



C-570-048
Expedited Review
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March 15, 2018

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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Results of Expedited Review of the Countervailing
Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate
from the People's Republic of China

I. SUMMARY

In this expedited review, the Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to Jiangsu Tiangong Tools Company Limited (TG Tools).¹

II. BACKGROUND

A. Initiation and Case History

On March 20, 2017, Commerce published the countervailing duty (CVD) order on certain carbon and alloy steel cut-to-length plate (CTL plate) from the People's Republic of China (China).² On April 19, 2017, Commerce received a request from TG Tools to conduct an expedited review in

¹ TG Tools is the exporter of subject merchandise and respondent in this expedited review. *See, e.g., Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Initiation of Expedited Review of the Countervailing Duty Order*, 82 FR 23197 (May 22, 2017). We refer to the respondent as TG Tools as well as the collective entity comprised of TG Tools and its cross-owned affiliates in this memorandum.

² *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Countervailing Duty Order*, 82 FR 14346 (March 20, 2017) (*Order*).



accordance with 19 CFR 351.214(k).³ Based upon this request, Commerce initiated an expedited review of the CVD order on CTL plate from China on May 16, 2017, for TG Tools.⁴

On May 16, 2017, Commerce issued the CVD questionnaire to the Government of China (GOC) and instructed the GOC to forward it to TG Tools.⁵ This questionnaire requested information regarding subsidies that were previously investigated. TG Tools submitted its affiliation response on May 30, 2017.⁶ On June 22, 2017, TG Tools filed its initial questionnaire response and on July 7, 2017, the GOC filed its initial questionnaire response.⁷

On August 3, 2017, and August 31, 2017, Commerce placed on the record memoranda analyzing China's financial system and banking system.⁸ On August 29, 2017, ArcelorMittal USA LLC (the petitioner) requested that Commerce conduct verification of the factual information submitted by TG Tools and its affiliated companies in this proceeding.⁹

Between June 2017 and December 2017, Commerce issued supplemental questionnaires to TG Tools and the GOC,¹⁰ and between June 2017 and January 2018, the petitioner submitted deficiency comments on the initial and supplemental questionnaire responses of TG Tools and the GOC.¹¹ Between June 2017 and December 2017, TG Tools and the GOC responded to our

³ See TG Tools' Letter re: Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Request for Expedited Review, dated April 19, 2017.

⁴ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Initiation of Expedited Review of the Countervailing Duty Order*, 81 FR 23197 (May 22, 2017).

⁵ See Commerce Letter re: Countervailing Duty Expedited Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Countervailing Duty Questionnaire, dated May 16, 2017 (Initial Questionnaire).

⁶ See TG Tools' May 30, 2017, Affiliation Response (TG Tools AFFR).

⁷ See TG Tools' June 22, 2016, Initial Questionnaire Response (TG Tools IQR); GOC's July 7, 2017, Initial Questionnaire Response (GOC IQR).

⁸ See Memorandum, "Review of China's Financial System Memorandum," dated August 3, 2017; Memorandum, "Countervailing Duty Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Banking Memoranda," dated August 31, 2017.

⁹ See the Petitioner's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from People's Republic of China – Request for Verification," dated August 29, 2017.

¹⁰ See Commerce Letter re: Countervailing Duty Expedited Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Supplemental Questionnaire for Affiliation Questionnaire Response, dated June 20, 2017; Commerce Letter to GOC re: Countervailing Duty Expedited Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Supplemental Questionnaire, dated September 27, 2017 (GOC SQ); Commerce Letter re: Countervailing Duty Expedited Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Section III Supplemental Questionnaire, dated October 11, 2017; Commerce Letter re: Countervailing Duty Expedited Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Section III Second Supplemental Questionnaire, dated December 8, 2017 (TG Tools Second SQ).

¹¹ See the Petitioner's Letter, "Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China – AMUSA's Deficiency Comments on Government of China's Section II Questionnaire Response," dated June 29, 2017; the Petitioner's Letter "Carbon And Alloy Steel Cut-to-Length Plate from People's Republic of China – AMUSA's Deficiency Comments on TG Tools' Section III Questionnaire Response," dated June 30, 2017; the Petitioner's Letter, "Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China – AMUSA's Deficiency Comments on TG Tools' Supplemental Questionnaire Response," dated November 13, 2017; the Petitioner's Letter, "Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China – AMUSA's

supplemental questionnaires.¹² On January 16, 2018, TG Tools submitted rebuttal comments in response to the petitioner’s January 8 Deficiency Comments.¹³ On March 1, 2018, the petitioner submitted comments regarding the upcoming preliminary results of review.¹⁴ On March 1, 2018, the petitioners submitted comments related to the upcoming preliminary results.¹⁵ On March 8, 2018, TG Tools submitted comments in response to the petitioner’s comments.¹⁶

On October 10, 2017, Commerce extended the deadline for the preliminary results of the CVD expedited review from November 13, 2017, to March 12, 2018, in accordance with 19 CFR 351.214(i)(2).¹⁷ On January 23, 2018, Commerce exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018. The revised deadline for the preliminary results of this review is now March 15, 2018.¹⁸

B. Period of Review

The period of expedited review (POR) is January 1, 2015, through December 31, 2015.

III. SCOPE OF THE ORDER

The products covered by the order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other

Deficiency Comments on TG Tools; Third Supplemental Questionnaire Response,” dated January 8, 2018 (January 8 Deficiency Comments).

¹² See TG Tools’ June 27, 2018, Affiliation Supplemental Response (TG Tools SAFFR); GOC’s October 11, 2017, Supplemental Questionnaire Response (GOC October 11 SQR); TG Tools’ November 3, 2017, First Supplemental Questionnaire Response (TG Tools November 3 SQR); TG Tools’ December 20, 2017, Second Supplemental Questionnaire Response (TG Tools December 20 SQR).

¹³ See TG Tools’ Letter, “Carbon and Alloy Steel Cut-to-Length Plate from the People’s Republic of China: Information Submitted to Rebut, Clarify or Correct AMUSA’s Questionnaire Comments,” dated January 16, 2018.

¹⁴ See the Petitioner’s Letter, “Carbon and Alloy Steel Cut-to-Length Plate from the People’s Republic of China – AMUSA’s Pre-Preliminary Comments,” dated March 1, 2018. On March 2, 2018, TG Tools submitted comments alleging that the petitioner’s comments contained untimely filed new factual information and on March 5, 2018, the petitioner submitted a response explaining that the alleged untimely filed new factual information was “a citation to and reliance on the Department’s methodology as stated in prior decision memoranda.”; see TG Tools’ Letter, “Carbon and Alloy Steel Cut-to-Length Plate from the People’s Republic of China: Request to Reject Untimely Filed Rebuttal Benchmark Information,” dated March 2, 2018; the Petitioner’s Letter, “Carbon and Alloy Steel Cut-to-Length Plate from the People’s Republic of China: AMUSA’s Response to TG Tools’ Request to Reject Submission,” dated March 5, 2018. We agree that, although the petitioner’s initial submission lacked the proper citations in support of its argument, the information submitted is clearly public information that has been stated by Commerce in numerous decision memoranda and, thus, does not constitute untimely filed new factual information.

¹⁵ See the Petitioner’s Letter, “Carbon and Alloy Steel Cut-to-Length Plate from the People’s Republic of China – AMUSA’s Pre-Preliminary Comments,” dated March 1, 2018.

¹⁶ See TG Tools’ Letter, “Carbon and Alloy Steel Cut-to-Length Plate from the People’s Republic of China: Response to AMUSA’s Pre-Preliminary Cmts.,” dated March 8, 2018.

¹⁷ See Memorandum, “Certain Carbon and Alloy Steel Cut-to-Length Plate from the People’s Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Expedited Administrative Review,” dated October 10, 2017.

