Examination," (March 10, 2017) (*Respondent Selection Memorandum*).

¹² See letter from the Department, "2015 Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from China: Questionnaire," (March 20, 2016) (*Initial Questionnaire to GOC*).

¹³ See Xuzhou Xugong's letter, "Countervailing Duty Administrative Review of OTR Tires from the People's Republic of China: Notice of Decision Not to Participate in Review," (April 11, 2017).

¹⁴ See letter from the GOC, "Initial Response of the Government of the People's Republic of China Certain New Pneumatic Off-The-Road Tires From the People's Republic of China (C-570-913) (POR 2015)," (May 3, 2017) (GOC May 3, 2017 IQR); letter from the Guizhou Tyre, "Response to Section III Identifying Affiliated Companies Certain New Pneumatic Off-the-Road Tires from China," (April 3, 2017). (Guizhou Tyre Affiliation Response).

¹⁵ See letter from the petitioners, "Eighth Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China -Titan and the USW's Comments on and Submission of Rebuttal, Clarifying, and Correcting Factual Information to the Initial Questionnaire Responses," (May 17, 2017).

¹⁶ See letter to the GOC, "Supplemental Questionnaire for the Countervailing Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," (June 7, 2017); letter to Guizhou Tyre, "Supplemental Questionnaire for the Countervailing Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," (June 7, 2017).

¹⁷ See letters from the GOC, "GOC's First Supplemental Questionnaire Response: Certain New Pneumatic Off-The-Road Tires from the People's Republic of China (C-570-913)," (June 26, 2017) (GOC June 26, 2017 1st SQR); letter from the Guizhou Tyre, "Guizhou Tyre's First Supplemental Questionnaire Response : Certain New Pneumatic Off-the-Road Tires from the People's Republic of China (C-570-913)(POR 2015)," (June 26, 2017) (Guizhou Tyre June 26, 2017 1st SQR).

¹⁸ See Memorandum to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review -2015," (May 22, 2017).

¹⁹ See letter from the petitioners, "Eighth Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China – Titan and the USW's Pre-Preliminary Comments," (July 21, 2017) (Petitioners' Pre-Prelim Comments).

the deadline for the preliminary results by an additional 60 days to October 2, 2017.²⁰ On August 2, 2017, the Department issued a 2nd supplemental questionnaire to the GOC,²¹ to which the GOC responded on August 16, 2017.²²

III. SCOPE OF THE ORDER

The products covered by the scope are new pneumatic tires designed for off-the-road (OTR) and off-highway use, subject to exceptions identified below. Certain OTR Tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR Tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,²³ combine harvesters,²⁴ agricultural high clearance sprayers,²⁵ industrial tractors,²⁶ log-skidders,²⁷ agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;²⁸ (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,²⁹ front end loaders,³⁰ dozers,³¹ lift trucks, straddle carriers,³² graders,³³ mobile cranes,³⁴ compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road

²⁰ See Memorandum to James Maeder, Senior Director, performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review -2015,” (July 28, 2017).

²¹ See letter to the GOC, “2nd Supplemental Questionnaire for the Countervailing Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China,” (August 2, 2017) (*2nd Supplemental Questionnaire*).

²² See letter from the GOC, “GOC’s Second Supplemental Questionnaire Response Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China (C-570-913)(POR 2015),” (August 16, 2017) (*GOC 2nd SQR*).

²³ Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

²⁴ Combine harvesters are used to harvest crops such as corn or wheat.

²⁵ Agricultural sprayers are used to irrigate agricultural fields.

²⁶ Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

²⁷ A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

²⁸ Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver’s shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

²⁹ Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

³⁰ Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

³¹ A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.*, typically around construction sites. They can also be used to perform “rough grading” in road construction.

³² A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

³³ A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform “finish grading.” Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

³⁴ *i.e.*, “on-site” mobile cranes designed for off-highway use.

counterbalanced lift trucks.³⁵ The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the proceeding range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type³⁶ or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.70.0010, 4011.70.0050, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol “DOT” must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

P - Identifies a tire intended primarily for service on passenger cars;
LT - Identifies a tire intended primarily for service on light trucks; and,
ST - Identifies a special tire for trailers in highway service.

Suffix letter designations:

TR - Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156” or plus 0.250”;
MH - Identifies tires for Mobile Homes;
HC - Identifies a heavy duty tire designated for use on “HC” 15” tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
Example: 8R17.5 LT, 8R17.5 HC;
LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and

³⁵ A counterbalanced lift truck is a rigid framed, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

³⁶ While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

MC - Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

IV. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF ADVERSE INFERENCES

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, use the “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; 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; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.³⁷ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this administrative review.³⁸

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available (AFA) when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. For purposes of these preliminary results, as discussed below, we have relied on adverse facts available due to the GOC’s lack of response to the initial questionnaire and supplemental questionnaires regarding the alleged provision of inputs, land use rights, and electricity.

³⁷ See 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 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).

³⁸ *Id.*, 80 FR at 46794-95. The 2015 amendments are found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

A. Application of AFA: Xuzhou Xugong

As noted above, the Department selected Xuzhou Xugong as a mandatory respondent in this review.³⁹ However, Xuzhou Xugong submitted a letter to the Department, dated April 11, 2017, stating that “Xugong will not be participating in the above-referenced CVD administrative review.”⁴⁰ As a result of Xuzhou Xugong’s failure to participate in this review, necessary information is not on the record of this review. In addition, we find that Xuzhou Xugong has withheld information requested by the Department and significantly impeded this proceeding. As a result, we must rely on the facts otherwise available, pursuant to sections 776(a)(1) and 776(a)(2)(A) & (C) of the Act. Moreover, we also find that Xuzhou Xugong has failed to cooperate to the best of its ability. Therefore, pursuant to 776(b) of the Act, we preliminarily find that use of AFA is warranted to ensure that Xuzhou Xugong does not obtain a more favorable result by failing to cooperate than if it had fully complied with our request for information.

It is the Department’s practice in CVD proceedings to apply a total AFA rate for a non-cooperating company using the highest calculated program-specific rates determined for the identical or similar programs.⁴¹ Specifically, in an administrative review, the Department applies the highest calculated above-*de minimis* rate for the identical program from any segment of the same proceeding.⁴² If there is no identical program match within the same proceeding, or if the rate is *de minimis*, the Department uses the highest non-*de minimis* rate calculated for a similar program, based on treatment of the benefit. Absent an above-*de minimis* subsidy rate calculated for the identical or similar program from the same proceeding, the Department looks to other proceedings involving the same country and applies the highest calculated above-*de minimis* subsidy rate for the identical or similar/comparable program. Where no above-*de minimis* rate for an identical or similar program within the country has previously been calculated, the Department applies the highest calculated rate for any program from any CVD case involving the same country that could conceivably be used by the non-cooperating company.⁴³

We have taken into consideration information the GOC has provided concerning the countervailability of the programs the GOC has identified as being used by other mandatory respondents. In applying AFA for Xuzhou Xugong, we are guided by the Department’s

³⁹ See *Respondent Selection Memo*.

⁴⁰ See letter from Xuzhou Xugong, “Countervailing Duty Administrative Review of OTR Tires from the People’s Republic of China: Notice of Decision Not to Participate in Review,” (April 11, 2017).

⁴¹ See, e.g., *Chlorinated Isocyanurates From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 27466 (June 15, 2017) and accompanying Issues and Decision Memorandum (IDM) at “Use of Facts Otherwise Available and Adverse Inferences.” See also *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) and accompanying Issues and Decision Memorandum (IDM) at 13.

⁴² For purposes of selecting AFA program rates, we normally treat rates less than 0.5% 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.”

⁴³ *Id.*; see also, e.g., *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 IDM at “Selection of the Adverse Facts Available Rate.”

methodology detailed above. Following this methodology, we preliminarily determine the net AFA countervailable subsidy rate for Xuzhou Xugong to be 91.94 percent *ad valorem*.⁴⁴

B. Suppliers of Inputs are “Authorities”

As discussed below in the section “Programs Preliminarily Determined to be Countervailable,” the Department is investigating the provision of four inputs for LTAR: natural rubber, synthetic rubber, carbon black, and nylon cord. We requested information from the GOC regarding the specific companies that produced the input products that Guizhou Tyre and its respective cross-owned companies, purchased during the POR. Specifically, we sought information from the GOC that would allow us to determine whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.⁴⁵

We asked Guizhou Tyre to coordinate with the GOC to prepare a complete list of its input producers.⁴⁶ Regarding the producers that the GOC identified as private companies, we asked the GOC to provide information about the involvement of the Chinese Communist Party (CCP) in those companies, including whether individuals in management positions are CCP members, in order to evaluate whether the privately-owned suppliers are “authorities” within the meaning of section 771(5) of the Act.⁴⁷ When asked to identify any owners, members of the board of directors, or managers of the input suppliers who were government or CCP officials during the POR, the GOC explained that there is “no central informational database to search for the requested information.”⁴⁸ The GOC goes on to state that the information that the Department requests consists of personal information of individuals that the GOC would have to reveal contrary to Article 14 of the *Regulation on Disclosure of Government Information (Decree 492 of the State Council, 2007* which forbids such disclosures of personal information.⁴⁹ The GOC concluded that “{i}f the Department insists on the necessity of this information, the Department should collect this information through the respondents, via their suppliers directly.”⁵⁰ Furthermore, the Department requested that the GOC provide the articles of incorporation, capital verification reports, business licenses and tax registration, again in order to analyze whether these suppliers meet the meaning of section 771(5)(B) of the Act. However, in response to the request for these documents, the GOC provided only the ownership structure and basic business registration information; these do not provide the same level of detailed information as contained in the requested documents.

On June 7, 2017, the Department requested that the GOC provide a complete response to the information requested in the Information Regarding Input Producers in the PRC Appendix with respect to all producers, suppliers, and other entities from which the respondents purchased, received, or obtained rubber, nylon cord, and carbon black during the POR. Again, the GOC

⁴⁴ See “Preliminary Results of the Countervailing Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Application of Adverse Facts Available for Non-Cooperative Company,” dated concurrently with this memorandum.

⁴⁵ See letter to GOC, “2015 Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from China: Questionnaire,” (March 20, 2017) (*Initial Questionnaire to GOC*), at Section II, Programs Previously Found to be Countervailable.

⁴⁶ *Id.*

⁴⁷ See *Initial Questionnaire to GOC*.

⁴⁸ See GOC May 3, 2017 IQR at 37.

⁴⁹ *Id.* at 50 and at Exhibit B.9.

⁵⁰ *Id.* at 50.

failed to provide information regarding the involvement of the CCP in those companies, including whether individuals in management positions are CCP members.⁵¹

With regard to the ownership of certain producers that the respondents identified and for whom the GOC provided no information, as well as for the producers that the GOC identified as private companies but for whom the GOC did not provide the requested information regarding CCP involvement, we preliminarily determine that the GOC has withheld the necessary information that was requested of it, and thus, that the Department must rely on “facts otherwise available” in issuing our preliminary results, pursuant to section 776(a)(2)(A) of the Act. Moreover, by withholding the requested information, the GOC has significantly impeded this proceeding, within the meaning of sections 776(a)(2)(A) and (C) of the Act.