¹⁸ See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government” (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above; and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of the order are products in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of the order unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of the order:

- (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;
- (2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL-A-12560,
- MIL-DTL-12560H,
- MIL-DTL-12560J,
- MIL-DTL-12560K,
- MIL-DTL-32332,
- MIL-A-46100D,
- MIL-DTL-46100-E,
- MIL-46177C,
- MIL-S-16216K Grade HY80,
- MIL-S-16216K Grade HY100,
- MIL-S-24645A HSLA-80;
- MIL-S-24645A HSLA-100,
- T9074-BD-GIB-010/0300 Grade HY80,
- T9074-BD-GIB-010/0300 Grade HY100,
- T9074-BD-GIB-010/0300 Grade HSLA80,
- T9074-BD-GIB-010/0300 Grade HSLA100, and
- T9074-BD-GIB-010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of the order;

- (3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;
- (4) CTL plate meeting the requirements of ASTM A-829, Grade E 4340 that are over 305 mm in actual thickness;
- (5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:
 - (a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):
 - Carbon 0.23-0.28,
 - Silicon 0.05-0.20,
 - Manganese 1.20-1.60,
 - Nickel not greater than 1.0,
 - Sulfur not greater than 0.007,
 - Phosphorus not greater than 0.020,
 - Chromium 1.0-2.5,
 - Molybdenum 0.35-0.80,
 - Boron 0.002-0.004,

- Oxygen not greater than 20 ppm,
 - Hydrogen not greater than 2 ppm, and
 - Nitrogen not greater than 60 ppm;
- (b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:
- (i) 270-300 HBW,
 - (ii) 290-320 HBW, or
 - (iii) 320-350HBW;
- (c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and
- (d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;
- (6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:
- (a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):
- Carbon 0.23-0.28,
 - Silicon 0.05-0.15,
 - Manganese 1.20-1.50,
 - Nickel not greater than 0.4,
 - Sulfur not greater than 0.010,
 - Phosphorus not greater than 0.020,
 - Chromium 1.20-1.50,
 - Molybdenum 0.35-0.55,
 - Boron 0.002-0.004,
 - Oxygen not greater than 20 ppm,
 - Hydrogen not greater than 2 ppm, and
 - Nitrogen not greater than 60 ppm;
- (b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;
- (c) Having the following mechanical properties:
- (i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18%

or more and Reduction of area 35% or more; having charpy V at -75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01-75; or

- (ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at -40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);
 - (d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and
 - (e) Conforming to magnetic particle inspection in accordance with AMS 2301;
- (7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:
- (a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):
 - Carbon 0.25-0.30,
 - Silicon not greater than 0.25,
 - Manganese not greater than 0.50,
 - Nickel 3.0-3.5,
 - Sulfur not greater than 0.010,
 - Phosphorus not greater than 0.020,
 - Chromium 1.0-1.5,
 - Molybdenum 0.6-0.9,
 - Vanadium 0.08 to 0.12
 - Boron 0.002-0.004,
 - Oxygen not greater than 20 ppm,
 - Hydrogen not greater than 2 ppm, and
 - Nitrogen not greater than 60 ppm.
 - (b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);
 - (c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or

more and Reduction of area 35% or more; having charpy V at -40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

- (d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and
- (e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the order may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

IV. APPLICATION OF THE CVD LAW TO IMPORTS FROM CHINA

On October 25, 2007, Commerce published its final determination on coated free sheet paper from China.¹⁹ In *CFS from China*, Commerce found that:

{G}iven the substantial differences between the Soviet-style economies and China's economy in recent years, {Commerce's} previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.²⁰

Commerce affirmed its decision to apply the CVD law to China in numerous subsequent determinations.²¹ Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that Commerce has the authority to apply the CVD law to countries designated as non-

¹⁹ 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 China*), and accompanying Issues and Decision Memorandum (CFS IDM).

²⁰ See CFS IDM at Comment 6.

²¹ See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from China*) and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

market economies under section 771(18) of the Act, such as China.²² The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.²³

V. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.²⁴ Commerce finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.²⁵ Commerce notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

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

B. Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of Commerce'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 *CVD Preamble* to Commerce's regulations further clarifies Commerce's cross-ownership standard.²⁶ According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

²² Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

²³ See Public Law 112-99, 126 Stat. 265 §1(b).

²⁴ See 19 CFR 351.524(b).

²⁵ See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

²⁶ See *Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998) (*CVD Preamble*).

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.²⁷

Thus, Commerce’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 Commerce’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.²⁸

TG Tools

TG Tools reported that during the POR, TG Tools exported subject merchandise produced by its cross-owned affiliate Tiangong Aihe Company Limited (TG Aihe) to unaffiliated customers in the United States.²⁹ In addition to TG Aihe, TG Tools reported the following additional cross-owned affiliates and submitted questionnaire responses on their behalf:

- Jiangsu Tiangong Group Company Limited (TG Group) - TG Group is a holding company with no production or sales activities during the POR.³⁰ TG Group was the former parent company of TG Tools and TG Aihe during the AUL period, but prior to the POR.³¹ TG Group transferred its shares in TG Tools to China Tiangong Company Limited in 2006.³²
- Danyang Tianfa Precision Forging Co., Ltd. (Tianfa Forging) – In 2013, all fixed assets and inventory of Tianfa Forging were sold to TG Aihe, after which Tianfa Forging did not engage in any sales or production activity.³³
- Tiangong Development Hong Kong Company Limited (TG HK) – TG Tools reported that TG HK is a Hong Kong-registered trading company and contends that Commerce has a consistent practice of not requiring CVD responses from entities located outside the country. However, TG Tools stated that a portion of its sales were conducted through TG HK and provided a complete response at Commerce’s request.³⁴
- Jiangsu Tiangong Mould Steel R&D Center Company Limited (TG R&D) – TG R&D reported that it was established in 2012 as a research and development (R&D) company with no production and export facilities but that it provided R&D services to TG Tools

²⁷ *Id.*, 63 FR at 65401.

²⁸ *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

²⁹ *See* TG Tools SAFFR at 2.

³⁰ *See* TG Tools IQR at Volume III at 4.

³¹ *See* TG Tools AFFR at 4.

³² *See* TG Tools November 3 SQR at 50; *see also* TG Tools AFFR at Exhibit 1.

³³ *See* TG Tools IQR at Volume IV at 4-5.

³⁴ *See* TG Tools SAFFR at Volume V at 4.

and TG Aihe during the POR.³⁵

Based on TG Tools' responses, we preliminarily determine that TG Group, TG Tools, and TG Aihe are cross-owned companies within the meaning of 19 CFR 351.525(b)(6)(vi), through TG Group's status as a holding and parent company during the AUL, and that TG Tools, TG Aihe, and TG R&D are cross-owned companies through ownership interest during the POR.³⁶ Due to the proprietary nature of the affiliation and ownership between TG Tools and its cross-owned companies, these findings are further discussed in the TG Tools Preliminary Calculation Memorandum. Because TG Tools reported that neither Tianfa Forging nor TG HK received any non-recurring subsidies during the AUL, we need not reach a conclusion regarding the cross-ownership of these companies. To the extent that any subsidies were provided to TG Tools, TG Aihe, and TG R&D, we are attributing the subsidies received by each company to the companies' own sales, in accordance with 19 CFR 351.525(b)(6)(i). To the extent that any subsidies were provided to TG Group, we are attributing the subsidy to the combined sales of TG Tools, TG Aihe, and TG R&D (less inter-company sales), in accordance with 19 CFR 351.525(b)(6)(iii).