We preliminarily find that the GOC did not act to the best of its ability to comply with our request for information. Consequently, we find that the application of adverse facts available is warranted pursuant to section 776(b) of the Act. For the producers of carbon black, nylon cord, synthetic rubber, and natural rubber, about which the GOC provided no ownership information, we are finding that the GOC failed to provide information to show the ownership of these producers. For the privately-owned producers, we determine that the GOC failed to identify whether members of the board of directors, owners or senior managers were CCP officials. Thus, as AFA, we preliminarily find that these producers are “authorities,” within the meaning of section 771(5)(B) of the Act.

C. Provision of Electricity for LTAR

As discussed below under the section “Programs Preliminarily Found to be Countervailable,” the Department is investigating whether the GOC provided electricity for LTAR.

The GOC did not provide complete responses to the Department’s questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act.

In order for the Department to analyze the financial contribution and specificity of this program, we requested that the GOC provide information regarding the roles of provinces, the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in electricity price adjustments. Specifically, in the Department’s initial questionnaire, for each province in which a respondent is located, the Department asked the GOC to provide a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. We asked the GOC to provide the original provincial price proposals for the applicable tariff schedule for each province in which a mandatory respondent or any reported “cross-owned” company is located for applicable tariff schedules that were in effect during the POR.

⁵¹ See GOC Jun 26, 2017st SQR at 26-39.

Instead of providing the requested documents, the GOC stated that “these proposals are drafted by the provincial governments and submitted to the NDRC. They are working documents for the NDRC’s review only. The GOC is therefore unable provide them with this response.”⁵² The GOC further stated that, for periods after April 20, 2015, there are no “Provincial Price Proposals” and the NDRC no longer reviewed proposed electricity pricing schedules submitted to it by provincial governments.⁵³ The GOC contends that the NDRC no longer exercised control over provincial electricity price adjustments and has legally begun delegating total pricing autonomy to the provinces and only ratifies prices submitted for review since April 2015.⁵⁴ The GOC submitted an updated price adjustment notice issued by the NDRC, Notice 3105, on December 27, 2015.⁵⁵ In its 2nd supplemental questionnaire responses, the GOC confirmed that, in addition to Notices 748 and 3105, Article III of Notice of the NDRC on Perfecting the Relevant Matters of Coal-Electricity Linkage Mechanism Between Coal and Electricity, Notice 3169, also provides that the NDRC continues to play a central role in determining the principles and general adjustment level of each provinces’ electricity sales price, while the specific electricity price of each electricity usage catalogue category is determined by provinces based on their own actual situations.⁵⁶

Notice 748 is based upon consultations between the NDRC and the National Energy Administration.⁵⁷ Article 1 contained therein stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour. Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts.⁵⁸ Article 2 indicates that the “price space” formed due to this price reduction “{s}hall be mainly used to lower the sales price of electricity for industrial and commercial use.”⁵⁹ Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity. Articles 6 and 7, respectively, indicate that provincial pricing authorities “{s}hall make and distribute the on-grid price of electricity and specific plans of the price adjustment in accordance with the average standard of price adjustment in Annex 1 and submit filings to the National Development and Reform Commission,” and that the “{a}forementioned electricity price adjustment shall be enforced since April 20th, 2015.” Lastly, Article 10 directs that, “Administrative departments at all levels in charge of pricing shall guarantee the implementation of the price adjustment.”⁶⁰

Notice 3105, also based upon consultations between the NDRC and the National Energy Administration, directs additional price reductions, and stipulates at Articles II and X, that local price authorities shall implement in time the price reductions included in its Annex and report resulting prices to the NDRC.⁶¹ Consequently, both Notice 748 and Notice 3105 explicitly direct

⁵² See GOC May 3, 2017 IQR at 159; GOC June 26, 2017 1st SQR at 12.

⁵³ See GOC June 26, 2017 1st SQR at 12.

⁵⁴ *Id.*; see also *Certain Aluminum Foil From the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 37844 (August 14, 2017) (*Aluminum Foil from the PRC Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM) at 37-41.

⁵⁵ See GOC August 16, 2017 2nd SQR at 3 and Exhibit S2-1.b (Notice 3105).

⁵⁶ *Id.* at 3-4 and Exhibit S2-1a.1 (Notice 3169).

⁵⁷ See GOC June 26, 2017 1st SQR at Exhibit S1-20.2 (Notice 748).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See Notice 3105.

provinces to reduce prices and to report the enactment of those changes to the NDRC. Neither Notice 748 nor Notice 3105 explicitly stipulates that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions, as the Government of the PRC states to be the case.⁶² Rather, both notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices.⁶³ Moreover, Notice 3169 aims to make clear the benchmark and specific contents of coal-electricity price linkage mechanism in the market and notifies that the previous provisions concerning coal-electricity price linkage mechanism should not be carried out since January 1, 2016, which is out of the POR and therefore not applicable to this review.⁶⁴

In response to our questions regarding how electricity cost increases are reflected in retail price increases, the GOC explained how price increases should theoretically be formulated but did not explain the actual process that led to the price increases.⁶⁵ In addition, the GOC provided no province-specific information in response to these questions in its initial questionnaire response.⁶⁶

With respect to price derivation at the provincial level, the Department requested specific information regarding how increases in cost elements led to retail price increases, the derivations of those cost increases, how cost increases were calculated, and how cost increases impacted final prices. The GOC failed to provide complete responses to these requests. Specifically, it failed to provide the specific derivation of increases in cost elements and the methodology used to calculate cost element increases. Instead, and in sum, the Government of the PRC asserted that “{e}lectricity rates are fully reflective of the changes in the supply and demand of the market,” and did not provide any documentation to support its claim.⁶⁷ Lastly, the GOC failed to explain how final price increases were allocated across the respondents’ provinces and across tariff end-user categories.⁶⁸

The Department requested that the GOC identify the legislation which may have eliminated the Provincial Price Proposals. The GOC referred the Department to Notice 748 and Notice 3105.⁶⁹ As discussed above, these two documents, issued by the NDRC, direct provinces to reduce prices by amounts specific to provinces. They neither explicitly eliminate Provincial Price Proposals nor define distinctions in price-setting roles between national and provincial pricing authorities. Additionally, we requested that the GOC explain whether the province-specific price reductions indicated in Notice 748 were required to be adopted by all provinces. The GOC responded that, “{N}otice 748 does not serve as the NDRC’s notice of control over the provincial electricity price adjustments, rather, such notice only indicates that the NDRC promotes electricity policy objectives at the macro level.” This response does not accord with the directive language in Notice 748, as discussed above.⁷⁰ Finally, we requested that the GOC explain how the NDRC monitors compliance with the price changes directed in Notice 748 and what action the NDRC would take were any province not to comply with the directed price changes. The GOC

⁶² See Notice 748 and Notice 3105; *see also* GOC May 3, 2017 IQR at 157.

⁶³ See *e.g.*, Notice 748 Article 10 and Notice 3105 Articles II and X.

⁶⁴ See Notice 3169.

⁶⁵ See GOC May 3, 2017 IQR at 160-162.

⁶⁶ *Id.* at 156-165.

⁶⁷ *Id.* at 157.

⁶⁸ See at 160-162.

⁶⁹ See GOC June 26, 2017 1st SQR and GOC August 16, 2017 2nd SQR.

⁷⁰ *Id.*

responded that the NDRC only requires provinces to report established provincial prices to the NDRC. It failed to explain what actions the NDRC would take in the event of non-compliance with directed price changes.

The Department additionally requested that the GOC explain, with supporting documentation, how the pricing values indicated in the Appendix to NDRC Notice 748 were derived, including the specific factors or information relied upon by the NDRC. In response, the GOC merely repeated its initial explanation, as discussed above. Subsequently, the GOC failed to identify and provide the sources of information on which this explanation was based. We asked the GOC whether Notice 748 and Notice 3105 coincided with price changes set forth at the provincial level. It did not respond directly, but rather only reasserted that these notices delegate price setting authority to the provinces.

In addition to our request for a detailed explanation of how the NDRC derived the price reduction amounts indicated in Notice 748 and Notice 3105, we requested that the GOC explain the factors and information the Guizhou Province price bureaus relied upon to generate their submitted price adjustments and tariffs. In its response, the GOC repeated its previously submitted, aforementioned responses regarding price derivation, *i.e.* that “price authorities” investigate price and cost, and that, for a variety of reasons, electricity rates reflect market supply and demand. As part of its response to this question, the GOC again failed to provide requested sources and relevant documentation to support its statements.

The above requested information is crucial to the Department’s analysis of how prices are set within the PRC. Absent this information, we are unable to rely on the information provided by the GOC. Thus, the GOC has not provided a complete response to our requests for information regarding this program. Accordingly, and consistent with prior cases in which the GOC provided a similar response,⁷¹ we preliminarily find that the GOC’s answers are inadequate and do not provide the necessary information required by the Department to analyze the provision of electricity in the PRC. The GOC did not provide the requested price proposal documents or explain how price increases were formulated and has significantly impeded this proceeding. As a result, we must rely on the facts otherwise available, pursuant to sections 776(a)(1) and 776(a)(2)(A) & (C) of the Act.

We preliminarily find that the GOC failed to cooperate by not acting to the best of its ability to comply with the Department’s request for information, in accordance with section 776(b) of the Act. While the GOC acknowledged the existence of the provincial price proposals, the GOC withheld them without explaining why it could not submit such documents on the record of this proceeding, particularly as the Department permits parties to submit information under an APO for limited disclosure if it is business proprietary in nature. Moreover, while the GOC provided electricity data for all provinces, municipalities and autonomous regions, this information is not germane to an analysis of how and why the prices of the tariff schedules in effect during the POR were drafted and implemented. The GOC also did not ask for additional time to gather and provide such information, nor did the GOC provide any other documents that would have answered the Department’s questions. Therefore, because the GOC failed to cooperate by not acting to the best of its ability in responding to the Department’s request for this information, an

⁷¹ See, *e.g.*, *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*OTR Tires from the PRC Final Determination*) and accompanying Issues and Decision Memorandum (IDM) at 24; see also *Aluminum Foil from the PRC Preliminary Determination* and PDM at 37-41.

application of adverse facts available pursuant to section 776(b) of the Act is warranted. Without the requested information, we must rely on the facts otherwise available to make a finding with respect to financial contribution or specificity because the details required to analyze the GOC's electricity price adjustment process are contained in the missing price proposals. In applying AFA, we preliminarily 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. The GOC failed to provide requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we are also drawing an adverse inference in selecting from the facts available to select the benchmark for determining the existence and amount of the benefit.⁷² The benchmark rates we selected are derived from information from the record of this investigation and are the highest electricity rates on this record for the applicable rate and user categories.⁷³

D. Provision of Land Use Rights for LTAR

As discussed below in the section "Programs Preliminarily Determined to be Countervailable," the Department is investigating the provision of four land-use rights programs for less than adequate remuneration: Government Provision of Land to State-Owned Enterprises (SOEs); Provision of Land-Use Rights to OTR Tire Producers for LTAR; Provision of Land for LTAR to Foreign-Invested Enterprises (FIEs); and Provision of Land-Use Rights in Industrial and Other Special Economic Zones (SEZs) for LTAR. We requested information from the GOC regarding these four programs.

Our review of the GOC's initial questionnaire response shows that the GOC did not respond fully to certain sections regarding these programs. Specifically, we asked the GOC to identify all instances in which it provided land or land-use rights to the mandatory respondents during the AUL.⁷⁴ Rather than responding directly to this question, the GOC instead referred the Department to cooperating respondent Guizhou Tyre's questionnaire responses.⁷⁵ Similarly, the Department asked the GOC to identify the instances in which land or land-use rights were provided in industrial and other economic zones. In response, the GOC referred the Department to its previous answer regarding the instances in which the GOC provided land or land-use rights to the mandatory respondent,⁷⁶ *i.e.*, the GOC again directed us to Guizhou Tyre's questionnaire responses.

Next, in response to our request to explain the basis upon which the land or land-use rights were provided (*i.e.*, status or activity) to the mandatory respondents, GOC stated that the provisions of land or land-use rights were not contingent upon the firm's status or activity.⁷⁷ The Department asked a similar question regarding the basis for providing land or land-use rights in industrial and

⁷² See section 776(b) of the Act.

⁷³ See "Countervailing Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Calculation Memorandum for Guizhou Tyre Co., Ltd. and its affiliates," dated concurrently with this memorandum (*Guizhou Tyre Preliminary Calculation Memorandum*).

⁷⁴ See GOC May 3, 2017 IQR at 151.

⁷⁵ *Id.* We note that the Department's requests for information in this regard were not limited any particular respondent.

⁷⁶ See GOC May 3, 2017 IQR at 156.

⁷⁷ *Id.* at 34.

other economic zones, to which the GOC again responded by referring to the previous answer,⁷⁸ stating that these land or land-use rights are not contingent upon status or activity.

The information requested regarding the provision of land and land-use rights to the mandatory respondents and the basis for which they were provided is crucial for our analysis to determine whether an alleged program is a financial contribution and specific. This type of information has been provided and verified in previous investigations.⁷⁹

In its initial questionnaire response, the GOC stated that the provision of land or land-use rights were not contingent upon status or activities; however, the GOC did not provide any evidence to support this statement. Its statement, alone, therefore cannot be considered reliable record evidence upon which we can make a determination. Given that the GOC has provided information and supporting evidence regarding the provision of land and land-use rights in previous proceedings, we preliminarily determine that the GOC has, but did not provide, the necessary information that was requested of it and, thus, that the Department must rely on “facts otherwise available” in issuing its preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, because the GOC failed to provide information it is able to provide, we preliminarily find that the GOC did not act to the best of its ability to comply with our request for information. Consequently, we preliminarily find that AFA is warranted, pursuant to section 776(b) of the Act. In applying AFA, we preliminarily find that the GOC’s provision of land-use rights 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. For details regarding the remainder of our analysis for this program, including the benefit determination, *see* the “Analysis of Program” section below.

E. Export Buyer’s Credits from State-Owned Banks

Under the new section 776(d) of the Act, the Department may use as AFA 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, 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 have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁸⁰

The Department has determined that the use of AFA is warranted in determining the countervailability of the Export Buyer’s Credit program because the GOC did not provide the requested information needed to allow the Department to fully analyze this program. In our initial questionnaire, we requested that the GOC provide all “the information requested in the

⁷⁸ *Id.* at 37.

⁷⁹ *See, e.g., See Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 72 FR 71360, 71363 (December 17, 2007)(*OTR Tires from the PRC Preliminary Determination*), and accompanying Preliminary Determination Memorandum (PDM) at page 10 (“we examined these companies’ land-use rights agreements and discussed the agreements with the relevant government authorities”) (unchanged in the *OTR Tires from the PRC Final Determination*).

⁸⁰ *See* section 776(d)(3) of the Act.

Department's March 20, 2017, Standard Questions Appendix⁸¹ with regard to all types of financing provided by state-owned banks" such as the Export Import Bank of China (EX-IM Bank) and the Bank of China through the Export Buyer's Credit program. Rather than responding to the questions in the Appendix, the GOC stated that it had confirmed "none of the U.S. customers of the respondents used Export Buyer's Credits from the EX-IM Bank during the POR."⁸² Moreover, in the same response, the GOC stated that the EX-IM Bank confirmed that it strictly limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million.⁸³ Information on the record indicates that the GOC revised this program in 2013 to eliminate this minimum requirement.⁸⁴ In response to our request that it provide the documents pertaining to the 2013 program revision, the GOC declined to provide them, stating that "since none of the U.S. customers of the respondents used the Export Buyer's Credit from EX-IM Bank during the POR, this question is not applicable."⁸⁵ We preliminarily find that the GOC has refused to provide the requested information or any information concerning the 2013 program revision, which is necessary for the Department to analyze how the program functions.

Moreover, information on the record also indicates that the EX-IM Bank may disburse Export Buyer's Credits directly or through a third-party partner and/or correspondent banks.⁸⁶ We asked the GOC to confirm whether it extended credit through third-party banks. Instead of providing a response stating whether third party banks play a role in the disbursement/settlement of export buyer's credits, the GOC replied that our "question is not applicable."⁸⁷ The Department also requested that the GOC provide a list of all third-party banks involved in the disbursement/settlement of Export Buyer's Credits. Instead of providing the information requested, the GOC again advised us that our "question is not applicable."⁸⁸

Pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by the Department that significantly impedes a proceeding, the Department uses facts otherwise available. Further, pursuant to section 776(b) of the Act, we preliminarily find that the GOC, by withholding information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted.

As noted above, the GOC has not answered the questions from the Department's March 20, 2017, Standard Questions Appendix with respect to this program. As a result, the GOC has not provided information that would permit us, absent the use of facts available pursuant to section 776 of the Act, to make a determination as to whether this program constitutes a financial contribution or whether this program is specific. Accordingly, we preliminarily find that the GOC has not cooperated to the best of its ability in response to the Department's specific information requests and determine, as AFA, that this program constitutes a financial

⁸¹ The Standard Questions Appendix solicits general information about a program including questions about the program's operation and eligibility criteria.

⁸² See GOC May 3, 2017 IQR at 139.

⁸³ *Id.* at 140.

⁸⁴ See Memorandum to The File, "Placing Information on the Record," at Attachment 1 page 2 (September 16, 2016).

⁸⁵ See GOC June 26, 2017^{1st} SQR at 10-11.

⁸⁶ See Memorandum to The File, "Placing Information on the Record," at Attachment 2 page 5 (September 16, 2016).

⁸⁷ See GOC June 26, 2017^{1st} SQR at 10-11.

⁸⁸ *Id.*

contribution and meets the specificity requirements of the Act.⁸⁹ We also note that the GOC has not provided information with respect to whether the EX-IM Bank limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million. In addition, the GOC has not provided information on whether it uses third-party banks to disburse/settle Export Buyer's Credits. Such information is critical to understanding how Export Buyer's Credits flow to/from foreign buyers and the EX-IM Bank. Absent the requested information, the GOC's and the participating respondent company's claims of non-use of this program are not verifiable. Therefore, as AFA, we preliminarily find that Guizhou Tyre used and benefited from this program.

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.⁹⁰ In accordance with the AFA rate selection methodology described earlier, we are applying an AFA rate of 2.04 percent *ad valorem*, the highest rate determined for a similar program in the previous OTR Tires Administrative Review from the PRC, as the rate for each respondent.⁹¹

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."⁹² The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.⁹³

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.⁹⁴ 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.⁹⁵

With regard to the reliability aspect of corroboration, we note that the rate on which we are relying is a subsidy rate calculated in another PRC CVD proceeding. Further, the calculated rate was based on information about the same or similar programs. Moreover, no information has

⁸⁹ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) IDM at "Use of Facts Otherwise Available and Adverse Inferences."

⁹⁰ 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*) IDM at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-74 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

⁹¹ See *Certain New Pneumatic Off-the Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 18285 (April 18, 2017), and accompanying Issues and Memorandum (IDM) at Comment 10; see also *Guizhou Tyre Final Results Calculation Memorandum* at 5.

⁹² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

⁹³ *Id.*

⁹⁴ *Id.* at 869-870.

⁹⁵ See section 776(d) of the Act.

been presented that calls into question the reliability of the calculated rate that we are applying as AFA for this program. Finally, 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 corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.⁹⁶

As discussed below, due to the failure of the GOC to cooperate to the best of its ability, the Department relied on information concerning a PRC subsidy program from another proceeding. In light of the above, the Department corroborated the rate it selected to use as AFA for this program to the extent practicable for these preliminary results. Because this rate reflects the actual behavior of the GOC with respect to similar subsidy programs, and lacking adequate information demonstrating otherwise, the Department corroborated the rate that it selected to the extent practicable.

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

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.⁹⁷ In *CFS from the PRC*, the Department found that:

given the substantial difference between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to the Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.⁹⁸

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.⁹⁹ Furthermore, on March 31, 2012, Public Law 112-99 was enacted which confirms that the Department has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.¹⁰⁰ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.¹⁰¹

⁹⁶ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

⁹⁷ 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*), IDM at Comment 6.

⁹⁸ *Id.*

⁹⁹ 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) IDM at Comment 1.

¹⁰⁰ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

¹⁰¹ See Public Law 112-99, 126 Stat. 265 §1(b).

VI. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the AUL of renewable physical assets used in the production of subject merchandise.¹⁰² The Department preliminarily finds the AUL in this proceeding to be 14 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.¹⁰³ The Department notified the respondents of the AUL in the Initial Questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

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

¹⁰² See 19 CFR 351.524(b).

¹⁰³ See U.S. Internal Revenue Service Publication 946 (2015), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.¹⁰⁴

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 upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.¹⁰⁵

Guizhou Tyre

In its affiliation response, Guizhou Tyre identified GTCIE as an exporter that is cross-owned with GTC, the producer of subject merchandise. As the Department found in *OTR Tires*,¹⁰⁶ GTCIE is 100 percent owned by GTC. Guizhou Tyre also stated that its “structure and affiliations have not changed in any significant way since the original {off-the-road tires} investigation.”¹⁰⁷ GTC reported that GTCIE is the sole exporter of subject merchandise produced by GTC and that all of the subject merchandise exported by GTCIE is produced by GTC.¹⁰⁸ Because GTCIE is a trading company, for purposes of this preliminary determination, in accordance with 19 CFR 351.525(c), we are cumulating subsidies received by GTCIE with subsidies received by GTC. As noted above, we refer to GTC and GTCIE collectively as “Guizhou Tyre.”