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. We have identified the denominator we used to calculate the countervailable subsidy rate for each program, as discussed below and in the calculation memorandum prepared for these preliminary results.³⁷

VI. BENCHMARKS AND INTEREST RATES

Commerce is investigating loans received by TG Tools and its cross-owned companies from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies received by TG Tools.³⁸ The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

A. Renminbi-Denominated Loans

Section 771(5)(E)(ii) of the Tariff Act of 1930, as amended (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, Commerce uses comparable commercial loans

³⁵ See TG Tools SAFFR at Volume VI at 4.

³⁶ See TG Tools IQR at Volume I at 4 and TG Tools AFFR at 4 and Exhibits 1 and 2; *see also* Memorandum, "Preliminary Affirmative Countervailing Duty Expedited Review Results: Certain Carbon and Alloy Steel Cut-to-Length Plate from the People's Republic of China: Preliminary Results Calculations for Jiangsu Tiangong Tools Company Limited," (TG Tools Preliminary Calculation Memorandum) dated concurrently with these preliminary results.

³⁷ See TG Tools Preliminary Calculation Memorandum.

³⁸ See 19 CFR 351.524(b)(1).

reported by the company as a benchmark.³⁹ If the firm did not have any comparable commercial loans during the period, our regulations provide that we “may use a national average interest rate for comparable commercial loans.”⁴⁰

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from China*, 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.⁴¹ In an analysis memorandum dated July 21, 2017, Commerce has conducted a re-assessment of the lending system in China.⁴² Based on this re-assessment, Commerce 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, Commerce is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with our practice. For example, in *Lumber from Canada*, Commerce used U.S. timber prices to measure the benefit for government-provided timber in Canada.⁴³

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China* and later updated in *Thermal Paper from China*.⁴⁴ Under that methodology, we first determine which countries are similar to China in terms of gross national income, based on the World Bank’s classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from China*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, China fell in the lower-middle income category.⁴⁵ Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2015.⁴⁶ Accordingly, as explained below, we are using the interest

³⁹ See 19 CFR 351.505(a)(3)(i).

⁴⁰ See 19 CFR 351.505(a)(3)(ii).

⁴¹ 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 China*), and accompanying Issues and Decision Memorandum (CFS IDM) at Comment 10.

⁴² See Memorandum, “Review of China’s Financial System Memorandum,” dated August 31, 2017.

⁴³ See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Lumber from Canada*), and accompanying Issues and Decision Memorandum at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

⁴⁴ See CFS IDM at Comment 10; see also *Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*), and accompanying Issues and Decision Memorandum (Thermal Paper IDM) at 8-10.

⁴⁵ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups> (“World Bank Country Classification”); see also TG Tools Preliminary Calculation Memorandum.

⁴⁶ See World Bank Country Classification.

rates of lower-middle income countries to construct the benchmark and discount rates for 2001-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2015. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.⁴⁷

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

In each of the years from 2001-2009 and 2011-2015, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.⁴⁸ For 2010, however, the regression does not yield that outcome for China's income group.⁴⁹ This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmarks for the years from 2001-2009 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 2001-2009.⁵⁰ First, we did not include those economies that Commerce considered to be non-market economies for antidumping duty purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we remove any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year Commerce calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.⁵¹ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.⁵²

⁴⁷ See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying Preliminary Decision Memorandum at "Benchmarks and Discount Rates" (unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*)).

⁴⁸ See TG Tools Preliminary Calculation Memorandum.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

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, Commerce 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.⁵³

In *Citric Acid from China*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.⁵⁴ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁵⁵

The resulting inflation-adjusted benchmark lending rates are provided in the Preliminary Calculation Memorandum for TG Tools.⁵⁶

B. Foreign Currency-Denominated Loans

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

For any long-term foreign currency-denominated loans, Commerce 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. The resulting inflation-adjusted benchmark lending rates are provided in TG Tools Preliminary Calculation Memorandum.⁵⁷

C. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the GOC

⁵³ See, e.g., Thermal Paper IDM at 10.

⁵⁴ See *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from China*), and accompanying Issues and Decision Memorandum at Comment 14.

⁵⁵ See TG Tools Preliminary Calculation Memorandum.

⁵⁶ *Id.*

⁵⁷ *Id.*; for more details on foreign currency-denominated loans, see TG Tools Preliminary Calculation Memorandum.

provided non-recurring subsidies.⁵⁸ The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the TG Tools Preliminary Calculation Memorandum.⁵⁹

D. Input Benchmarks

We selected benchmarks for determining the benefit from the provision of steam coal at less than adequate remuneration (LTAR) in accordance with 19 CFR 351.511. Section CFR 351.511(a)(2) of Commerce’s regulations sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. 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 one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As discussed in the “Use of Facts Otherwise Available and Adverse Inferences” section, we are relying on “tier two” (world market) prices for the input benchmarks for these programs.

With respect to steam coal, TG Tools and TG Aihe reported purchases of steam coal during the POR.⁶⁰ TG Tools submitted tier-two benchmark data for steam coal sourced from the Global Trade Atlas (GTA) and based on the average of HTS subcategories 2701.11 (anthracite coal) and 2701.19 (other non-bituminous coal).⁶¹ The petitioner agreed that Commerce should calculate TG Tools’ countervailable benefit to measure the adequacy of remuneration using tier-two benchmarks.⁶² We, therefore, are basing our preliminary calculations regarding the provision of steam coal for LTAR on the benchmark data submitted by TG Tools.

With respect to ocean freight expenses, TG Tools submitted ocean freight data for shipping a twenty-foot container to Shanghai from various ports around the world from Xeneta, a freight rate market intelligence firm.⁶³ Although information on the record submitted by TG Tools indicates that the nearest port is Shanghai,⁶⁴ the Xeneta data are not actual price quotes.⁶⁵ As Commerce adjusts the benchmark price to reflect charges that companies would have paid, and as no additional parties submitted ocean freight information, we are preliminarily relying on information sourced from Maersk Shipping Line, representing actual price quotes for the shipment of cargo (*e.g.*, aluminum and glass) from various points around the world to Shanghai,

⁵⁸ See TG Tools Preliminary Calculation Memorandum.

⁵⁹ *Id.*

⁶⁰ See TG Tools IQR at Volume I at 23 and Exhibit 12, Volume II at 21 and Exhibit 12.

⁶¹ See TG Tools’ Letter, “Carbon and Alloy Steel Cut-to-Length Plate from the People’s Republic of China: Benchmark Submission,” dated February 13, 2018, (TG Tools Benchmark Submission) at 2 and Exhibit 1.

⁶² See the Petitioner’s Letter, “Carbon and Alloy Steel Cut-to-Length Plate from People’s Republic of China – AMUSA’s Pre-Preliminary Comments,” dated February 28, 2018, at 6 (citing to TG Tools Benchmark Submission).

⁶³ See TG Tools Benchmark Submission at 3 and Exhibits 3a-3c.

⁶⁴ See TG Tools IQR at Volume I at 24.

⁶⁵ See, *e.g.*, *Certain Aluminum Foil from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 37844 (August 14, 2017) and accompanying Preliminary Decision Memorandum (Aluminum Foil PDM) at 17; unchanged in *Countervailing Duty Investigation of Certain Aluminum Foil from the People’s Republic of China: Final Affirmative Determination*, 82 FR 9274 (March 5, 2018) and accompanying Issues and Decision Memorandum (*Aluminum Foil Final*).

China, which we are placing on the record of this review.⁶⁶ Commerce has used this type of data in previous cases, including *Silica Fabric from China*.⁶⁷

Regarding inland freight, TG Tools and TG Aihe reported that all steam coal was purchased domestically on a factory-delivered basis during the POR and, as such, no freight expenses were incurred on its steam coal purchases.⁶⁸ TG Tools submitted inland freight expenses incurred for the exports of steel each month during the POR.⁶⁹ As explained in the TG Tools Preliminary Analysis Memorandum, we adjusted the benchmark price to include delivery charges and value-added-tax (VAT) pursuant to 19 CFR 351.511(a)(2)(iv). Regarding delivery charges, we included ocean freight and the inland freight charges that would be incurred to deliver the inputs to TG Tools' production facilities.

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" (FA) if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.⁷⁰

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2)

⁶⁶ See TG Tools Preliminary Calculation Memorandum.

⁶⁷ See *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017) (*Silica Fabric from China*) and accompanying Issues and Decision Memorandum at Comment 11.

⁶⁸ See TG Tools IQR at Volume I at 24 and Volume II at 21.

⁶⁹ See TG Tools IQR at Volume I at 24 and Exhibits 13 and 14.

⁷⁰ On June 29, 2015, the Trade Preferences Extension Act of 2015, made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this investigation.

states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record.⁷¹ When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide {Commerce} with complete and accurate information in a timely manner."⁷² Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁷³

Section 776(c) of the Act provides that, when Commerce 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.⁷⁴ Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."⁷⁵ It is Commerce's practice to consider information to be corroborated if it has probative value.⁷⁶ In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.⁷⁷ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.⁷⁸ Furthermore, Commerce is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.⁷⁹

Finally, under the new section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.⁸⁰

⁷¹ See also 19 CFR 351.308(c).

⁷² See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (*Drill Pipe from China*); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

⁷³ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

⁷⁴ See also 19 CFR 351.308(d).

⁷⁵ See, e.g., SAA at 870.

⁷⁶ See SAA at 870.

⁷⁷ See, e.g., SAA at 869.

⁷⁸ See SAA at 869-870.

⁷⁹ See section 776(c)(2) of the Act; see also section 502(2) of the TPEA.

⁸⁰ See section 776(d)(3) of the Act.

It is our practice in CVD proceedings to apply an AFA rate using the highest calculated program-specific rates determined for the identical or similar programs.⁸¹ Specifically, in an administrative review, Commerce applies the highest calculated above-*de minimis* rate for the identical program from any segment of the same proceeding.⁸² If there is no identical program match within the same proceeding, or if the rate is *de minimis*, Commerce 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, Commerce 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, Commerce 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.⁸³

For purposes of these preliminary results, we are applying AFA in the circumstances outlined below.

A. Application of AFA: Provision of Land-Use Rights for LTAR

a. GOC

With respect to questions on TG Tool's land-use rights, Commerce requested information from the GOC pertaining to this allegation.⁸⁴ In its response, the GOC provided the Land Administration Law of the People's Republic of China (2004 Revision), Regulation on the Implementation of the Land Administration Law of the People's Republic of China (2014 Version), and Provisions on the Assignment of State-owned Construction Land Use Right through Bid Invitation Auction and Quotation.⁸⁵ The GOC did not identify instances in which land or land use rights were provided by the GOC to TG Tools, and only stated that we should refer to the mandatory respondent's questionnaire response for this information.⁸⁶ Although Commerce requested provincial, city, and county government laws governing land use rights, the

⁸¹ 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.

⁸² 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."

⁸³ *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), and accompanying IDM at "Selection of the Adverse Facts Available Rate."

⁸⁴ See GOC IQR at 85-88.

⁸⁵ *Id.* at Exhibits 57-59.

⁸⁶ *Id.* at 86.

GOC provided only central government laws.⁸⁷ These deficiencies notwithstanding, TG Tools stated that its land-use rights were purchased from the local land authority and the land-use rights contracts and certificates purportedly related to the acquisition of land-use rights submitted by TG Tools and its cross-owned affiliates also indicate that they were purchased from the local land authority.⁸⁸ Accordingly, we find that TG Tools' land-use rights were provided by an "authority" within the meaning of section 771(5)(B) of the Act and that the provision of land-use rights constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

Commerce requested that the GOC provide a discussion of how the price of land or land-use rights was established and provide a reconciliation between the prices paid by TG Tools and those dictated by the laws and regulations of the relevant provinces, cities, and counties.⁸⁹ While the GOC provided a very brief discussion explaining that the price of land-use rights is established between companies and the local governments or between the entities that transfer the land-use rights, referring to Regulation on the Implementation of the Land Administration Law of China, it failed to explain fully how the price of the land-use was established between TG Tools and the local authorities and it did not reconcile the price paid by TG Tools and the price dictated by the laws of the relevant provinces, cities and counties.⁹⁰

Although the GOC provided a 1995 local land regulation for Jiangsu Province in response to a second request for "all local planning documents relevant to the land use rights acquired by TG Tools and its cross owned companies over the AUL period," the GOC responded to our second request for documents from the local government authorities regarding TG Tools' acquisition of land-use rights by instructing Commerce to refer to the questionnaire response of TG Tools.⁹¹

Because the GOC did not provide complete responses to Commerce's questions regarding the derivation of the prices paid by TG Tools for land-use rights, Commerce is unable to determine whether the provision of these land-use rights was specific. Therefore, we preliminarily determine that the GOC withheld information that was requested of it and, thus, that Commerce must rely on facts available pursuant to section 776(a)(2)(A) of the Act in making our preliminary specificity determination for TG Tools. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. The GOC refused to provide necessary information regarding prices paid by TG Tools for its land use rights in its questionnaire responses. Consequently, the GOC has not cooperated to the best of its ability and an adverse inference is warranted in the selecting from the facts otherwise available.⁹² In applying AFA, we find that the provision of land tracts to TG Tools is specific within the meaning of section 771(5A) of the Act given the GOC's failure to provide information regarding how land prices were determined for the land-use rights held by TG Tools.

⁸⁷ *Id.* at 86-87.

⁸⁸ *See* TG Tools IQR at Volume III at 14 and Exhibits 6-8.

⁸⁹ *See* GOC IQR at 88.

⁹⁰ *Id.*

⁹¹ *See* GOC October 11 Response at 19-20 and Exhibit 4.

⁹² *See* section 776(b) of the Act.

b. TG Tools

TG Tools reported that its land was purchased from its related holding company, TG Group.⁹³ TG Group reported that its land-use rights were purchased from the local land authority and that some of the land-use rights were transferred to its affiliates, TG Tools and TG Aihe.⁹⁴ However, when Commerce requested clarification regarding certain discrepancies between the “Value in the contract” field and the “Price paid” fields in TG Tools’ IQR, TG Tools responded by merely referring to a “corrected spreadsheet” submitted with its response.⁹⁵ We issued TG Tools another supplemental questionnaire requesting clarification of a number of discrepancies and supporting documentation for its reported land-use rights.⁹⁶ However, TG Tools’ response continued to exhibit numerous discrepancies with regard to the area of land negotiated in the contracts and the area of land conveyed by the certificates. Because of the proprietary nature of this discussion, please see TG Tools Preliminary Calculation Memorandum for a more detailed description of this issue.

We preliminarily determine that TG Tools’ failure to clearly describe and document the circumstances surrounding its land-use rights acquisition and transfers renders us unable to conclude whether TG Tools has accurately reported its land-use rights or to determine whether it has properly disclosed all payments for its land use-rights. Therefore, we preliminarily find that TG Tools significantly impeded this review and did not cooperate to the best of its ability within the meaning of sections 776(a)(2)(C) and 776(b) of the Act. Accordingly, we based TG Tools’ land-use rate on AFA.⁹⁷ Because TG Tools failed to remedy or satisfactorily explain the deficiencies within the applicable time limits, subject to section 782(e) of the Act, we are disregarding TG Tools reported land-use data and, in accordance with section 776(d) of the Act, are assigning a program rate based upon AFA using a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving China.

In selecting this rate, we are guided by Commerce’s hierarchy as detailed above. As there is no calculated above-*de minimis* rate for the same or similar program in any segment of this proceeding, Commerce is applying the highest calculated above-*de minimis* subsidy rate for the identical or similar/comparable program from any proceeding involving the same country. Additionally, and as explained above, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party. Specifically, we are assigning an AFA program rate of 5.24 percent, the highest rate found for the same program in a prior CVD proceeding involving imports from China, for the provision of land-use rights for

⁹³ See TG Tools IQR at Volume I at 22, Volume II at 18, and Volume III at 14.