Guizhou Tyre also identified Guizhou Dalishi Tyre Co., Ltd. (GDC) and Guizhou Advance Rubber Co., Ltd. (GAR) as direct subsidiaries of GTC that produced subject merchandise during the period 2006 through 2010 for GDC and prior to 2010 for GAR.¹⁰⁹ GTC owns a majority interest in GDC and GAR; therefore, GDC and GAR satisfy the definition of cross-ownership provided in 19 CFR 351.525(b)(6)(vi). Because GDC produced subject merchandise during the period 2006 through 2010 and GAR produced subject merchandise prior to 2010, we are applying the attribution rule under 19 CFR 351.525(b)(6)(ii). As such, we are attributing any non-recurring subsidies received by either GDC or GAR during this period to the combined sales of GTC, GDC and GAR, for purposes of conducting the “0.5 percent test” provided under 19 CFR 351.524(b), and determining whether to allocate such subsidies over the AUL.

Guizhou Tyre identified Guiyang Industry Investment (Group) Co., Ltd. (GIIC) as the investment arm of the Guiyang SASAC that holds 25.33 percent of GTC’s shares.¹¹⁰ The remaining shares are publicly traded on the Shenzhen Stock Exchange. GIIC is a wholly government-owned asset management company for Guiyang SASAC. GIIC holds the state shares for many other companies, none of which are involved in the production or sales of subject merchandise and none of which provided inputs to GTC; GIIC itself is not involved in production or sales and does not have any of its own production facilities.¹¹¹

¹⁰⁴ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998).

¹⁰⁵ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600 (CIT 2001).

¹⁰⁶ See *OTR Tires from the PRC Preliminary Determination* at 72 FR 71360, 71363 (unchanged in the *OTR Tires from the PRC Final Determination*).

¹⁰⁷ See *Guizhou Tyre Affiliation Response* at 4.

¹⁰⁸ *Id.* at 1.

¹⁰⁹ *Id.* at 2.

¹¹⁰ *Id.* at 5.

¹¹¹ *Id.* at 6.

Given GIIC's minority share in GTC, we preliminarily determine that GIIC does not meet the definition of cross-ownership provided in 19 CFR 351.525(b)(6)(vi). In addition, consistent with *OCTG from China*,¹¹² in light of the GOC's direct ownership of GIIC (through Guiyang SASAC), and GIIC's function as a state asset management company with no operations of its own, we preliminarily determine that GIIC acted as a government agency, and there is no basis for treating it as a holding or parent company under 19 CFR 351.525(b)(6)(iii).¹¹³ As such, we have not required a full questionnaire response from GIIC. Moreover, for purposes of the preliminary determination, there is no indication that GIIC, as a holding company, served as the conduit for the transfer of a subsidy from the GOC to GTC, as contemplated by 19 CFR 351.525(b)(6)(iii).

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators we used to calculate the countervailable subsidy rate for the various subsidy programs described below are explained in further detail in the preliminary calculations memorandum prepared for this preliminary review.¹¹⁴

VII. INTEREST RATE BENCHMARKS, DISCOUNT RATES, INPUT, ELECTRICITY, AND LAND BENCHMARKS

We are examining loans received by the respondents from Chinese policy banks and state-owned commercial banks (SOCBs). We are also examining non-recurring, allocable subsidies.¹¹⁵ The derivation of the benchmark interest rates and discount rates used to measure the benefit from these subsidies are discussed below.

A. Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark.¹¹⁶ 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."¹¹⁷ As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate.

¹¹² See *OCTG from China* IDM at Comment 40.

¹¹³ In *OTR Tires*, the Department relied on this shareholding by a SASAC to determine that Guizhou Tyre is a state-owned enterprise. See *OTR Tires from the PRC Preliminary Determination*, 72 FR 71360, 71366. The facts remain that the next largest shareholder holds such a small percentage of shares that no other shareholder is in a position to challenge the Guiyang SASAC.

¹¹⁴ See Guizhou Tyre Preliminary Calculation Memorandum.

¹¹⁵ See 19 CFR 351.524(b)(1).

¹¹⁶ See 19 CFR 351.505(a)(3)(i).

¹¹⁷ See 19 CFR 351.505(a)(3)(ii).

For the reasons explained in *CFS from the PRC*,¹¹⁸ loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. In an analysis memorandum dated July 21, 2017, the Department has conducted a re-assessment of the lending system in China.¹¹⁹ Based on this re-assessment, the Department has concluded that despite reforms to date, the Government of the PRC's role in the system continues to fundamentally distort lending practices in the PRC in terms of risk pricing and resource allocation, precluding the use of interest rates in the PRC for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that 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.¹²⁰ The use of an external benchmark is consistent with the Department's practice.¹²¹

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *CFS from the PRC*¹²² and later updated in *Thermal Paper from the PRC*.¹²³ 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 PRC*,¹²⁴ this pool of countries captures the broad inverse relationship between income and interest rates. For 2002 through 2009, the PRC fell in the lower-middle income category.¹²⁵ Beginning with 2010, however, the PRC is in the upper-middle income category and remained there for 2011 to 2015.¹²⁶ Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for the years 2002-2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for the years 2010-2015.

After identifying the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in the 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.

¹¹⁸ See *CFS from the PRC*, and CFS IDM at Comment 10.

¹¹⁹ See Memorandum to the File, "Review of China's Financial System Memorandum," dated concurrently with this memorandum.

¹²⁰ See World Bank Country Classification <http://econ.worldbank.org/>; see also letter from the petitioners, "Petitioners' Benchmark Factual Information" at Exhibit 1 (May 17, 2017).

¹²¹ 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) IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

¹²² See *CFS from the PRC* IDM at Comment 10.

¹²³ See *Thermal Paper from the PRC*, and accompanying IDM at 8-10.

¹²⁴ See *CFS from the PRC* IDM at Comment 10.

¹²⁵ See Interest Rate Benchmark Memorandum, dated concurrently with this preliminary determination.

¹²⁶ See World Bank Country Classification, <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?locations=XM-XD-XT-XN>.

In each year from 2002-2009, and 2011-2015, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for the PRC's income group. This contrary result for a single year does not lead the Department 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 benchmark for the years from 2002-2009, and 2011- 2015. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper-middle income" by the World Bank for 2010 - 2015, and "lower-middle income" for 2002 -2009.¹²⁷ First, we did not include those economies that the Department considers to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.¹²⁸ Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate and excluded any countries with aberrational or negative real interest rates for the year in question.¹²⁹ Because the resulting rates are net of inflation, we adjusted the benchmark rates to include an inflation component before comparing them to the interest rates on loans issued to the respondents by SOCBs.¹³⁰

B. Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short-and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short-and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.¹³¹

In the *Citric Acid from the PRC Final Determination*, this methodology was revised by switching from a long-term markup based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where 'n' equals or approximates the number of years of the term of the loan in

¹²⁷ See Interest Rate Benchmark Memorandum.

¹²⁸ For example, in certain years, Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L'Este reported dollar-denominated rates; therefore, such rates have been excluded.

¹²⁹ For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country's real interest rates were 34.95 percent and 37.25 percent, respectively. See Interest Rate Benchmark Memorandum.

¹³⁰ See Interest Rate Benchmark Memorandum for the adjusted benchmark rates including an inflation component.

¹³¹ See *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) IDM at 8.

question.¹³² Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.¹³³

C. Foreign Currency-Denominated Loans

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

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where ‘n’ equals or approximates the number of years of the term of the loan in question.¹³⁴

D. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we are using as the discount rate the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.¹³⁵

E. Provision of Inputs for LTAR

The basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR is set forth in 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (Tier 1); (2) world market prices that would be available to purchasers in the country under investigation (Tier 2); or (3) an assessment of whether the government price is consistent with market principles (Tier 3).

In order to determine the appropriate benchmark with which to measure the benefits of inputs provided at LTAR under 19 CFR 351.511, the Department asked the GOC several questions concerning the structure of the industries for carbon black, nylon cord, synthetic rubber, and natural rubber. In response, the GOC provided the requested information regarding the number of domestic producers of each input, the number of such producers in which the GOC maintains and ownership or management interest, the total volume of production of each input, the volume and value of imports, exports and domestic consumption, and the rate of import tariffs in

¹³² 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) IDM at Comment 14 (*Citric Acid from the PRC Final Determination*).

¹³³ See Interest Rate Benchmark Memorandum for the resulting inflation adjusted benchmark lending rates.

¹³⁴ See Interest Rate Benchmark Memorandum.

¹³⁵ *Id.*

effect.¹³⁶ For each of the inputs, we have analyzed this information to determine whether domestic prices for the input in question can be used as the Tier 1 benchmark provided in 19 CFR 351.511(a)(2)(i):

The {Department} will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good . . . resulting from actual transactions in the country in question. Such a price could include prices stemming from actual transactions between private parties, {or} actual imports. . . In choosing such transactions or sales, the {Department} will consider product similarity; quantities sold {or} imported; and any other factors affecting comparability.

For all of the inputs, as discussed above in the section, “Use of Facts Otherwise Available and Application of Adverse Inferences,” we preliminarily determine that all of Guizhou Tyre’s supplying producers are “authorities.” Therefore, respondent’s purchases from these entities constitute financial contributions within the meaning of section 771(5)(D)(iii); accordingly, the prices stemming from these purchases are inappropriate to use as Tier 1 benchmarks. Below we analyze the information provided and the selection of a benchmark for each input.

1. *Carbon Black*

The GOC reported that of the 57 carbon black producers in operation during the POR, the GOC maintains an ownership or management interest in five.¹³⁷ According to data provided by the GOC, these five producers account for 27.50 percent¹³⁸ of domestic carbon black production during the POR. Given this relatively low level of government involvement in the market for carbon black, and absent record information indicating government policies restricting exports of the input, we would normally derive our benchmarks from Tier 1 prices, *i.e.*, from actual domestic transactions or imports. As discussed in the “Suppliers of Inputs are ‘Authorities’” section above, we preliminarily find that GOC did not act to the best of its ability to comply with the Department’s request for information with regard to ownership and control of the producers that supplied the input to respondent; consequently, as AFA, we find that all of the respondent’s domestic supplying producers are “authorities” within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily find that none of respondent’s domestic purchases of the input is appropriate for benchmarking. In addition, the data provided by the GOC shows that imports of the input into the PRC as a percentage of domestic production and consumption (1.78 and 2.05 percent, respectively), is relatively insignificant. Consequently, we also preliminarily find that import prices for the input likewise cannot serve as Tier 1 benchmarks.¹³⁹ Thus, we preliminarily find that there are no appropriate Tier 1 prices available from which to derive our benchmarks. Accordingly, to measure the adequacy of remuneration for the provision of carbon black, we are relying instead on world market prices (Tier 2) to derive our benchmarks as provided for in 19 CFR 351.511(a)(2)(ii).

¹³⁶ See GOC May 3, 2017 IQR at 2-77.

¹³⁷ *Id.* at 61.

¹³⁸ See Memorandum to the File, “Analysis of Market Distortion in the Markets for Carbon Black, Nylon Cord, Synthetic Rubber and Butadiene, and Natural Rubber,” dated concurrently with these preliminary results (Market Distortion Analysis).

¹³⁹ See, *e.g.*, *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Final Affirmative Determination*, 75 FR 59212 (September 27, 2010) IDM at 22 and Comment 14.

2. *Nylon Cord*

The GOC reported that, of the 60 nylon cord producers in operation during the POR, the GOC maintained an ownership or management interest in four.¹⁴⁰ According to data provided by the GOC, these producers account for 6.67 percent of domestic production.¹⁴¹ Given this relatively low level of government involvement in the market for the input, and absent record information indicating government policies restricting exports of the input, we would normally derive our benchmarks from Tier 1 prices, *i.e.*, from actual domestic transactions or imports. As discussed in the “Suppliers of Inputs are ‘Authorities’” section above, we are preliminarily finding that all of the respondent’s supplying producers are “authorities” within the meaning of section 771(5)(B) of the Act. Consequently, we preliminarily find that respondent’s domestic purchases of the input are not appropriate as Tier 1 benchmarks. Moreover, the level of imports of the input are relatively insignificant; according to data provided by the GOC, imports accounted for only 2.50 percent of total production in 2015.¹⁴² Additionally, Guizhou Tyre itself did not have imports of nylon cord during the POR. Thus, we preliminarily find that there are no appropriate Tier 1 prices available from which to derive our benchmarks. Accordingly, to measure the adequacy of remuneration for the provision of nylon cord, we are relying instead on world market prices (Tier 2) to derive our benchmarks as provided for in 19 CFR 351.511(a)(2)(ii).¹⁴³

3. *Synthetic Rubber*

According to data provided by the GOC, during the POR, state-owned producers accounted for 32.32 percent of the synthetic rubber produced in the country.¹⁴⁴ While this level of government involvement in the market is not insubstantial, in the absence of record information indicating government policies to restrict exports of the input, we preliminarily find no basis to find the domestic synthetic rubber market to be distorted; accordingly, we may rely on Tier 1 prices to derive our benchmarks. As discussed in the “Suppliers of Inputs are ‘Authorities’” section above, we preliminarily find that GOC did not act to the best of its ability to comply with the Department’s request for information with regard to ownership and control of the producers that supplied the input to respondent; consequently, as AFA, we preliminarily find that all of the respondent’s domestic supplying producers are “authorities” within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily find that respondent’s domestic purchases of the input are not appropriate as Tier 1 benchmarks. Turning to imports, the record information indicates that imports of synthetic rubber were substantial, accounting for 28.6 percent of total consumption.¹⁴⁵ Accordingly, we preliminarily find that import prices could serve as Tier 1 benchmarks. Guizhou Tyre reported imports of synthetic rubber during the POR. The Department preliminarily finds these import purchases to be an appropriate basis for deriving Tier 1 benchmark prices for synthetic rubber. As such, we have used Guizhou Tyre’s monthly weighted-average prices of imports of synthetic rubber as benchmarks.

4. *Natural Rubber*

¹⁴⁰ See GOC May 3, 2017 IQR at 40.

¹⁴¹ See Market Distortion Analysis Memorandum.

¹⁴² *Id.*

¹⁴³ See Guizhou Tyre Preliminary Calculation Memorandum.

¹⁴⁴ See Market Distortion Analysis Memorandum.

¹⁴⁵ *Id.*

According to data provided by the GOC, during the POR, state-owned producers accounted for 50.24 percent of the natural rubber produced in the country.¹⁴⁶ We preliminarily find that this level of GOC-controlled production is substantial. However, the data provided by the GOC also show that the volume of imports into the PRC was significant. Specifically, the PRC imported far more natural rubber than it produced during the POR, with imports accounting for approximately 83.30 percent of the natural rubber consumed in the country.¹⁴⁷ Thus, given the large penetration of imports of rubber in the PRC market and the lack of other evidence on the record to show that GOC-controlled companies or government agencies through other methods had control of, or otherwise distorted, this input market during the POR, we do not preliminarily find government distortion of the PRC rubber market.¹⁴⁸ Accordingly, we may rely on Tier 1 benchmarks.

As set forth in 19 CFR 351.511(a)(2)(i), Tier 1 benchmarks may be derived from prices resulting from actual transactions within the country of investigation. As discussed in the “Suppliers of Inputs are ‘Authorities’” section above, we preliminarily find that GOC did not act to the best of its ability to comply with the Department’s request for information with regard to ownership and control of the producers that supplied the input to respondent; consequently, as AFA, we preliminarily find that all of the respondent’s domestic supplying producers are “authorities” within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily find that respondent’s domestic purchases of the input are not appropriate as Tier 1 benchmarks and, thus, we turn to import prices. Guizhou Tyre reported imports of natural rubber during the POR. The Department preliminarily finds these import purchases to be an appropriate basis for deriving Tier 1 benchmark prices for natural rubber. As such, we have used Guizhou Tyre’s monthly weighted-average prices of imports of natural rubber as benchmarks.

F. Provision of Electricity for LTAR

As discussed above in the section, “Use of Facts Otherwise Available and Application of Adverse Inferences,” we are relying on AFA to select the highest electricity rates that are on the record of this review our benchmark for measuring the adequacy of remuneration.

G. Provision of Land-Use Rights for LTAR

As explained in detail in previous investigations, the Department cannot rely on the use of Tier 1 and/or Tier 2 benchmarks to assess the benefits from the provision of land for LTAR in the PRC.¹⁴⁹ For this review, the petitioner submitted the same Thailand benchmark information, *i.e.*,

¹⁴⁶ See Market Distortion Analysis Memorandum.

¹⁴⁷ *Id.*

¹⁴⁸ We make this finding based solely on the facts of this particular case. In other cases, even if there are similar levels of import penetration and SOE production as here, we may consider other indicators of market distortion in determining whether domestic prices can serve as an appropriate benchmark.

¹⁴⁹ See, e.g., *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015) (*PVLT from the PRC Final Determination*) IDM at 10-11; see also *Laminated Woven Sacks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *Laminated Woven Sacks from the People’s Republic of China: Final Affirmative*

“Asian Marketview Reports” by CB Richard Ellis (CBRE), that we relied upon in calculating land benchmarks in the CVD investigation of *Solar Cells from the PRC*.¹⁵⁰ We initially selected this information in the *Laminated Woven Sacks* investigation after considering a number of factors, including national income levels, population density, and producers’ perceptions that Thailand is a reasonable alternative to the PRC as a location for production in the region.¹⁵¹ We preliminarily find that these benchmarks, adjusted for inflation, are suitable for these preliminary results to measure any benefit received by the respondent companies through the provision of land by the government during the AUL of this investigation.

VIII. 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. *Income Tax Reductions for High- and New- Technology Enterprises*

The Department previously found that this program provides countervailable subsidies.¹⁵² According to Article 28.2 of the Enterprise Income Tax Law (EITL) of the PRC, if a company is designated to a High- and New- Technology Enterprise (HNTE), the government provides for the reduction of income tax rate from 25 percent to 15 percent for such companies.¹⁵³ The conditions to be met by an enterprise to be recognized as an HNTE are set forth in Article 93 of the Regulation on the Implementation of the Enterprise Income Tax Law.¹⁵⁴

The GOC reported that there are no anticipated changes in this program and the program has not been terminated.¹⁵⁵ In its Initial Questionnaire Response of May 3, 2017, the GOC confirmed that Guizhou Tyre was recognized as High or New Technology Enterprises and applied for,

Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008) (*Laminated Woven Sacks*).

¹⁵⁰ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from the PRC*) IDM at 6 and Comment 11.

¹⁵¹ The complete history of our reliance on this benchmark is discussed in *Solar Cells from the PRC* at 6 and Comment 11. In that discussion, we reviewed our analysis from the *Laminated Woven Sacks* investigation and concluded the CBRE data were still a valid land benchmark.

¹⁵² See *Citric Acid from the PRC First Review* IDM at “Reduced Income Tax Rate for High or New Technology Enterprises;” *Citric Acid from the PRC Second Review* IDM at “Reduced Income Tax Rate for High or New Technology Enterprises;” *Citric Acid from the PRC Third Review* IDM at “Reduced Income Tax Rate for High or New Technology Enterprises;” and *Aluminum Extrusions from the People’s Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013*, 80 FR 77325 (December 14, 2015) IDM at “Preferential Tax Policies for High or New Technology Enterprises” (*Aluminum Extrusions from the PRC Third Review Final*).

¹⁵³ See GOC May 3, 2017 IQR at 111-117 and *Aluminum Extrusions from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) IDM at “Preferential Tax Program for High or New Technology Enterprises” (*Aluminum Extrusions from the PRC First Review Final*).

¹⁵⁴ See *Aluminum Extrusions from the PRC First Review Final*.

¹⁵⁵ See GOC May 3, 2017 IQR at 116.

received, or accrued assistance under this program during the POR.¹⁵⁶

There is no new information on the record that would warrant reconsideration of our prior determinations. Therefore, consistent with *Citric Acid from the PRC First Review*, *Citric Acid from the PRC Second Review*, *Citric Acid from the PRC Third Review*, and *Aluminum Extrusions from the PRC Third Review*, and based on the record in this proceeding, we preliminarily continue to find that this program provides a countervailable subsidy. The reduced income tax rate paid by Guizhou Tyre under this program constitutes a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue foregone by the GOC, and provides a benefit to the recipient in the amount of the tax savings.¹⁵⁷

We also determine, consistent with *Citric Acid from the PRC First Review*, *Citric Acid from the PRC Second Review*, *Citric Acid from the PRC Third Review*, and *Aluminum Extrusions from the PRC Third Review*, that the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in the *Measures on Recognition of HNTEs* and, hence, is specific under section 771(5A)(D)(i) of the Act.

Guizhou Tyre reported receiving tax savings under this program in the amount indicated on income tax returns filed during the POR.¹⁵⁸ To calculate the benefit, we compared the income tax that Guizhou Tyre would have paid in the absence of the program, at the rate of 25 percent, to the income tax that the companies actually paid at the reduced rate of 15 percent. We treated the income tax savings as a recurring benefit, consistent with section 771(5)(E) of the Act and 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate, we divided the benefit by the total sales of the relevant cross-owned affiliates of Guizhou Tyre, in accordance with 19 CFR 351.525(b)(3), according to the methodology described in the “Attribution of Subsidies” section, above. On this basis, we calculated a countervailable subsidy of 0.26 percent, *ad valorem* for Guizhou Tyre.