⁹⁴ *Id.* at Volume III at 14.

⁹⁵ See TG Tools November 3 SQR at 52 and Exhibit 24.

⁹⁶ See TG Tools Second SQ.

⁹⁷ See TG Tools December 20 SQR at 4-7.

LTAR to TG Tools.⁹⁸

B. Application of AFA: Provision of Steam Coal for LTAR

GOC – Whether Coal Producers Are “Authorities”

In our initial questionnaire, we requested information that would allow us to analyze whether steam coal producers are “authorities” within the meaning of section 771(5)(B) of the Act. Specifically, we requested a variety of information from the GOC to assess the relationship between the identified producers of these inputs and the GOC. Although the GOC provided basic registration information and a diagram purporting to represent the ownership structure of TG Tools’ steam coal supplier, we requested, and the GOC failed to provide, original Chinese and full translations of the producer’s articles of incorporation and capital verification reports.⁹⁹ In a supplemental questionnaire we again requested the missing documentation and the GOC refused to provide the documentation a second time.¹⁰⁰ However, the GOC stated that the input producer in question is a majority government owned enterprise.¹⁰¹ As explained in the Public Bodies Memorandum,¹⁰² record evidence demonstrates that producers in China that are majority-owned by the government possess, exercise, or are vested with, governmental authority. Record evidence demonstrates that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, consistent with prior findings¹⁰³ and the GOC’s failure to provide rebuttal information to the contrary, we determine that these enterprises are “authorities” within the meaning of section 771(5)(B) of the Act and that the provision of steam coal constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

GOC - Whether the Provisions of Steam Coal are Specific

Commerce asked the GOC to provide a list of industries in China:

Provide a list of industries in {China} that purchase steam coal directly, using a consistent level of industrial classification. Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use whatever resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects

⁹⁸ See *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 53473 (November 16, 2017) and accompanying Issues and Decision Memorandum (Hardwood Plywood IDM) at 14.

⁹⁹ See GOC IQR at 50-51 and Exhibits 31-32.

¹⁰⁰ See GOC October 11 SQR at 14-15.

¹⁰¹ *Id.* at 15.

¹⁰² See Memorandum, “CCP Public Bodies Memo,” dated concurrently with this memorandum.

¹⁰³ See, e.g., Aluminum Foil PDM at 32; unchanged in *Aluminum Foil Final*.

consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.¹⁰⁴

Commerce requests such information for purposes of its *de facto* specificity analysis, pursuant to 771(5A)(D)(iii).

In response, the GOC submitted an excerpt from a 2014 report showing total consumption up to 2013 and consumption broken out under very broad industrial categories (*e.g.*, electricity, building materials, *etc.*). Although the GOC contends that “steam coal has a number of uses and is used by a variety of industries throughout the Chinese economy,”¹⁰⁵ we had also requested that the GOC provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, *i.e.*, TG Tools and its cross-owned affiliates, as well as the totals purchased by every other industry. The GOC provided only the industry total volume of steam coal purchases for 2013, and failed to provide the volume and value for 2014 and 2015, as requested.¹⁰⁶ Moreover, the GOC failed to “clearly identify the industry in which the companies under investigation are classified.”¹⁰⁷

Therefore, consistent with past proceedings,¹⁰⁸ we preliminarily determine that necessary information is not available on the record and that the GOC withheld information that was requested of it, and, thus, that Commerce must rely on “facts available” for these preliminary results, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in selecting from the facts otherwise available pursuant to section 776(b) of the Act. In applying AFA, we find that steam coal is provided by the GOC to a limited number of industries and enterprises, and, hence, specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

GOC – Whether the Steam Coal Market is Distorted

In our Initial Questionnaire, we asked the GOC to respond to specific questions regarding the Chinese steam coal industry and market for the POR.¹⁰⁹ Specifically, we asked the GOC to:

- Provide the following information concerning the steam coal industry in {China} for the POI, including an explanation of the sources used to compile the information:
 - a. The total number of producers.
 - b. The total volume and value of Chinese domestic consumption of steam coal and the total volume and value of Chinese domestic production of steam coal.
 - c. The percentage of domestic consumption accounted for by domestic production.

¹⁰⁴ See GOC IQR at 70.

¹⁰⁵ *Id.* at 70-71.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See *Utility Scale Wind Towers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012), (*Wind Towers from China*) and accompanying Issues and Decision Memorandum (Wind Towers IDM) at Comment 13.

¹⁰⁹ See *e.g.*, Initial Questionnaire, Section II, “Provision of Steam Coal for LTAR – Questions Regarding the Steam Coal Industry.”

- d. The total volume and value of imports of steam coal.
- e. The percentage of total volume and (separately) value of domestic production that is accounted for by companies in which the Government maintains a majority ownership or a controlling management interest, either directly or through other Government entities. Please also provide a list of the companies that meet these criteria.
- f. If the share of total volume and/or value of production that is accounted for by the companies identified in paragraph “e”, above, is less than 50 percent, please provide the following information:
 - i. The percentage of total volume and value of domestic production that is accounted for by companies in which the Government maintains some, but not a majority, ownership interest or some, but not a controlling, management interest, either directly or through other Government entities.
 - ii. A list of the companies that meet the criteria under sub-paragraph “i”, above.
 - iii. A detailed explanation of how it was determined that the government has less than a majority ownership or less than a controlling interest in such companies, including identification of the information sources relied upon to make this assessment.
 - iv. Identify the precise product code/industry classification used to collect the reported data. Provide the complete description for this code/classification.
- g. A discussion of what laws, plans or policies address the pricing of steam coal, the levels of production of steam coal, the importation or exportation of steam coal, or the development of steam coal capacity. Please state which, if any, central and sub-central level industrial policies pertain to the steam coal industry.
 - If there is a steam coal association in {China}, please provide the rules or guidelines under which it operates and a list of its members.
 - Are there any or have there been in the POR any export or price controls on steam coal or any price floors or ceilings established?
 - Please state the VAT and import tariff rates in effect for steam coal in 2015 and the prior two years.
 - Was there an export tariff or quota on steam coal during the POI? If so, please report the tariff rate or quota amount in effect and provide a translated copy of the regulation/law in which the export tariff rate or quota is reported.

Commerce requests such information to inform its analysis of the degree of the GOC’s presence in the market and whether such presence results in the distortion of prices. The GOC failed to provide the number of producers, the volume and value of domestic consumption and production, and the percentage of domestic consumption accounted for by domestic production specific to steam coal.¹¹⁰ The GOC also failed to provide the volume and value of domestic production of steam coal accounted for by companies in which the GOC maintains a majority ownership.¹¹¹

¹¹⁰ See GOC IQR at 65-66.

¹¹¹ *Id.* at 67.

Commerce preliminarily determines that the GOC’s refusal to provide the information requested constitutes a lack of cooperation. The GOC has previously provided, and Commerce has verified, information from other government databases concerning the value and volume of production by enterprises producing input products.¹¹² Moreover, Commerce has verified the operation of the GOC’s “Enterprise Credit Information Publicity System,” which requires that the administrative authorities release detailed information of enterprises and other entities and is intended to bring clarity to companies registered in China.¹¹³ Based on this experience, Commerce is aware that this system is a national-level internal portal that holds certain information regarding any China-registered company. Among other information, each company must upload its annual report, make public whether it is still operating, and update any changes in ownership. The GOC has stated that all companies operating within China maintain a profile in the system, regardless of whether they are private or an SOE. Therefore, we determine that information related to the operation and ownership of companies within the steam coal industry is in fact available to the GOC.¹¹⁴

Because the GOC refused to provide requested information regarding the steam coal industry in China, as explained above, we preliminarily determine that the GOC withheld necessary information and failed to cooperate by not acting to the best of its ability to comply with our request for information necessary for our analysis of the GOC steam coal industry and market for the POR.¹¹⁵ Consequently, we find that an adverse inference is warranted in selecting from the facts otherwise available.¹¹⁶

Accordingly, as AFA, we preliminarily determine that the GOC’s significant involvement in the steam coal market in China results in distortion of the prices of steam coal such that they cannot be used as a tier one benchmark and, hence, the use of an external benchmark, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the Provision of Steam Coal for LTAR.