2. *Enterprise Income Tax Law, Research and Development Program*

According to Article 30 of the Enterprise Income Tax Law of the PRC and Article 95 of the Implementing Regulation of the Enterprise Income Tax of the PRC, companies may deduct from their taxable income R&D expenses incurred in the development of new technologies, products, or processes at 150% of the actual accrued amount of total expenses, and therefore reduce the companies’ actual income tax payable.¹⁵⁹

Guizhou Tyre reported using this program during the POR.¹⁶⁰ This income tax deduction is a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone by the government, and it provides a benefit to the recipient in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily find that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus,

¹⁵⁶ *Id.* at 111.

¹⁵⁷ See section 771(5)(D)(ii) of the Act, section 771(5)(E) of the Act, and 19 CFR 351.509(a)(1).

¹⁵⁸ See Guizhou Tyre May 3, 2017 IQR at 46-49 and Exhibits I132 and I134.

¹⁵⁹ See GOC May 3, 2017 IQR at 119-129.

¹⁶⁰ See Guizhou Tyre May 3, 2017 IQR at 49-51 and Exhibit I35.

is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily find that this program constitutes a countervailable subsidy.

To calculate the benefit from this program to Guizhou Tyre, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax each respondent would have paid absent the tax deductions at the tax rate that would otherwise apply (*e.g.*, 15 percent as allowed under the program, Income Tax Reductions for High- and New- Technology Enterprises, discussed above). We then divided the tax savings by the appropriate total sales denominator for each respondent. On this basis, we calculated a countervailable subsidy of 0.11 percent *ad valorem* for the Guizhou Tyre.

3. *Export Seller's Credits from State-Owned Banks*

In *Citric Acid from the PRC Final Determination*, *Citric Acid from the PRC First Review*, *Citric Acid from the PRC Second Review*, the Department found that loans under this program conferred a countervailable subsidy.¹⁶¹ Record information in this review is consistent with those findings.

Guizhou Tyre has reported receiving loans that were outstanding during the POR under the Export Seller's Credit program from the Import and Export Bank of China (EXIM Bank).¹⁶² The GOC confirmed that Guizhou Tyre utilized export seller's credits from the EXIM Bank during the POR.¹⁶³

Therefore, consistent with the *Citric Acid* findings, we preliminarily find that loans provided by the GOC under this program constitute financial contributions under section 771(5)(D)(i) of the Act. Because receipt of loans under this program is tied to actual or anticipated exportation or export earnings, this program is specific pursuant to sections 771(5A)(B) of the Act. The loans also provide a benefit under 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans.

To calculate the benefit under this program, we compared the amount of interest the company paid on the outstanding loans to the amount of interest the company would have paid on a comparable commercial loan.¹⁶⁴ In conducting this comparison, we used the interest rates described in the "Interest Rate Benchmarks, Discount Rates, Input, Electricity, and Land Benchmarks" section above. We divided the total benefit amount by each company's appropriate export sales denominator during the POR. On this basis, we preliminarily find that the Guizhou Tyre received a countervailable subsidy of 0.58 percent *ad valorem*.

4. *Provision of Land-Use Rights to OTR Tire Producers for LTAR*

5. *Government Provision of Land to State-Owned Enterprises (SOEs)*

¹⁶¹ See *Citric Acid from the PRC Final Determination* and accompanying IDM at "Policy Lending;" *Citric Acid from the PRC First Review* IDM at "Export Seller's Credit for High- and New-Technology Products;" *Citric Acid from the PRC Second Review* IDM at "Export Seller's Credit for High- and New-Technology Products."

¹⁶² See Guizhou Tyre May 3, 2017 IQR at 54 and Exhibit I14 and I37.

¹⁶³ See GOC May 3, 2017 IQR at 132-138.

¹⁶⁴ See 19 CFR 351.505(a).

There are two alleged land-use rights subsidy programs under review during the POR: a) *Government Provision of Land to State-Owned Enterprises (SOEs)*; b) *Provision of Land-Use Rights to OTR Tire Producers for LTAR*.¹⁶⁵ Guizhou Tyre has reported purchasing land-use rights during the AUL and POR, and have provided supporting documentation.¹⁶⁶ The GOC has also confirmed the accuracy of Guizhou Tyre’s responses regarding its land-use rights provided by the GOC after December 11, 2001, through the end of the POR.¹⁶⁷

The “Notice of the Ministry of Industry and Information Technology on Issuing the Tire Industry Policy (Gong Chan Ye Zheng Ce {2010}(No. 2))” indicates that relevant government entities are encouraged to consider the *Tire Industry Policy* when making “land allocation” decisions.¹⁶⁸ Therefore, consistent with the Department’s previous investigations,¹⁶⁹ for purposes of this preliminary results, we have included under *Provision of Land-Use Rights to OTR Tires Producers for LTAR* program, all land-use rights purchased by respondents after September 15, 2010, regardless of the status of the company (*i.e.*, SOE, FIE) or whether the land was in a special zone.

As discussed above in the section, “Use of Facts Otherwise Available and Application of Adverse Inferences,” for the government’s provision of land-use rights, we are preliminarily basing our finding, in part, on AFA. We determine, as AFA, that the GOC’s provision of land-use rights is a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act, and that it is specific within the meaning of section 771(5A)(D) of the Act.

To determine the benefit pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we have relied on data provided by the respondents. We first compared the price actually paid by the mandatory respondents (and their cross-owned companies) for land-use rights to the Thailand industrial land benchmarks discussed above under the “Benchmarks and Discount Rates” section above, to the price actually paid for the land to derive the total benefit for each year in which a land-use right was purchased. We next conducted the “0.5 percent test” of 19 CFR 351.524(b)(2) for each year in which there was a purchase of land-use rights by dividing the total benefit by the appropriate sales denominator. When we found that the benefits were at least 0.5 percent of relevant sales, we allocated the total benefit amounts across the terms of the land-use agreement, using the standard allocation formula of 19 CFR 351.524(d). On this basis, we calculated and determined the benefit amount attributable to the POR. We divided this amount by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above.

On this basis, we preliminarily determine as AFA that the Guizhou Tyre received land-use rights under the *Government Provision of Land to SOEs* at a countervailing subsidy rate of 0.24 percent

¹⁶⁵ See letter from the petitioners, “Eighth Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China – Titan and the USW’s Pre-Preliminary Comments,” (July 21, 2017) (Petitioners’ Pre-Prelim Comments).

¹⁶⁶ See Guizhou Tyre May 3, 2017 IQR at 27-32, 60-64, and Exhibits I25 to I29, I41.

¹⁶⁷ See GOC May 3, 2017 IQR at 151-156.

¹⁶⁸ See *Truck and Bus Tires from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Determination*, 81 FR 43577 (July 5, 2016) PDM at 32.

¹⁶⁹ See *e.g.*, *PVLT from the PRC Preliminary Determination* PDM at 44.

ad valorem and land-use rights after 2010 under the program *Provision of Land-Use Rights to OTR Tires Producers for LTAR* at a countervailing subsidy rate of 2.21 percent *ad valorem*.

6. *Provision of Electricity for LTAR*

The Department has investigated and determined this program confers a countervailable subsidy for less than adequate remuneration in several prior China investigations.¹⁷⁰ As discussed in “Use of Facts Otherwise Available and Adverse Inference,” we are preliminarily basing our finding on the government’s provision of electricity, in part, on AFA. As AFA, we determine that the GOC’s provision of electricity is a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act, and that it is specific within the meaning of section 771(5A)(D) of the Act.

In a CVD proceeding, the Department requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, may preliminarily find that a financial contribution exists under the alleged program and that the program is specific.¹⁷¹ However, where possible, the Department will rely on the responsive producer’s or exporter’s records to determine the existence and amount of the benefit, to the extent that those records are useable and verifiable.

Guizhou Tyre provided data on its companies’ electricity consumption and the electricity rates paid during the POR.¹⁷² To measure the benefit under the program, we compared the rates paid by the respondent for its electricity to the highest rates that it could have paid in the PRC during the POR.

In deriving the benchmark,¹⁷³ we selected the highest non-seasonal provincial rates in the PRC during the POR for each applicable user category (*e.g.*, “large industrial user,” and “normal industrial and commercial user”), voltage class (*e.g.*, 1-10kv, 35-110kv), time periods (general, high peak, peak, normal, and valley), and basic fee (*e.g.*, “base charge/maximum demand”) as provided by the petitioners.¹⁷⁴ This benchmark reflects the use of AFA, which we applied as a result of the GOC’s failure to act to the best of its ability in providing requested information about its provision of electricity in this investigation. We calculated benchmark electricity payments by multiplying consumption volumes by the benchmark electricity rate corresponding to the user category, voltage class, and time period (*i.e.* peak, normal, and valley), where applicable. We then compared the calculated benchmark payments to the actual electricity payments made by the company during the POR. Where the benchmark payments exceeded the payments made by the company, a benefit was conferred. Based on this comparison, we

¹⁷⁰ See, *e.g.*, *Certain Seamless Carbon and Alloy Steel SLP Pipe* IDM at 18-19; *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) IDM at 22-23; *PVLT Tires* IDM at 35-36.

¹⁷¹ See, *e.g.*, *Hardwood and Decorative Plywood from the People’s Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013) IDM at Comment 3, “Provision of Electricity.”

¹⁷² See Guizhou Tyre May 3, 2017 IQR at 64-66 and Exhibit I42.

¹⁷³ See 19 CFR 351.511(a)(2).

¹⁷⁴ See letter from the petitioners, “Eighth Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China-Titan and the USW’s Benchmark Factual Information,” at Exhibit 1 (May 17, 2017).

preliminarily find that electricity was provided for LTAR to the Guizhou Tyre.

To calculate the countervailable subsidy rates for the POR, we summed each individual company's benefits and divided the amount by the appropriate sales denominator for the POR. On this basis, we determine that the Guizhou Tyre received a countervailable subsidy of 1.14 percent *ad valorem*.¹⁷⁵

7. Government Policy Lending

The Department determined in the original investigation that this program was countervailable.¹⁷⁶ Specifically, we found that policy lending was *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, constituted financial contributions by "authorities" (*i.e.*, state-owned commercial banks) within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act, and provided benefits within the meaning of section 771(5)(E)(ii) of the Act equal to the difference between what the recipients paid on loans from government-owned banks and the amount they would have paid on comparable commercial loans.¹⁷⁷ The record information in this segment of the proceeding supports the same findings and there is otherwise no other information on the record that leads us to reconsider that determination. Therefore, we preliminarily continue to find that this program provides a countervailable subsidy.