For further information on this program, *see* “Programs Found to Be Countervailable” below.

C. Application of AFA: Provision of Electricity for LTAR

The GOC did not provide complete responses to Commerce’s questions regarding the alleged provision of electricity for LTAR reported by TG Tools. These questions requested information to determine whether the provision of electricity for LTAR constituted a financial contribution

¹¹² *See e.g., Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013, 80 FR 77318 (December 14, 2015) and accompanying Issues and Decision Memorandum at Comment 2.*

¹¹³ *See Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination, 81 FR 46643 (July 18, 2016) and accompanying Preliminary Decision Memorandum at 21-22 (unchanged in Countervailing Duty Investigation of Stainless Steel Sheet and Strip from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part, 82 FR 9714 (February 8, 2017).*

¹¹⁴ *See, e.g., Aluminum Foil PDM at 32; unchanged in Aluminum Foil Final.*

¹¹⁵ *See Initial Questionnaire, at Section II, “Input Producer Appendix;” see also GOC IQR at 65-68.*

¹¹⁶ *See section 776(b) of the Act.*

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 with the meaning of section 771(5A) of the Act.

In order for Commerce 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 initial questionnaire, for each province in which a respondent is located, Commerce 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 how the final price increases were allocated across the province and across tariff end-user categories. We also 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.

Instead of providing the requested documents, the GOC stated that “proposals of this kind 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.”¹¹⁷ The GOC further stated that, it “believes that sufficient information exists on the record to make a determination regarding this program without this information but will work with {Commerce} to identify additional documentation so long as {Commerce} specifically identifies the information it believes is missing for its analysis.”¹¹⁸ In a supplemental questionnaire, Commerce reiterated its request for a complete response to the Electricity Appendix and also requested specific explanations and documentation regarding the price setting practices of the pricing authorities as detailed in the GOC’s IQR. To each request the GOC provided an identical response referring to its initial response.¹¹⁹ Specifically, Commerce requested information regarding statements made in the GOC’s IQR, including “reports generated by the relevant authorities who conducted the investigations and inspections regarding electricity prices and costs,” the “prices for fuel and coal during the POR used to determine electricity costs,” a “description of how adequate consideration is given to interests of the power generating transmission and distribution companies,” a “description of how the capacity of users and residents is taken into account,” and “POR examples of NRDC correspondence with power generation companies, grid companies and local price bureaus in cross checking electricity cost elements.”¹²⁰ In response, the GOC reiterated its objection to the investigation of this program and, for each request for information, instructed Commerce to “refer to the response to Provision of Electricity for LTAR program in the initial questionnaire response submitted by the GOC on July 7, 2017, for the requested information,”¹²¹ which was not responsive to our requests for information.

¹¹⁷ See GOC IQR at 80.

¹¹⁸ *Id.*

¹¹⁹ See GOC October 11 SQR at 18-19.

¹²⁰ *Id.*

¹²¹ *Id.*

Consequently, for these preliminary results, we find that the GOC withheld necessary information that was requested of it, and thus, that Commerce must rely on facts otherwise available in making our determination, pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Specifically, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in selecting from the facts otherwise available under section 776(b) of the Act. In applying AFA, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We also relied on AFA in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we selected are derived from information from the record of this review and are the highest electricity rates on this record for the applicable rate and user categories.¹²²

D. Application of AFA: Provision Of “Other Subsidies”

TG Tools, TG Aihe, and TG R&D reported that they received “Other Subsidies” during the POR and AUL in their initial questionnaire response.¹²³ The GOC's IQR stated that “{i}n the absence of allegations and sufficient evidence in respect of {sic} ‘other’ subsidies, consistent with Article 11.2 and other relevant articles of the WTO Agreement on Subsidies and Countervailing Measures no reply to this question is warranted or required.”¹²⁴ Therefore, we issued a supplemental questionnaire requesting that the GOC provide full questionnaire responses regarding the measurable “Other Subsidies” reported by TG Tools, TG Aihe, and TG R&D.¹²⁵ In its response, the GOC provided no additional information and only stated that “an answer to this question is premature absent a more direct inquiry supported by credible evidence and the initiation of a discrete investigation by {Commerce}.”¹²⁶

Based upon the above, we preliminarily determine that the GOC has withheld information that was requested of it, and, thus, that Commerce must rely on “facts available” in making our preliminary determination in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in selecting from the facts otherwise available, pursuant to section 776(b) of the Act. In applying AFA, we find that these “Other Subsidies” reported by TG Tools, TG Aihe, and TG R&D constitute a financial contribution pursuant to section 771(5)(D) of the Act and are specific within the meaning of section 771(5A) of the Act. We determined the benefit by dividing the amount of any measurable grant reported by TG Tools, TG Aihe, and TG R&D applicable to the POR by the appropriate sales denominator for TG Tools, TG Aihe, and TG R&D. *See*

¹²² *See* GOC IQR at Exhibit 53.

¹²³ *See* TG Tools IQR at Volume I at 28 and Exhibit 17, Volume II at 25 and Exhibit 13.

¹²⁴ *See* GOC IQR at 91.

¹²⁵ *See* GOC SQ.

¹²⁶ *See* GOC October 11 SQR at 21.

“Provision of ‘Other Subsidies’” section, below.

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. Policy Loans for the CTL Plate Industry

Based on our review of the information and responses of the GOC, we preliminarily determine that loans received by the CTL plate industry from SOCBs were made pursuant to government directives.

Record evidence demonstrates that the GOC, through its directives, has highlighted and advocated the development of the CTL plate industry. For instance, the Catalogue of Major Industries, Products, and Technologies Encouraged for Development in China (2000) indicates that the industry under consideration falls within the “Encouraged” category.¹²⁷ Under the general “Iron and steel” heading, it enumerates numerous subgroupings related to CTL plate production, such as “Production of heat- and cold-rolled stainless steel plate” and “Production of high-performance precision alloy plate and strip” as encouraged sectors.¹²⁸ Moreover, the Industrial Restructuring Guidance Catalogue (2011), lists the “Development and application of...high-strength wide and thick plates for vessels,... moderate thickness plates of not less than 420 MPa for buildings, bridges, and other structure” in the “encouraged” category.¹²⁹ This record evidence demonstrates that CTL plate production is contemplated as falling within these encouraged categories.

On the basis of the record information described above, we preliminarily determine that the GOC has a policy in place to encourage and promote the development and production of CTL plate through policy lending. The loans to CTL plate producers from policy banks and SOCBs in China constitute financial contributions from “authorities” within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act.¹³⁰ Finally, we determine that the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the GOC’s policy, as illustrated in the government plans and directives, is to encourage and support the growth and development of the CTL plate industry.

Pursuant to section 771(5)(E)(ii) of the Act, such financing provides a benefit equal to the difference between what the recipients paid on the loans and the amount they would have paid on comparable commercial loans. TG Tools, TG Aihe, and TG Group reported that they had loans

¹²⁷ See GOC IQR at Exhibit 17.

¹²⁸ *Id.* at Exhibit 16.

¹²⁹ *Id.* at Exhibit 22.

¹³⁰ See section 771(5)(E)(ii) of the Act.

outstanding during the POR, which were provided by SOCBs.¹³¹ To calculate the benefit under this program, we compared the amount of interest each company paid on their outstanding loans to the amount of interest they would have paid on comparable commercial loans.¹³² In conducting this comparison, we used the interest rates described in the “Benchmarks and Discount Rates” section above. We have attributed benefits under this program to the appropriate sales value, as discussed in the “Attribution of Subsidies” section above. On this basis, we preliminarily find that TG Tools received a countervailable subsidy of 7.10 percent *ad valorem*.

2. Preferential Income Tax Reductions for HNTEs

Under Article 28 of the Enterprise Income Tax Law (EITL), the income tax a firm pays is reduced to a rate of 15 percent from the standard 25 percent rate if an enterprise is recognized as an HNTE.¹³³ Commerce previously found this program to be countervailable.¹³⁴ The GOC reported that TG Tools and TG Aihe applied for, received or accrued assistance under this program during the POR.¹³⁵ TG Tools and TG Aihe also confirmed that they benefited from this program during the POR.¹³⁶

Consistent with our determination in *Shrimp from China*, we preliminarily determine that this program constitutes a financial contribution in the form of revenue forgone by the GOC, as provided under section 771(5)(D)(ii) of the Act. We further determine that the income tax reduction afforded by this program is limited as a matter of law to certain enterprises whose products are designated as being in “high-tech fields with state support,” and, hence, is *de jure* specific under section 771(5A)(D)(i) of the Act.

As provided under 19 CFR 351.509(a)(1) and (b)(1), we calculated the benefit as the difference between the taxes TG Tools and TG Aihe would have paid under the standard 25 percent tax rate and the taxes the companies actually paid under the preferential 15 percent tax rate, as reflected on the tax returns filed during the POR. We treated the tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1). We then divided the POR benefit by the company’s total sales, as described in the “Attribution of Subsidies” section. On this basis, we calculated a net subsidy rate of 3.41 percent *ad valorem* for TG Tools.

¹³¹ See TG Tools IQR at Volume I at 12 and Exhibit 8, Volume II at 10 and Exhibit 9, Volume III at 9 and Exhibit 5; TG Tools November 3 SQR at 7-8, 49-50, 51-52 and Exhibits 9, 20, and 22; TG Tools December 20 SQR at 8 and Exhibit 6.

¹³² See 19 CFR 351.505(a).

¹³³ See GOC IQR at 26-27, Exhibit 4 at Article 4 and 28, and Exhibit 5.

¹³⁴ See, e.g., *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013) (*Shrimp from China*) and accompanying Preliminary Decision Memorandum at 25; unchanged in *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013).

¹³⁵ See GOC IQR at 26.

¹³⁶ See TG Tools IQR at Volume I at 15, Volume II at 13.

3. Preferential Deduction of R&D Expenses for HNTes

The GOC reported that Article 30 of the EITL and Article 95 of the Implementation Regulation of the EITL (Regulation 512) allow enterprises to deduct, through income tax deductions, research expenditures incurred in the development of new technologies, products, and techniques.¹³⁷ Article 95 of Regulation 512 provides that, if “no intangible asset has been formed” from the research and development of new technologies, new products, and new techniques, an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount.¹³⁸ Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs.¹³⁹ TG Tools reported benefitting from this program during the POR.¹⁴⁰ Commerce previously found in *Wind Towers from China* and *Solar Cells from China* that this program provides a countervailable subsidy.¹⁴¹

This income tax deduction is a financial contribution in the form of revenue forgone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). Consistent with our previous findings, 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 research and development in eligible high-technology sectors and, thus, is specific under section 771(5A)(D)(i) of the Act. Commerce verified the specificity of this program in *Wind Towers from China*.¹⁴²

To calculate the benefit from this program to TG Tools, we treated the tax credits as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax the companies would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator (exclusive of inter-company sales), as described in the “Subsidies Valuation” section, above. On this basis, we preliminarily determine a countervailable subsidy rate of 0.27 percent *ad valorem* for TG Tools.

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

The Circular of the State Council on Adjusting Tax Policies on Imported Equipment (GUOFA {1997} No. 37) exempts FIEs and certain domestic enterprises from VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into a prescribed list of non-eligible items, in order to encourage foreign investment and to introduce

¹³⁷ See GOC IQR at 7 at Exhibits 4 and 5.

¹³⁸ *Id.* at 8-9 and Exhibit 5 at Article 95.

¹³⁹ *Id.*

¹⁴⁰ See TG Tools IQR at Volume I at 9.

¹⁴¹ See *Wind Towers* IDM at 18-19 and Comment 17; see also *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 China*), and accompanying Issues and Decision Memorandum at 17 and Comment 25.

¹⁴² See *Wind Towers* IDM at 18-19.

foreign advanced technology equipment and industry technology upgrades.¹⁴³ As of January 1, 2009, the GOC discontinued VAT exemptions under this program, but companies can still receive import duty exemptions.¹⁴⁴ The GOC reported that over the AUL, TG Tools and TG Aihe benefited from this program.¹⁴⁵ Commerce previously found VAT and tariff exemptions under this program to confer countervailable subsidies.¹⁴⁶

Consistent with earlier cases, we preliminarily determine that VAT and tariff exemptions on imported equipment confers a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC, which provides a benefit to the recipients in the amount of VAT and tariff savings.¹⁴⁷ Moreover, we preliminarily determine that the VAT and tariff exemptions afforded by the program are *de jure* specific under section 771(5A)(D)(i) of the Act because the program is limited to certain enterprises, *i.e.*, FIEs and domestic enterprises involved in “encouraged” projects.¹⁴⁸

Since these exemptions are provided for, or tied to, the capital structure or capital assets of a firm, Commerce treated them as non-recurring benefits and applied our standard methodology for non-recurring grants to calculate the subsidy rate.¹⁴⁹ Specifically, where the benefits exceeded 0.5 percent of the relevant sales of that year, we allocated the amount of the VAT and/or tariff exemptions over the AUL.¹⁵⁰ In the years that the benefits received by each company under this program did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described in the section “Subsidies Valuation” above to calculate the amount of the benefit allocable to the POR. Those benefits expensed or allocated to the POI were then used as the basis for calculating the net subsidy rate by dividing the total POI benefit by the total sales denominator. On this basis, we calculated a subsidy rate of 0.41 percent *ad valorem* for TG Tools.

5. Provision of Steam Coal for LTAR

As discussed above in section “Use of Facts Otherwise Available and Adverse Inferences,” we preliminarily find that TG Tools’ supplier of steam coal is an authority within the meaning of section 771(5)(B) of the Act and that the provision of steam coal constitutes a financial contribution under section 771(5)(D)(iii) of the Act. Additionally, as explained in the “Use of Facts Otherwise Available and Adverse Inferences” section of this memorandum above, we preliminarily find that, as AFA, the GOC is providing steam coal to a limited number of industries and enterprises, and, hence, that the subsidies under these programs are specific

¹⁴³ See GOC IQR at 36-37 and Exhibit 27.

¹⁴⁴ *Id.* at 38.

¹⁴⁵ *Id.*

¹⁴⁶ See, e.g., *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) and accompanying Issues and Decision Memorandum at “Analysis of Programs.”

¹⁴⁷ See sections 771(5)(D)(ii) and 771(5)(E) of the Act, as well as 19 CFR 351.510(a)(1).

¹⁴⁸ See CFS IDM at Comment 16.

¹⁴⁹ See 19 CFR 351.524(b).

¹⁵⁰ See 19 CFR 351.524(c)(2)(iii) and (d)(2).

pursuant to section 771(5A)(D)(iii) of the Act. As discussed above at “Use of Facts Otherwise Available and Adverse Inferences,” we preliminarily find that, as AFA, the domestic market for steam coal is distorted through the intervention of the GOC.