In its initial response, the GOC stated that this program does not exist and that no loans to any of the respondents were issued pursuant to a policy lending program. The GOC further claimed that if an industrial policy existed, it had "no connection to or effect upon the decision of any bank to issue loans to any respondent," and thus those loans did not constitute a countervailable subsidy.¹⁷⁸ The GOC provided no documentation in support of these assertions that would call into question the Department's conclusions from the investigation. In addition, information on the record demonstrates that the GOC still encourages the tire industry. Article 1 of the *Tire Industry Policy* states, "According to the needs of economic and social development, in accordance with the overall objectives of the development plan and petrochemical industry, through mergers and acquisitions, layout optimization, overall control, elimination of the outdated, technological innovation, energy conservation and other measures to actively promote the structural adjustment of tire industry and make it stronger."¹⁷⁹

In addition, certain tire inputs, including synthetic rubber, are also among the "Encouraged Category" of projects listed in the "Catalogue for the Guidance of Foreign Investment Industries (Amended in 2011),"¹⁸⁰ a key component of the "Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment (No.40{2005}Guo Fa),"¹⁸¹ which contains a list of encouraged projects the GOC develops through loans and other forms of assistance, and which the Department relied upon in prior specificity determinations.¹⁸²

¹⁷⁵ See Guizhou Tyre Preliminary Calculation Memorandum.

¹⁷⁶ See *OTR Tires Final Determination* IDM at "Government Policy Lending."

¹⁷⁷ *Id.*

¹⁷⁸ See GOC May 3, 2017 IQR at 2.

¹⁷⁹ See GOC May 3, 2017 IQR.

¹⁸⁰ See the petitioners' comments re: the Initial Questionnaire Responses at Exhibit 27.

¹⁸¹ *Id.* at Exhibit 28.

¹⁸² See *PVLT from the PRC Final Determination* IDM at 31.

Guizhou Tyre reported having loans outstanding from Chinese policy banks or SOCBs during the POR under this program.¹⁸³ To calculate the benefit, we used the benchmarks described under “Benchmark and Discount Rates” above. We divided the total benefits received during the POR by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in Guizhou Tyre’s preliminary calculation memoranda. On this basis, we determine a countervailable subsidy rate of 6.86 percent *ad valorem* for Guizhou Tyre under this program.

8. *Provision of Natural and Synthetic Rubber at LTAR*

The Department determined in the original investigation that this program was countervailable.¹⁸⁴ Specifically, we found that the provision of rubber to be specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, because the rubber is provided to a limited number of industries. Financial contribution and benefit were based on AFA because the GOC refused to respond to the Department’s questions regarding this program. The record information in this segment of the proceeding supports the same findings and there is otherwise no other information on the record that leads us to reconsider that determination. Therefore, we preliminarily continue to find that this program provides a countervailable subsidy.

As discussed above in the “Use of Facts Available and Application of Adverse Inferences” section, as AFA we are treating the supplying producers of rubber as authorities within the meaning of section 771(5)(B) of the Act and, therefore, that their sales of rubber to the respondent constitute a financial contribution under section 771(5)(D)(iii) of the Act.

Guizhou Tyre reported purchasing natural and synthetic rubber during the POR.¹⁸⁵ As discussed in the “Benchmarks and Discount Rates” section, the Department is selecting benchmark prices for these rubber purchases based on 19 CFR 351.511(a)(2). As discussed above, we are applying Tier 1 benchmark prices (*i.e.*, prices resulting from actual transactions from within the country, specifically import prices) for both natural and synthetic rubber.

Regarding delivery charges, where necessary, we included actual ocean freight and inland freight charges that Guizhou Tyre incurred to transport natural rubber and synthetic rubber to the Guizhou Tyre’s production facilities. Further, where appropriate, we added the actual import duty and value added tax (VAT) payments Guizhou Tyre made. We compared these monthly benchmark prices to the respondents’ reported purchase prices for individual domestic transactions, including VAT and any delivery charges. We then divided the total amount of these benefits by each company’s total sales during the POR and preliminarily determined a countervailable subsidy rate of 0.00 percent *ad valorem* for natural rubber and 7.86 *ad valorem* for synthetic rubber for Guizhou Tyre.

¹⁸³ See Guizhou Tyre May 3, 2017 IQR at 9-10 and Exhibit I14.

¹⁸⁴ See *OTR Tires Final Determination* IDM at 9-12.

¹⁸⁵ See Guizhou Tyre May 3, 2017 IQR at 10-12.

9. *Provision of Nylon Cord by SOEs for LTAR*

The Department determined in the first administrative review that this program was countervailable.¹⁸⁶ Specifically, we found the provision of nylon cord to be specific within the meaning of section 771(5A)(D)(iii)(II) of the Act, because the tire industry is the predominant user of nylon cord. Financial contribution and benefit were based on AFA because the GOC refused to respond to the Department's questions regarding this program. The record information in this segment of the proceeding supports the same findings and there is otherwise no other information on the record that leads us to reconsider that determination. Therefore, we preliminarily continue to find that this program provides a countervailable subsidy.

As discussed above in the "Use of Facts Available and Application of Adverse Inferences" section, as AFA we are treating the supplying producers of nylon cord as authorities within the meaning of section 771(5)(B) of the Act and, therefore, that their sales of nylon cord to the respondent constitute a financial contribution under section 771(5)(D)(iii) of the Act.

Guizhou Tyre reported purchasing nylon cord during the POR. As discussed in the "Benchmarks and Discount Rates" section, in selecting benchmark prices for nylon cord purchases under 19 CFR 351.511(a)(2)(ii), we are applying Tier 2 world market benchmark prices for nylon cord.

Regarding delivery charges, where necessary, we included ocean freight and inland freight charges that would be incurred to transport nylon cord to the Guizhou Tyre's production facilities. Further, where appropriate, we added import duties as reported by the GOC, and the value-added tax (VAT) applicable to import prices of nylon cord into the PRC, also as reported by the GOC.¹⁸⁷ In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for any ocean freight and/or import duties. We compared these monthly benchmark prices to the respondents' reported purchase prices for individual domestic transactions, including VAT and any delivery charges. We then divided the total amount of these benefits by each company's total sales during the POR and preliminarily determined a countervailable subsidy rate of 1.57 percent *ad valorem* for Guizhou Tyre.

10. *Provision of Carbon Black by SOEs for LTAR*

The Department determined in the first administrative review that this program was countervailable.¹⁸⁸ Specifically, we found that the provision of carbon black to be specific within the meaning of section 771(5A)(D)(iii)(II) of the Act, because the tire industry is the predominant user of carbon black. Financial contribution and benefit were based on AFA because the GOC refused to respond to the Department's questions regarding this program. The record information in this segment of the proceeding supports the same findings and there is otherwise no other information on the record that leads us to reconsider that determination. Therefore, we preliminarily continue to find that this program provides a countervailable subsidy.

¹⁸⁶ See *New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268 at 64275 (October 19, 2010) (unchanged in the Final Results) (*OTR Tires from the PRC 1st AR Preliminary Results*).

¹⁸⁷ See GOC May 3, 2017 IQR at 45-46 and Exhibit C.1.

¹⁸⁸ See *OTR Tires from the PRC 1st AR Preliminary Results* at 75 FR 64268 at 64275 (unchanged in the Final Results).

As discussed above in the “Use of Facts Available and Application of Adverse Inferences” section, as AFA we are treating the supplying producers of carbon black as authorities within the meaning of section 771(5)(B) of the Act and, therefore, that their sales of carbon black to the respondent constitute a financial contribution under section 771(5)(D)(iii) of the Act.

Guizhou Tyre reported purchasing carbon black during the POR.¹⁸⁹ As discussed in the “Benchmarks and Discount Rates” section, in selecting benchmark prices for carbon black purchases based on 19 CFR 351.511(a)(2), we are applying Tier 2 benchmark prices for carbon black.

Regarding delivery charges, where necessary, we included ocean freight and inland freight charges that would be incurred to transport carbon black to the Respondents’ production facilities. Further, where appropriate, we added import duties as reported by the GOC, and the value-added tax (VAT) applicable to import prices of carbon black into the PRC, also as reported by the GOC.¹⁹⁰ In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for any ocean freight and/or import duties. We compared these monthly benchmark prices to the respondents’ reported purchase prices for individual domestic transactions, including VAT and any delivery charges. We then divided the total amount of these benefits by each company’s total sales during the POR and preliminarily determined a countervailable subsidy rate of 4.35 percent *ad valorem* for Guizhou Tyre.

11. *Import Duty and VAT Exemptions on Imports of Raw Materials*

The Department determined in the first administrative review that this program was countervailable. Specifically, we found that import duty and VAT exemptions were (1) specific within the meaning of section 771(5A)(B) of the Act, because it was an export subsidy; and (2) provided a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOC. Information on the record of this review shows that that this program is specific pursuant to section 771(5A)(B) of the Act and provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone by the GOC.¹⁹¹

In the first administrative review, the GOC failed to respond to our questions regarding the operation and administration of this program. In particular, the GOC did not answer questions that would have allowed the Department to evaluate whether the GOC had an effective system in place to confirm which inputs are consumed in the production of exported products and in what amounts, and that the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export.¹⁹² Therefore, as AFA we found that entire amount of the exemption to confer a benefit.¹⁹³

Based on the information placed on the record by the GOC and Guizhou Tyre in this review, the Department preliminarily determines that the GOC does not have an effective system in place to confirm which inputs are consumed in the production of exported products and in what amounts, and that the system or procedure is reasonable, effective for the purposes intended, and is based

¹⁸⁹ See Guizhou Tyre May 3, 2017 IQR at 13-14 and Exhibit I19.

¹⁹⁰ See GOC May 3, 2017 IQR at 82-84 and Exhibit E.1, E.2, and E.3.

¹⁹¹ See *OTR Tires from the PRC 1st AR Preliminary Results* at 75 FR 64268, 64275 (unchanged in the Final Results).

¹⁹² See 19 CFR 351.519(a)(4).