As discussed above, because Commerce is finding that GOC steam coal market is distorted by significant government involvement in the Chinese market, we are selecting external benchmark prices, *i.e.*, “tier two” or world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the CVD Preamble. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under “tier two,” Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Also as discussed above, TG Tools submitted tier-two benchmark data for steam coal sourced from GTA and based on the average of HTS subcategories 2701.11 (anthracite coal) and 2701.19 (other non-bituminous coal).¹⁵¹ The petitioners agreed that Commerce should calculate TG Tools’ countervailable benefit using tier-two benchmarks to measure the adequacy of remuneration.¹⁵² Accordingly, to derive the benchmark prices we included ocean freight and inland freight that would be incurred to deliver inputs to the respondents’ facilities. We then added to the benchmark prices the appropriate VAT of 17 percent to the benchmark prices.

We compared these monthly benchmark prices to TG Tools and TG Aihe’s reported purchase prices for individual domestic transactions, including VAT and delivery charges. Based on these comparisons, we preliminarily determine that a benefit exists for TG Tools and TG Aihe in the amount of the difference between the benchmark prices and the prices paid by the companies. We divided the total benefits by the appropriate sales denominator, as discussed in the “Subsidies Valuation Information” section.

For the reasons discussed above, we have calculated a subsidy rate of 0.15 percent *ad valorem* for TG Tools for the provision of steam coal for LTAR.

6. Provision of Electricity for LTAR

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

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

¹⁵¹ See TG Tools’ Letter, “Carbon and Alloy Steel Cut-to-Length Plate from the People’s Republic of China: Benchmark Submission,” dated February 13, 2018, (TG Tools Benchmark Submission) at 2 and Exhibit 1.

¹⁵² See the Petitioners’ Letter, “Carbon and Alloy Steel Cut-to-Length Plate from People’s Republic of China – AMUSA’s Pre-Preliminary Comments,” dated February 28, 2018, at 6 (citing to TG Tools Benchmark Submission).

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

To measure whether TG Tools received a benefit with regard to their base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to the companies by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the companies' consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by the companies during the POR from the benchmark base rate costs. We then calculated the total benefit received during the POR under this program by summing the benefits stemming from the respondent's variable electricity payments and base rate payments.

To calculate the net subsidy rates attributable to TG Tools, we divided the benefit by total POR sales of respondent producers as described in the "Subsidies Valuation" section above. On this basis, we preliminarily determine that the TG Tools received a countervailable subsidy rate of 7.60 percent *ad valorem*.

7. Provision of "Other Subsidies"

TG Tools, TG Aihe, and TG R&D reported receiving various non-recurring grants from the GOC during the POR and throughout the AUL period. As discussed in the "Use of Facts Available and Adverse Inferences" section above, Commerce preliminarily finds that these grants constitute a financial contribution under section 771(5)(D)(i) of the Act, and that they are specific under section 771(5A) of the Act. Commerce further preliminarily finds that these grants each confer a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a). To calculate the benefit received under these programs, Commerce followed the methodology described in 19 CFR 351.524. To calculate the *ad valorem* subsidy rate for these grants, we divided the benefit conferred under each of these programs by the appropriate POR sales denominator – total sales or total export sales – depending on the nature of the subsidy program.

TG Tools, TG Aihe, and TG R&D self-reported receiving measurable benefits under multiple programs. Based on the methodology outlined above, Commerce preliminarily determines a cumulative *ad valorem* subsidy rate of 5.25 percent for TG Tools for these programs.

8. Provision of Land-Use Rights for LTAR

As explained in the "Use of Facts Available and Adverse Inferences" section above, we preliminarily find that TG Tools' land-use rights were provided by an "authority" within the

meaning of section 771(5)(B) of the Act and that the provision of land-use rights constitutes a financial contribution under section 771(5)(D)(iii) of the Act. Additionally, as explained in the “Use of Facts Otherwise Available and Adverse Inferences” section of this memorandum above, we preliminarily find that, as AFA, this program is specific within the meaning of section 771(5A) of the Act given the GOC’s failure to provide information regarding how land prices were determined for the land-use rights held by TG Tools. Further, as explained in the “Use of Facts Otherwise Available and Adverse Inferences” section of this memorandum above, we based TG Tools’ land-use rate on AFA. We are therefore assigning a rate for this program based upon AFA using a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving China. Specifically, we are assigning an AFA program rate of 5.24 percent, *ad valorem*, the highest rate found for the same program in a prior CVD proceeding involving imports from China, for the provision of land-use rights for LTAR to TG Tools.¹⁵³

B. Programs Preliminarily Determined to be Not Used during the POR

- 1. Preferential Income Tax Program for HNTes in Designated Zones**
- 2. Preferential Income Tax Program for FIEs**
- 3. Preferential Tax Programs for FIES - Export Oriented FIEs**
- 4. Income Tax Credits for Domestically-Owned Enterprises Purchasing Domestically Produced Equipment**
- 5. Preferential Loans to SOEs**
- 6. Export Loans**
- 7. Treasury Bond Loans**
- 8. Preferential Loans for Key Projects and Technologies**
- 9. Preferential Lending to CTL Plate Producers and Exporters Classified as "Honorable Enterprises"**
- 10. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program**
- 11. Debt-to-Equity Swaps**
- 12. Exemptions for SOEs from Distributing Dividends**
- 13. Loan and/or Interest Forgiveness for SOEs**
- 14. Stamp Tax Exemption on Share Transfer Under Non-Tradeable Share Reform**
- 15. VAT and Tariff Exemptions for Purchasers of Fixed Assets Under the Foreign Trade Development Fund**
- 16. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring**
- 17. Provision of Land to SOEs for LTAR**
- 18. Provision of Hot-Rolled Steel for LTAR**
- 19. Provision of Iron Ore for LTAR**
- 20. Provision of Coking Coal for LTAR**
- 21. State Key Technology Project Fund**
- 22. Foreign Trade Development Fund Grants**
- 23. Export Assistance Grants**
- 24. Programs to Rebate Antidumping Legal Fees**
- 25. Subsidies for Development of Famous Brands and China World Top Brands**
- 26. Sub-Central Government Programs to Promote Famous Export Brands and China**

¹⁵³ See Hardwood Plywood IDM at 14.

- World Top Brands**
- 27. Grants to Loss-Making SOEs**
 - 28. Export Interest Subsidies**
 - 29. Grants for Energy Conservation and Emission Reduction**
 - 30. Grants for the Retirement of Capacity**
 - 31. Grants for Relocating Production Facilities**
 - 32. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China**
 - 33. Preferential Income Tax Policy for Enterprises in the Northeast Region**
 - 34. Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax**
 - 35. Income Tax Benefits for Domestically-Owned Enterprises Engaging in Research and Development**

IX. DISCLOSURE AND PUBLIC COMMENT

Commerce intends to disclose to interested parties the calculations performed in connection with the preliminary results of review within five days of its public announcement.¹⁵⁴ Unless the parties are otherwise notified, in accordance with 19 CFR 351.309(c)(ii), case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than 30 days after the date on which the notice of the preliminary results of this expedited review is published in the *Federal Register*. In accordance with 19 CFR 351.309(d)(1), rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.

Parties submitting 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.¹⁵⁵ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of these preliminary results in the *Federal Register*.¹⁵⁶ 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, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.¹⁵⁷ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹⁵⁸ on the due dates established above.

¹⁵⁴ See 19 CFR 351.224(b).

¹⁵⁵ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁵⁶ See 19 CFR 351.310(c).

¹⁵⁷ See 19 CFR 351.303(b)(2)(i).

¹⁵⁸ See 19 CFR 351.303(b)(1).

X. CONCLUSION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

3/15/2018

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