¹⁹³ See *OTR Tires from the PRC 1st AR Preliminary Results* at 75 FR 64268, 64275 (unchanged in the Final Results).

on generally accepted commercial practices in the country of export. Specifically, the Department asked the GOC to explain how it determined the quantity of material (e.g., rubber, nylon cord and carbon black) consumed in the production process and to provide sample documentation or reports to support its explanation. In response, the GOC stated that it determined the quantity of material consumed in the production process in accordance with the provisions of Measures of Customs of the People's Republic of China for the Supervision and Administration of Processing Trade Goods (Customs Measures). The GOC did not specifically explain how it determined the quantity of rubber, nylon cord or carbon black consumed in the production process of OTR Tires. Moreover, it did not provide any documentation or reports to show how it determined the quantity of rubber, nylon cord or carbon black consumed by Guizhou Tyre or other tire producers in the production process.¹⁹⁴ Instead, the GOC submitted a copy of the Customs Measures and the Measures of the Customs of the People's Republic of China for the Administration of the Unit Consumption in Processing Trade (Measures of Unit Consumption).¹⁹⁵ While the GOC claims that it determined that the quantity of materials consumed in accordance with these measures, neither document provides details on how the GOC determined the specific quantity of rubber, nylon cord and carbon black consumed in the production process of OTR tires. In light of the GOC's failure to provide documentation demonstrating that it applied the process outlined in the Customs Measures and Measures of Unit Consumption in determining the quantity of rubber, nylon cord and carbon black consumed in the OTR tire production process, we preliminarily find that the GOC has not met the criteria for non-countervailability in 19 CFR 351.519(a)(4).¹⁹⁶

Because we have found that GOC did not demonstrate that it followed the process outlined in the Customs Measures and Measures of Unit Consumption in determining the quantity of rubber, nylon cord and carbon black consumed by Guizhou Tyre in the OTR Tire production, we have not further evaluated whether the GOC's system is reasonable and effective for the purposes intended, to confirm which inputs are consumed in the production of the exported products and in what amounts, in accordance with 19 CFR 351.519(a)(4). Therefore, we preliminarily determine that this program provides a benefit to the recipients in the amount of the import duties and VAT savings, in accordance with 351.519(a)(4)(i).¹⁹⁷

To calculate the amount of the benefit, we calculated the total amount of VAT and duties that would otherwise have been paid on the exempted materials, using the VAT and duty rates for the different types of materials reported by the GOC and the respondent companies. We then divided the total amount of these benefits by each company's total export sales during the POR and preliminarily determined a countervailable subsidy rate of 11.49 percent *ad valorem* for Guizhou Tyre.

12. *State Key Technology Renovation Project Fund*

The Department determined in the original investigation that this program was countervailable.¹⁹⁸ Specifically, we found that this fund was specific within the meaning of

¹⁹⁴ See GOC May 3, 2017 IQR at 82-102.

¹⁹⁵ *Id.*

¹⁹⁶ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From India: Final Affirmative Determination*, 81 FR 35323 (June 2, 2016) IDM at 18-19.

¹⁹⁷ See sections 771(5)(D)(ii) and 771(5)(E) of the Act; see also 19 CFR 351.510(a)(1).

¹⁹⁸ See *OTR Tires Final Determination* IDM at "State Key Technology Renovation Project Fund."

section 771(5A)(D)(i) of the Act because these grants were limited as a matter of law to certain enterprises. We also determined that these grants were a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act and thus providing a benefit in the amount of the grant in accordance with 19 CFR 351.504(a).¹⁹⁹ The record information in this segment of the proceeding supports the same findings and there is otherwise no other information on the record that leads us to reconsider that determination. Therefore, we preliminarily continue to find that this program provides a countervailable subsidy.

In its initial questionnaire response, the GOC states that this program was terminated in 2008.²⁰⁰ During the investigation, we treated these grants as non-recurring and allocated receipts of this grant over the AUL if the benefit received by a respondent company passed the 0.5 percent test.²⁰¹ Therefore, even if the program is terminated, the Department must determine if any past receipt of this grant is still benefitting the responding companies.

Guizhou Tyre reported receiving a disbursement from this program in 2003.²⁰² During the investigation, we allocated the grant amount received in 2003 over the AUL.²⁰³ Since the benefit for 2015 was calculated in the investigation, we are dividing the 2015 benefit amount from the investigation by Guizhou Tyre's 2015 sales. On this basis, we determine a countervailable subsidy rate of 0.04 percent *ad valorem* for Guizhou Tyre.

13. *VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries*

The Department determined in the original investigation that this program was countervailable.²⁰⁴ We stated that these exemptions (1) provided a financial contribution in the form of revenue forgone by the GOC; (2) provided a benefit to the recipients in the amount of the VAT and tariffs saved in accordance with section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1); and (3) since only certain domestic enterprises were eligible to receive VAT and tariff exemptions under this program, as well as FIEs, we found this program to be specific under section 771(5A)(D)(iii)(I) of the Act.²⁰⁵ The record information in this segment of the proceeding supports the same findings and there is otherwise no other information on the record that leads us to reconsider that determination. Therefore, we preliminarily continue to find that this program provides a countervailable subsidy.

Guizhou Tyre reported using this program during the AUL. Since these VAT and tariff exemptions were for the purchase of capital equipment, we are treating these exemptions as non-recurring benefits in accordance with 19 CFR 351.524(c)(2)(iii). To measure the benefits of each grant that are allocable to the POR, we first conducted the 0.5 percent test for each grant in accordance with 19 CFR 351.524(b)(2). We divided the total amounts of VAT and import duty exempted in each year by the relevant year's sales. If the amount of the exempted VAT and import duty provided in one year was greater than 0.5 percent of relevant sales, we allocated the

¹⁹⁹ *Id.*

²⁰⁰ See GOC May 3, 2017 IQR at 103.

²⁰¹ See *OTR Tires from the PRC Final Determination* IDM at "State Key Technology Renovation Project Fund."

²⁰² See Guizhou Tyre May 3, 2017 IQR at 25-26.

²⁰³ See *OTR Tires from the PRC Final Determination* IDM at 23.

²⁰⁴ *Id.* at "VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries."

²⁰⁵ *Id.*

benefit over the AUL. Where we found the benefits were less than 0.5 percent of the relevant year's sales during the POR, we expensed the benefit in the year of receipt. As none of the year's benefit exceeded 0.5 percent of the year's sales, we expensed all benefit to the year of receipt, including the benefit received in the POR. On this basis, we preliminarily determine a countervailable subsidy rate of 0.08 percent *ad valorem* for Guizhou Tyre.

14. *Export Buyer's Credits from State-Owned Banks*

Through this program, state-owned banks, such as the EX-IM Bank, provide loans at preferential rates for the purchase of exported goods from the PRC.

As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, in light of the GOC's non-cooperation with regard to this program, we are preliminarily relying on AFA to find that Guizhou Tyre used this program during the POI. We also determine as AFA that the program provides a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively.

On this basis, we determine a countervailable subsidy rate of 2.04 percent *ad valorem* for Guizhou Tyre.²⁰⁶

15. *Other Subsidy Programs*

Guizhou Tyre reported that it and its cross-owned affiliates received various grants during the AUL.²⁰⁷ The majority of the grants received by Guizhou Tyre do not pass the "0.5 percent test" provided in CFR 351.524(b)(2), and are allocated to the year of receipt. However, three grants that passed the "0.5 percent test" have been allocated over the AUL. Accordingly, we determine a countervailable subsidy rate of 0.23 percent *ad valorem* for these programs. In addition, Guizhou Tyre received several grants that were expensed during the POR²⁰⁸ and we calculated a countervailable subsidy rate of 0.04 percent *ad valorem* for these grants. On this basis, we preliminarily determine a countervailable subsidy rate of 0.27 percent *ad valorem* for the grant programs.

B. Programs Preliminarily Determined to be Not Used

1. Government Debt Forgiveness
2. Special Fund for Environmental Protection of 2004
3. Loan Forgiveness for SOEs
4. Funds for Outward Expansion of Industries in Guangdong Province
5. Export Interest Subsidy Funds for Enterprises Located in Guangdong and Zhejiang Provinces
6. Grants to Loss-Making SOEs
7. Exemption for SOEs from Distributing Dividends to the State
8. Provincial Support in Antidumping Proceedings

²⁰⁶ See *Certain New Pneumatic Off-the Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 18285 (April 18, 2017) and accompanying Issues and Memorandum (IDM); see also Guizhou Tyre Final Results Calculation Memorandum at 5.

²⁰⁷ See Guizhou Tyre QR at 30 and Exhibit II.J.1; see also Guizhou Tyre 1st SQR at 32-33 and Exhibit S1-38.

²⁰⁸ See Guizhou Tyre 2nd SQR at 4-10.

9. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Income Tax Program)
10. Preferential Tax Policies for Export-Oriented FIEs
11. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises
12. Tax Benefits for FIEs in Encourage Industries that Purchase Domestic Origin Machinery
13. VAT Rebate for FIE Purchases of Domestically Produced Equipment
14. Tax Subsidies to FIEs in Specially Designated Geographic Areas
15. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
16. Preferential Tax Policies for Advanced Technology Foreign Invested Enterprises
17. Preferential Tax Policies for Knowledge or Technology Intensive FIEs
18. Foreign Currency Retention Scheme
19. Discounted Loans for Export Oriented Enterprises
20. Preferential Tax Policies for Research and Development by FIEs
21. Preferential Tax Policies for High or New Technology FIEs
22. The Clean Production Technology Fund
23. Xuzhou Municipal Government Subsidies for Nurturing Industrial Enterprises (Groups) with Revenue Above 100 Billion Yuan and 10 Billion Yuan

C. Programs Preliminarily Determined to Provide no Benefit During the POR

Guizhou Tyre reported receiving benefits during the AUL under the following programs.²⁰⁹ However, these benefits either do not pass the “0.5 percent test” provided in CFR 351.524(b)(2), and they are allocated to the year of receipt, or they are less than 0.005 percent *ad valorem* during the POR, and they are not measurable. Thus, they provide no benefits during the POR.

1. Municipal Major Technical Innovation Program
2. Famous Brands Program
3. Local and Provincial Technology Renovation Grants to Guizhou Tyre and its Affiliates
4. Special Fund for Energy-Saving Technology Reform
5. Special Funds for the Development of Industrialization and Informationization of Guiyang
6. Grants for Export Credit Insurance
7. Local and Provincial Export Grants to Guizhou Tyre and Its Affiliates
8. Export Loan Interest Subsidies
9. Business Development and Industrial and Trading Development Funds
10. Local and Provincial Export Grants to Guizhou Tyre
11. Local and Provincial Technology Renovation Grants to Guizhou Tyre and Its Affiliates
12. Special Fund for Energy-Saving Technology Reform
13. Special Fund for the Development of Industrialization and Informatization of Guiyang
14. Export Loan Interest Subsidies
15. Advanced Technology Innovation Reward
16. Patent Supportive Reward
17. Well-known Brand Reward
18. Business Development Funds
19. Industrial and Trading Development Funds
20. Export Credit Insurance Supportive Funds

²⁰⁹ See Guizhou Tyre NSA QR at Exhibit II.J.1.

21. Business Development Specific Funds
22. 2013 Encouragement Funds to Private Enterprise

IX. 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.²¹⁰ 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.

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.²¹¹ 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*.²¹² Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time, and location to be determined. Parties will be notified of the date, time, and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.²¹³ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time, on the due dates established above.²¹⁴

X. VERIFICATION

The Department intends to verify the questionnaire responses of the GOC and Guizhou Tyre.

²¹⁰ See 19 CFR 351.224(b).

²¹¹ See 19 CFR 351.309(c)(2) and (d)(2).

²¹² See 19 CFR 351.310(c).

²¹³ See 19 CFR 351.303(b)(2)(i).

²¹⁴ See 19 CFR 351.303(b)(1).

XI. CONCLUSION

We recommend that you approve the preliminary results described above.

Agree

Disagree

10/2/2017

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance