



C-570-087
Investigation
Public Document
E&C/OFIG: SMB

DATE: October 19, 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: Decision Memorandum for the Preliminary Affirmative
Determination in the Countervailing Duty Investigation of Steel
Propane Cylinders from the People's Republic of China

I. Summary

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

II. Background

A. Initiation and Case History

On May 22, 2018, we received an antidumping (AD) and countervailing duty (CVD) petition concerning imports of steel propane cylinders from China, filed in proper form, on behalf of Worthington Industries and Manchester Tank & Equipment Co. (the petitioners).¹ Pursuant to section 702(b)(4)(A)(ii) of the Act, we invited representatives of the Government of China

¹ See Letter from the petitioners, "Countervailing Duty Petition Volume V: Subsidies the People's Republic of China," dated May 22, 2018 (Petition).

(GOC) for consultations with respect to the Petition.² On June 11, 2018, we initiated the CVD investigation of steel propane cylinders from China.³

On July 6, 2018, the U.S. International Trade Commission (ITC) notified Commerce of its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China.⁴ On July 12, 2018, the ITC published in the *Federal Register* a notice of its preliminary determination.⁵

We stated in the *Initiation Notice* that, if appropriate, we intended to base the selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for U.S. imports of steel propane cylinders from China during the period of investigation (POI) under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁶ Section 777A(e)(1) of the Act directs Commerce to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if Commerce determines it is therefore not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give Commerce discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise that can reasonably be examined.

On June 6, 2018, we released the CBP entry data under Administrative Protective Order and invited interested parties to submit comments on the CBP data as well as respondent selection within three business days after the publication of the initiation notice in the *Federal Register*.⁷ On June 7, 2018, the petitioners filed comments identifying concerns that the CBP data are reported in pieces, not kilograms, and that the data relies on large basket categories that do not reflect subject merchandise.⁸

On June 22, 2018, Commerce issued quantity and value (Q&V) questionnaires to the ten companies listed in the Petition as known producers/exporters.⁹ On July 17, 2018, we selected

² See Letter to the GOC, “Countervailing Duty Petition on Steel Propane Cylinders from the People’s Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition,” dated May 23, 2018; see also Memorandum, “Invitation to the Government of the People’s Republic of China for Consultations on the Steel Propane Cylinders Countervailing Duty Petition,” dated June 7, 2018.

³ See *Steel Propane Cylinders from the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 83 FR 28189 (June 18, 2018) (*Initiation Notice*). The initial allegations and supplements to the Petition on which Commerce initiated are described in the accompanying Initiation Checklist, dated June 11, 2018.

⁴ See Letter from the ITC, “Notification of ITC Preliminary Determinations,” dated July 13, 2018.

⁵ See *Steel Propane Cylinders from China and Thailand: Determinations*, 83 FR 32329 (July 12, 2018) (ITC Preliminary Determination); see also *ITC Publication 4804 (July 2018), Steel Propane Cylinders from China and Thailand, Investigation Nos. 701-TA-607 and 731-TA-1417 and 1419 (Preliminary)* at page 1 (ITC Publication).

⁶ See *Initiation Notice*, 83 FR at 28191.

⁷ See Memorandum to the File, “U.S. Customs Data for Respondent Selection,” dated June 6, 2018 (CBP Data Memorandum).

⁸ See Letter from the petitioners, “Steel Propane Cylinders from the People’s Republic of China - Petitioners’ Comments on Customs and Border Protection Data,” dated June 7, 2018 (Petitioners’ Comments on CBP Data).

⁹ See Memorandum to the File, “Countervailing Duty Investigation of Steel Propane Cylinders from the People’s Republic of China: Issuance of Quantity and Value Questionnaires,” dated June 22, 2018.

Shandong Huanri Group Co. Ltd. (Huanri) and TPA Metals and Machinery (SZ) Co. Ltd. (TPA Metals) as mandatory respondents.¹⁰

On July 17, 2018, we issued the Initial Questionnaire addressed to the GOC *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).¹¹ In the cover letter to the questionnaire, we notified the GOC that Commerce had selected Huanri and TPA Metals as mandatory respondents in this investigation and stated that the GOC "is responsible for forwarding copies of this cover letter and questionnaire to these respondent companies."¹² We also sent a courtesy copy of the questionnaire *via* United Parcel Service of America, Inc. (UPS) to TPA Metals.¹³ UPS delivered the questionnaire to TPA Metals on July 23, 2018.¹⁴ We also emailed a copy of the questionnaire to the email address used by TPA Metals to file its response to the Q&V Questionnaire.¹⁵ TPA Metals did not submit an affiliation response on July 31, 2018, and did not submit a questionnaire response on August 23, 2018. We did not receive any requests from TPA Metals for an extension of time to file a response.

On July 31, 2018, Huanri submitted its response to the affiliation question contained in the Initial Questionnaire on behalf of itself, Shandong Laizhou Steel Cylinder Factory (SC Factory), and Shandong Huanri Import & Export Trade Co., Ltd. (Huanri I&E).¹⁶ On August 13, 2018, we issued a supplemental affiliation questionnaire to Huanri, SC Factory, and Huanri I&E, to which they responded on August 20, 2018.¹⁷ On August 31, 2018, Huanri, SC Factory, and Huanri I&E submitted their respective responses to section III of the Initial Questionnaire.¹⁸ On August 31, 2018, and September 6, 2018, the GOC submitted its response to section II of the Initial Questionnaire.¹⁹

¹⁰ See Memorandum, "Countervailing Duty Investigation of Steel Propane Cylinders from the People's Republic of China: Respondent Selection," dated July 17, 2018 (Respondent Selection Memorandum).

¹¹ See Letter to the GOC, "Countervailing Duty Investigation of Steel Propane Cylinders from the People's Republic of China: Countervailing Duty Questionnaire," dated July 17, 2018 (Initial Questionnaire).

¹² *Id.* at cover letter (page 1).

¹³ See Memorandum to the File, "Countervailing Duty Investigation of Steel Propane Cylinders from the People's Republic of China: Delivery Status of Initial Questionnaire," dated August 1, 2018 at Attachment 1.

¹⁴ *Id.*

¹⁵ *Id.* at Attachment 2.

¹⁶ See Letter from Huanri, "Steel Propane Cylinders from the People's Republic of China – Section III Affiliation Response," dated July 31, 2018 (Huanri Affiliation QR).

¹⁷ See Letter from Huanri, "Steel Propane Cylinders from the People's Republic of China – Supplemental Questionnaire Regarding the Initial Affiliation Questionnaire," dated August 20, 2018 (Huanri SQR1).

¹⁸ See Letter from Huanri, "Steel Propane Cylinders from the People's Republic of China – Section III Questionnaire Response," dated August 31, 2018 (Huanri IQR); see also Letter from SC Factory, "Steel Propane Cylinders from the People's Republic of China – Section III Questionnaire Response," dated August 31, 2018 (SC Factory IQR); see also Letter from Huanri I&E, "Steel Propane Cylinders from the People's Republic of China – Section III Questionnaire Response," dated August 31, 2018 (Huanri I&E IQR).

¹⁹ See Letter from the GOC, "Steel Propane Cylinders from the People's Republic of China, Case No. C-570-087: Initial Questionnaire Response," dated August 31, 2018 (GOC IQR); see also Letter from the GOC, "Steel Propane Cylinders from the People's Republic of China, Case No. C-570-087: Initial Questionnaire Response for Huanri IMP. & EXP.," dated September 6, 2018 (GOC IQR for Huanri I&E).

On September 4, 2018, the petitioners requested that we align the final CVD determination in this investigation with the final determination in the companion AD investigation of steel propane cylinders from China.²⁰

On September 13, 2018, we issued a supplemental questionnaire to the GOC and to Huanri, SC Factory, and Huanri I&E, to which they responded on September 20, 24, 27, and 28, 2018.²¹ The petitioners filed comments on Huanri's questionnaire responses and the GOC's questionnaire responses on August 10, September 7, and September 11, 2018.²²

All parties filed comments concerning the appropriate benchmarks to be used in the preliminary determination from September 19, 2018, through October 1, 2018.²³ The petitioners filed pre-preliminary comments on October 2, 2018, and Huanri and the GOC filed rebuttals to the petitioners' pre-preliminary comments on October 4, 2018, and October 10, 2018, respectively.²⁴

²⁰ See Letter from the petitioners, "Steel Propane Cylinders from the People's Republic of China – Petitioners' Request to Align the Countervailing Duty Final Determination with the Companion Antidumping Duty Final Determination," dated September 4, 2018 (Request for Alignment).

²¹ See Letter from Huanri, "Steel Propane Cylinders from the People's Republic of China: Supplemental Section III Questionnaire Response," dated September 20, 2018 (Huanri SQR2); see also Letter from Huanri, "Steel Propane Cylinders from the People's Republic of China – Third Supplemental Questionnaire Response," dated September 24, 2018 (Huanri SQR3); see also Letter from the GOC, "Steel Propane Cylinders from the People's Republic of China, Case No. C-570-087: 1st Supplemental Questionnaire Response," dated September 27, 2018 (GOC SQR1); see also Letter from the GOC, "Steel Propane Cylinders from the People's Republic of China, Case No. C- 570-087: 2nd Supplemental Questionnaire Response," dated September 28, 2018 (GOC SQR2).

²² See Letter from the petitioners, "Steel Propane Cylinders from the People's Republic of China – Petitioners' Deficiency Comments on Huanri's Affiliation Response," dated August 10, 2018; see also Letter from the petitioners, "Steel Propane Cylinders from the People's Republic of China – Petitioners' Deficiency Comments on Huanri's Section III Questionnaire Responses," dated September 7, 2018; see also Letter from the petitioners, "Steel Propane Cylinders from the People's Republic of China – Petitioners' Deficiency Comments on the GOC's Initial Questionnaire Response," dated September 11, 2018.

²³ See Letter from the petitioners, "Steel Propane Cylinders from the People's Republic of China – Petitioners' Submission of Factual Information to Measure the Adequacy of Remuneration," dated September 19, 2018 (Petitioners' Benchmark Comments); see also Letter from Huanri, "Steel Propane Cylinders from the People's Republic of China – Benchmark Submission," dated September 19, 2018 (Huanri's Benchmark Comments); see also Letter from the GOC, "Steel Propane Cylinders from China, Case No. C-570-087: GOC's Rebuttal Factual Information to Petitioners' Submission of Factual Information to Measure the Adequacy of Remuneration," dated September 26, 2018 (GOC's Benchmark Rebuttal Comments); see also, Letter from the petitioners, "Steel Propane Cylinders from the People's Republic of China – Petitioners' Response to the Government of China's Rebuttal Information to Measure the Adequacy of Remuneration," dated September 27, 2018 (Petitioners' Sur-Rebuttal Benchmark Comments); see also Letter from the GOC, "Steel Propane Cylinders from China, Case No. C-570-087: GOC's Request to Reject Petitioners' Untimely Filed Reply and New Factual Information Submitted in Response to the GOC's Rebuttal Factual Information to Measure the Adequacy of Remuneration," dated September 27, 2018; see also Letter from Huanri, "Steel Propane Cylinders from the People's Republic of China – Rebuttal Benchmark Submission," dated October 1, 2018 (Huanri's Benchmark Rebuttal Comments).

²⁴ See Letter from the petitioners, "Steel Propane Cylinders from the People's Republic of China – Petitioners' Pre-Preliminary Comments," dated October 2, 2018 (Petitioners' Pre-Preliminary Comments); see also Letter from Huanri, "Steel Propane Cylinders from the People's Republic of China – Rebuttal Pre-Preliminary Comments," dated October 4, 2018 (Huanri's Pre-Preliminary Rebuttal Comments); see also Letter from the GOC, "Steel Propane Cylinders from the People's Republic of China, Case No. C570-087: Pre-Preliminary Comments," dated October 10, 2018.

B. Postponement of Preliminary Determination

On August 1, 2018, we postponed the deadline for this preliminary determination until no later than 130 days after the initiation of the investigation, based on a request from the petitioners.²⁵ As such, we postponed the preliminary determination until October 19, 2018,²⁶ in accordance with sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).

C. Period of Investigation

The POI is January 1, 2017, through December 31, 2017.

III. Scope Comments

In accordance with the *Preamble* to Commerce's regulations,²⁷ we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage.²⁸ We received several comments concerning the scope of the AD and CVD investigations of steel propane cylinders from China and Thailand. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determinations of the companion AD investigations, the deadline for which is currently scheduled for December 18, 2018.²⁹ We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in case and rebuttal briefs.

IV. Scope of the Investigation

The products subject to this investigation are steel cylinders for compressed or liquefied propane gas (steel propane cylinders) meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specifications 4B, 4BA, or 4BW, or Transport Canada Specification 4BM, 4BAM, or 4BWM, or United Nations pressure receptacle standard ISO 4706.

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the HTSUS. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive. For the complete scope of this investigation, see the corresponding *Federal Register* notice.

²⁵ See *Steel Propane Cylinders from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 83 FR 37463 (August 1, 2018) (*CVD Preliminary Determination Postponement*); see also Letter from the petitioners, "Steel Propane Cylinders from the People's Republic of China – Petitioners' Request to Postpone Preliminary Determination," dated July 20, 2018.

²⁶ See *CVD Preliminary Determination Postponement*.

²⁷ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁸ See *Initiation Notice*, 83 FR at 28189-28190.

²⁹ See *Steel Propane Cylinders from the People's Republic of China and Thailand: Postponement of Preliminary Determinations in the Less-Than-Fair Value Investigations*, 83 FR 51927 (October 15, 2018) (*AD Preliminary Determination Postponement*).

V. Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), and based on the petitioners' request,³⁰ we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of steel propane cylinders from China. Consequently, the final CVD determination will be signed on the same date as the final AD determination, which is currently scheduled to be due no later than March 4, 2019, unless postponed.³¹

VI. Injury Test

Because China is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry. On July 6, 2018, the ITC preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of steel propane cylinders from China that are alleged to be subsidized by the GOC.³²

VII. Application of the CVD Law to Imports from China

On October 25, 2007, we published the final determination in *Coated Free Sheet (CFS) from China*, where we found that:

{G}iven the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.³³

Commerce affirmed its decision to apply the CVD law to China in numerous subsequent determinations.³⁴ Furthermore, on March 13, 2012, Public Law 112-99 was enacted which makes clear that Commerce has the authority to apply the CVD law to countries designated as

³⁰ See Request for Alignment.

³¹ The actual due date falls on March 3, 2019, which is a Sunday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended*, 70 FR 24533 (May 10, 2005). Therefore, the AD final determination is currently due for signature no later than March 4, 2019.

³² See *ITC Preliminary Determination*, 83 FR at 32329; see also ITC Publication.

³³ 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 (IDM) at Comment 6.

³⁴ 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), and accompanying IDM at Comment 1 (*Steel Pipe from China IDM*).

non-market economies under section 771(18) of the Act, such as China.³⁵ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.³⁶

VIII. Diversification of China's Economy

Concurrently with this decision memorandum, Commerce is placing the following excerpts from the China Statistical Yearbook from the National Bureau of Statistics of China on the record of this investigation:³⁷ Index Page; Table 14-7: Main Indicators on Economic Benefit of State-owned and State-holding Industrial Enterprise by Industrial Sector; Table 14-11: Main Indicators on Economic Benefit of Private Industrial Enterprise by Industrial Sector. This information reflects a wide diversification of economic activities in China. The industrial sector in China alone is comprised of 37 listed industries and economic activities, indicating the diversification of China's economy.

IX. 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.³⁸ In Commerce's initial questionnaires to the GOC and the mandatory respondents, we notified the respondents to this proceeding that the AUL period would be 12 years, on the basis of U.S. Internal Revenue Service Publication 946 (2016), "Appendix B - Table of Class Lives and Recovery Periods" (IRS Pub. 946).³⁹ The 12-year period corresponds to IRS Pub. 946 asset class, under "34 "Manufacture Fabricated Metal Products." No parties submitted comments challenging the proposed AUL period, and we therefore preliminarily determine that a 12-year period is appropriate to allocate benefits from non-recurring subsidies.

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

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), 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) provide additional rules for the attribution of subsidies received by

³⁵ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

³⁶ See Public Law 112-99, 126 Stat. 265 §1(b) (2012).

³⁷ See Memorandum to the File, "China Statistical Yearbook Memorandum," dated concurrently with this memorandum.

³⁸ See 19 CFR 351.524(b).

³⁹ See U.S. Internal Revenue Service Publication 946 (2016), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

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 preamble to Commerce's regulations further clarifies Commerce's cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

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

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 (CIT) 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.⁴¹

As discussed above, we selected Huanri as a mandatory respondent. Huanri reported that it is a producer and exporter of subject merchandise.⁴² Huanri indicates that during the POI it was owned by individual shareholders.⁴³ SC Factory reported that it is a producer of subject merchandise but that it did not sell subject merchandise to the United States during the POI or supply an input to Huanri that is primarily dedicated to the production of steel propane cylinders.⁴⁴ SC Factory indicates that it is a "Rural Collective Ownership Enterprise" and that Huanri's General Manager served as the legal representative and director of SC Factory during the POI.⁴⁵ Huanri I&E reported that it was cross-owned with Huanri and thus it submitted a

⁴⁰ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

⁴¹ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁴² See Huanri Affiliation QR at 3.

⁴³ *Id.* at 4; see also Huanri IQR at 2-3.

⁴⁴ See Huanri Affiliation QR at 4-5.

⁴⁵ *Id.* at 5; see also Huanri SQR1 at 3; see also Huanri SQR3 at 2.

response to Commerce's initial questionnaire.⁴⁶ Huanri I&E reported that it did not sell steel propane cylinders during the POI and that it did not produce any inputs that were primarily dedicated to the production of steel cylinders, but also reported that it sold certain imported inputs to Huanri.⁴⁷ Huanri also reported that it falls under a group of companies called the China Huanri Group.⁴⁸

Based on Huanri's responses and our analysis below, we are preliminarily attributing subsidies received by Huanri to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

SC Factory

As noted above, Commerce's regulations at 19 CFR 351.525(b)(6)(vi) state that the cross-ownership 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. In the instant investigation, we preliminarily do not find information on the record indicating that Huanri and SC Factory share any mutual ownership. In addition, we preliminarily do not find that SC Factory's articles of association indicate a means by which the owners or management of Huanri could otherwise exert control over SC Factory.⁴⁹ Based on this information, we preliminarily determine that Huanri and SC Factory are not cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi), and, therefore, we have not included SC Factory in the calculation of the preliminary subsidy rate for Huanri.⁵⁰

Huanri I&E

Huanri I&E reported that it did not produce or sell subject merchandise during the POI and did not produce any inputs during the POI, but also reported that it sold certain imported inputs to Huanri.⁵¹ Because Huanri I&E was not the producer of the inputs, we attribute, pursuant to 19 CFR 351.525(b)(6)(v), only subsidies that were transferred by Huanri I&E to Huanri. Regardless of whether Huanri I&E is cross-owned with Huanri within the meaning of 19 CFR 351.525(b)(6)(vi), we preliminarily find that Huanri I&E did not transfer any subsidies to Huanri during the POI or the AUL period.⁵² Therefore, we preliminarily determine that Huanri I&E does not meet any of the attribution conditions enumerated under section 351.525(b)(6) of our regulations and have not included Huanri I&E in the calculation of the preliminary subsidy rate for Huanri.

⁴⁶ See Huanri IQR at 5; see also Huanri I&E IQR.

⁴⁷ *Id.* at 3; see also Huanri SQR1 at 1-2.

⁴⁸ See Huanri SQR2 at 1.

⁴⁹ See Huanri SQR3 at Exhibit SQ3-1.

⁵⁰ See Memorandum, "Preliminary Determination Calculations for Shandong Huanri Group Co. Ltd.," dated concurrently with this preliminary determination (Preliminary Calculation Memorandum).

⁵¹ See Huanri SQR1 at 1-2.

⁵² *Id.* at 2.

China Huanri Group

In response to our questions regarding references in Huanri’s questionnaire responses to the “China Huanri Group” or the “Group,”⁵³ Huanri asserted that the China Huanri Group is not a legal entity and has no physical production or sales of any products. Huanri explained that the “China Huanri Group” refers to a group of companies and is a designation that is used for marketing purposes.⁵⁴ Huanri further stated that the loans and cash flow of Huanri and other affiliated companies are managed on a consolidated basis by the China Huanri Group.⁵⁵ Consequently, while Huanri submitted the consolidated balance sheet that the China Huanri Group produced for the POI, Huanri asserted that the China Huanri Group is not a legal entity and thus does not meet any of the definitions of affiliation under sections 771(33)(A)-(G) of the Act and does not fulfill the criteria that necessitates the submission of a questionnaire response to Commerce.⁵⁶

As noted above, under 19 CFR 351.525(b)(6)(iii), Commerce will attribute subsidies received by a holding company, including a parent company with its own operations, to the consolidated sales of the holding company. The *Preamble* states that the term “holding company” is intended to mean “any company that owns or controls subsidiaries through the ownership of voting stock or other means.”⁵⁷ We preliminarily find that record evidence indicates that Huanri is wholly-owned by a group of individuals.⁵⁸ However, we intend to request additional information with respect to the “China Huanri Group” designation after this preliminary determination.

C. Denominators

In accordance with 19 CFR 351.525(b), 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, or portions thereof. As discussed in further detail below in the “Programs Preliminarily Determined to be Countervailable” section and in Huanri’s Preliminary Calculation Memorandum, where the program has been found to be countervailable as a domestic subsidy, we used Huanri’s total product sales as the denominator.⁵⁹ Where the program has been found to be contingent upon export activities, we used Huanri’s total export sales as the denominator. All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, *see* the Preliminary Calculation Memorandum.⁶⁰

⁵³ See Huanri SQR1 at Exhibit SQ1-1; *see also* Huanri IQR at 10.

⁵⁴ See Huanri’s Pre-Preliminary Rebuttal Comments at 8.

⁵⁵ *Id.*

⁵⁶ *Id.* at 1-2; *see also* Huanri IQR at 10.

⁵⁷ See *Preamble* at 65402.

⁵⁸ See Huanri Affiliation QR at Exhibit I-1; *see also* Huanri IQR at Exhibit 6, which contains Huanri’s Articles of Association and lists the names of the individuals who own Huanri.

⁵⁹ See *e.g.*, *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016), and accompanying IDM at 6.

⁶⁰ See Preliminary Calculation Memorandum.

X. Benchmarks and Interest Rates

Commerce is investigating loans received by Huanri from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.⁶¹ The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

A. Short-Term Renminbi (RMB)-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, Commerce uses comparable commercial loans reported by the company as a benchmark.⁶² If the firm did not have any comparable commercial loans during the period, Commerce’s regulations provide that we “may use a national average interest rate for comparable commercial loans.”⁶³

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.⁶⁴ In an analysis memorandum dated July 21, 2017, Commerce conducted a re-assessment of the lending system in China.⁶⁵ Based on this re-assessment, Commerce has concluded that, despite reforms to date, the GOC’s role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China 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 Commerce’s practice.⁶⁶

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*

⁶¹ See 19 CFR 351.524(b)(1).

⁶² See 19 CFR 351.505(a)(3)(i).

⁶³ See 19 CFR 351.505(a)(3)(ii).

⁶⁴ See *CFS Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*) and accompanying IDM at Comment 10 (*CFS from China* IDM).

⁶⁵ See Memorandum, “Review of China’s Financial System Memorandum,” dated concurrently with this memorandum.

⁶⁶ See, e.g., *CFS from China* IDM at 5-8 at “Benchmarks” and Comment 10; *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011), and accompanying IDM at “Use of Facts Otherwise Available and Adverse Inferences” (*Drill Pipe from China* IDM) at “Benchmarks and Discount Rates.”

China.⁶⁷ 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 2003 through 2009, China fell in the lower-middle income category.⁶⁸ Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2017.⁶⁹ Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2017. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.⁷⁰

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 2003-2009 and 2011-2017, 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.⁷¹ For 2010, however, the regression does not yield that outcome for China's income group.⁷² 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 2011-2017. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund (IMF), and they are included in that agency's International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as

⁶⁷ See *CFS from China* 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 IDM at 8-10.

⁶⁸ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups> (World Bank Country Classification); see also, Memorandum to the File, "Countervailing Duty Investigation of Propane Cylinders from the People's Republic of China: Interest Rate Benchmark Memorandum," dated concurrently with this memorandum (Interest Rate Benchmark Memorandum).

⁶⁹ See World Bank Country Classification.

⁷⁰ See, e.g., *Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 60178 (December 19, 2017), and accompanying IDM at "Benchmarks and Interest Rates" (unchanged in *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 32075 (July 11, 2018)).

⁷¹ See Interest Rate Benchmark Memorandum.

⁷² *Id.*

“upper middle income” by the World Bank for 2010-2017 and “lower middle income” for 2001-2009.⁷³ First, we did not include those economies that Commerce considered to be non-market economies (NME) for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we remove any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year 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.⁷⁴ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.⁷⁵

B. Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, 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.⁷⁶

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.⁷⁷ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁷⁸

C. Foreign Currency-Denominated Loans

To calculate benchmark interest rates for any foreign currency-denominated loans, Commerce is following the methodology developed over a number of 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.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See, e.g., *Thermal Paper from China*, and accompanying IDM at 10.

⁷⁷ 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 IDM at Comment 14.

⁷⁸ See Interest Rate Benchmark Memorandum.

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 the preliminary calculation memoranda for Huanri.⁷⁹

D. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the GOC provided non-recurring subsidies.⁸⁰ The interest rate benchmarks and discount rates used in our preliminary calculations are provided in Huanri’s Preliminary Calculation Memorandum.

E. Benchmarks for Government Provision of Hot-Rolled Steel at Less Than Adequate Remuneration

We selected benchmarks for determining the benefit from the provision of hot-rolled steel in accordance with 19 CFR 351.511. Section 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 less than adequate remuneration (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).⁸¹ As discussed in the section titled “Provision of Hot-Rolled Steel Coil Inputs for LTAR,” we are relying on “tier two” (world market) prices for calculating benchmarks for the government provision of hot-rolled steel (HRS).

We received comments and data from the petitioners to consider using a “tier two” benchmark of hot-rolled steel prices from the Trade Data Monitor (TDM).⁸² Specifically, the petitioners submitted pricing data for Harmonized Tariff Schedule (HTS) subheadings 7208.25, 7208.26, and 7208.27. The GOC submitted HRS import data which indicated that China imported HRS under HTS subheadings 7208.25 and 7208.26 during the POI. The TDM data includes the quantity and value of export prices from 48 countries and is delineated by HTS subheadings.⁸³

Huanri also submitted comments and data to consider using a “tier two” benchmark of hot-rolled steel prices from MEPS (International) Ltd (MEPS).⁸⁴ The data includes only prices, not

⁷⁹ See Preliminary Calculation Memorandum at Attachment 1.

⁸⁰ *Id.*; see also Interest Rate Benchmark Memorandum.

⁸¹ See 19 CFR 351.511(a)(2).

⁸² See Petitioners’ Benchmark Comments.

⁸³ *Id.* at Attachment 1.

⁸⁴ See Huanri’s Benchmark Comments.

volumes, and does not indicate the HTS subheadings. Huanri submitted benchmark rebuttal comments in which it stated that the company purchased hot-rolled coiled steel during the POI under the HTS subheadings 7208.38 and 7208.39.⁸⁵ As a result, Huanri argued that the HTS subheadings for hot-rolled coiled steel included in the TDM export prices are incompatible with the type of hot-rolled coiled steel used in the production of subject merchandise and, therefore, Commerce should use only export data based on prices of hot-rolled coiled steel under subheadings 7208.38 and 7208.39.⁸⁶ Huanri made no assertions as to HTS subheadings included in the export price data from MEPS.⁸⁷

We find that the hot-rolled coiled steel purchase data submitted by Huanri do not delineate by HTS subheadings. Further, there is no information in the MEPS data indicating the HTS subheadings that underlie the hot-rolled coiled steel prices, and Huanri does not make any assertions that the MEPS data include the HTS subheadings that accounted for all of its hot-rolled coiled steel purchases during the POI. In the absence of information on Huanri's reported hot-rolled coiled steel purchases by HTS subheading and the lack of information regarding the HTSUS subheadings that comprise the hot-rolled steel export prices from MEPS, we are unable to select benchmark data that only reflects the prices of the HTS subcategories of hot-rolled steel coil that Huanri purchased during the POI.

As a result, we preliminarily find that there is an insufficient basis to exclude one of the two proposed benchmarks over the other. Under 19 CFR 351.511(a)(2)(ii), where there is more than one commercially available world market price, Commerce will average the prices to the extent practicable. Therefore, we are determining the benchmark prices for hot-rolled steel using the simple average of: 1) the weighted-average export prices data from TDM submitted by the petitioners; and, 2) the export prices submitted by Huanri. We have applied the resulting benchmark prices to Huanri's reported purchases of hot-rolled steel, as appropriate.

Pursuant to 19 CFR 351.511(a)(2)(iv), benchmarks should reflect "delivered prices" and should include import and delivery charges. Therefore, we added freight charges, value-added tax (VAT), and import duties applicable on purchases in order to calculate a price that a respondent company would have paid on the world market for these inputs. We added import duties as reported by the GOC, the VAT applicable to imports of hot-rolled steel coil into China as also reported by the GOC, and inland freight from the port to the factory based on an amount reported by Huanri.⁸⁸ We also added an amount for ocean freight, as discussed in the section below.

Ocean Freight

The petitioners provided Maersk monthly ocean freight rates for shipments of 20-foot containers from five world ports (*i.e.*, Hamburg, Germany; Tokyo, Japan; Cape Town, South Africa; Constanta, Romania; and Los Angeles, CA) to Qingdao between January and December 2017.⁸⁹

⁸⁵ See Huanri's Benchmark Rebuttal Comments.

⁸⁶ *Id.*

⁸⁷ *Id.*; see also Huanri's Benchmark Comments.

⁸⁸ See GOC IQR at 31 and Exhibit HRS-6; see also Huanri SQR2 at Exhibit SQ2-9.

⁸⁹ See Petitioner's Benchmark Comments at 5 and Attachment 3.

Huanri submitted Maersk monthly ocean freight rates for shipments of 40-foot containers from Long Beach, CA and Newark, NJ to the port of Xiamen from January to December 2017.⁹⁰

The GOC submitted rebuttal comments arguing that because hot-rolled steel coil is a heavy commodity that can damage shipping containers, it is industry practice to ship hot-rolled steel coil in bulk or in special containers for steel rather than by standard shipping container.⁹¹ The GOC further argues that shipments of hot-rolled coiled steel are most suited for bulk carrier ships known as “coaster freight.”⁹² The GOC submitted monthly coaster freight rates from the International Seaborne Market (ISM) for shipments of hot-rolled coiled steel from Vladivostok, Russia to Hong Kong for January to December 2017.⁹³

The petitioners submitted sur-rebuttal comments in which they argued that the industry sources cited by the GOC provide inconclusive evidence that hot-rolled coiled steel is only shipped in bulk or in special containers.⁹⁴ The petitioners also argue that the industry sources the GOC relied upon also suggest that hot-rolled steel is shipped in closed equipment to protect the commodity from rust and physical damage.⁹⁵

We preliminarily have not included the GOC’s proposed coaster freight rates from ISM, which are based on a single route from Vladivostok, Russia to Hong Kong, because these rates are for shipments to Hong Kong, and ocean freight rates directly to China are available on the record.⁹⁶

As a result, we preliminarily find that the Maersk ocean freight rates reported by Huanri and the petitioners to be composed of a broad sample of routes, based on shipments from seven ports of debarkation on four continents to Qingdao and Xiamen, China. Commerce has used Maersk ocean freight data in previous cases, including *Silica Fabric from China* and *CDMT from China*.⁹⁷ As discussed further in the “Application of AFA: Provision of Hot-Rolled Steel Inputs for LTAR” section below, we have adjusted the benchmark used to measure the adequacy of remuneration for Huanri’s HRS purchases by including the Maersk ocean freight data submitted by the petitioners and the inland freight costs submitted by Huanri.

⁹⁰ See Huanri’s Benchmark Comments at 1 and Attachment 2.

⁹¹ See GOC’s Benchmark Rebuttal Comments at 2-3.

⁹² *Id.* at 3-5.

⁹³ *Id.* at Attachment 2.

⁹⁴ See the Petitioners’ Sur-Rebuttal Benchmark Comments at 2-3.

⁹⁵ *Id.* at 3 (citing to the GOC’s Benchmark Rebuttal Comments at Attachment 1).

⁹⁶ See, e.g., *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010), and accompanying Issues and Decision Memorandum at Comment 20 (in which Commerce explained that it used ocean freight rates to Japan instead of China as facts otherwise available pursuant to section 776(a)(1) of the Act because necessary information on ocean freight rates to China was not on the record.)

⁹⁷ 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 IDM at Comment 11 (*Silica Fabric from China* IDM); see also *Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017) (*CDMT from China*), and accompanying IDM at Comment 5 (*CDMT from China* IDM).

XI. Use of Facts Otherwise Available and Adverse Inferences

A. Legal Standard

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” 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.

Section 776(b) of the Act 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) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, 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.”⁹⁸ 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.”⁹⁹

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. 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.”¹⁰⁰ It is Commerce’s practice to consider information to be corroborated if it has probative value.¹⁰¹ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.¹⁰² However, the SAA emphasizes that Commerce need not prove that the selected facts are the best alternative information.¹⁰³ Furthermore, Commerce

⁹⁸ See, e.g., *CDMT from China* IDM at “Use of Facts Otherwise Available and Adverse Inferences;” see also *Drill Pipe China* IDM at “Use of Facts Otherwise Available and Adverse Inferences;” see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909 (February 23, 1998).

⁹⁹ 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.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 869.

¹⁰³ *Id.* at 869-870.

is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.¹⁰⁴

Finally, under 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 the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.¹⁰⁵

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

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

As noted in the “Initiation and Case History” section above, Commerce issued Q&V questionnaires to the ten companies identified in the Petition *via* ACCESS and we issued Q&V questionnaires *via* Federal Express or UPS to the nine companies that had not filed an entry of appearance on or before June 22, 2018.¹⁰⁶ We confirmed that eight of the nine Q&V questionnaires sent *via* Federal Express and UPS were delivered.¹⁰⁷ The Q&V questionnaire sent to TPA Metals was undeliverable due to an incorrect address; therefore, we sent the Q&V questionnaire to TPA Metals *via* email.¹⁰⁸ Of the ten companies that we confirmed had questionnaires delivered to them, only five timely responded to our request for information.¹⁰⁹ Thus, five companies that we confirmed had questionnaires delivered to them did not respond to our request for information: Guangzhou Lion Cylinders Co. Ltd.; Hubei Daly LPG Cylinder Manufacturer Co. Ltd.; Taishan Machinery Factory Ltd.; Wuyi Xilinde Machinery Manufacture Co., Ltd.; and Zhejiang Jucheng Steel Cylinder Co., Ltd. We preliminarily determine that the five non-responsive companies withheld necessary information that was requested of them, failed to provide information within the deadlines established, and significantly impeded this proceeding. Thus, Commerce will rely on facts otherwise available in making our preliminary determination with respect to these companies, pursuant to sections 776(a)(2)(A)-(C) of the Act.¹¹⁰ Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to the Q&V questionnaire, each of these companies did not cooperate to the best of their ability to comply with the requests for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that these companies (the “non-responsive companies”) do not obtain a more

¹⁰⁴ See section 776(c)(2) of the Act.

¹⁰⁵ See section 776(d)(3) of the Act.

¹⁰⁶ See Respondent Selection Memorandum at 2-3; *see also* Memorandum to the File, “Issuance and Receipt of Quantity and Value Questionnaires,” dated July 2, 2018.

¹⁰⁷ *Id.* at 1 and Attachment 2.

¹⁰⁸ *Id.* at 1 and Attachment 3.

¹⁰⁹ See Respondent Selection Memorandum at 3.

¹¹⁰ For the derivation of the preliminary AFA subsidy rate assigned to the five companies who did not respond to the Q&V questionnaire, *see* Appendix; *see also* Preliminary Calculation Memorandum.

favorable result by failing to cooperate than if they had fully complied with our requests for information.

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

C. Application of AFA: TPA Metals

As discussed in the “Initiation and Case History” section above, TPA Metals was one of two mandatory respondents in this investigation. However, TPA Metals did not provide a response to the Initial Questionnaire by the established deadlines nor did it submit any extension requests. Moreover, the GOC did not respond to our Initial Questionnaire with respect to TPA Metals. By not responding to the Initial Questionnaire, TPA Metals and the GOC significantly impeded this proceeding. Thus, in reaching a preliminary determination, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act, we are basing the subsidy rate for TPA Metals and our findings regarding specificity and financial contribution by the GOC by selecting from among the facts otherwise available on the record.

Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to the Initial Questionnaire, TPA Metals did not cooperate to the best of its ability to comply with the requests for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that TPA Metals does not obtain a more favorable result by failing to cooperate than if it had fully complied with Commerce's requests for information. The application of AFA to TPA Metals is consistent with Commerce's practice.¹¹¹ As facts otherwise available with an adverse inference, we find that all 18 of the programs at issue in this proceeding are countervailable with respect to TPA Metals – that is, they provide a financial contribution within the meaning of sections 771(5)(B) and (D) of the Act, confer a benefit within the meaning of sections 771(5)(B) and (E) of the Act, and are specific within the meaning of section 771(5A) of the Act. Therefore, we are including each of these programs in the determination of the AFA rate for TPA Metals.¹¹² We selected an AFA rate for each of these programs based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce's practice, and we included them in the determination of the AFA rate applied to TPA Metals. Commerce has previously countervailed these or similar programs. For a description of the selection of the AFA rate and

¹¹¹ See, e.g., *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Preliminary Affirmative Determination*, 80 FR 68843 (November 6, 2015), and accompanying IDM at “Initiation and Case History” and “Use of Facts Otherwise Available and Adverse Inferences,” unchanged in *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) (*CORE from China*), and accompanying IDM at “Case History” and “Use of Facts Otherwise Available and Adverse Inferences.” See also *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018), and accompanying IDM at “Use of Facts Otherwise Available and Adverse Inferences.”

¹¹² See Appendix.

our corroboration of this rate, see the “Selection of the AFA Rate” and “Corroboration of the AFA Rate” sections below.

Selection of the AFA Rate

It is Commerce’s practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.¹¹³ When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a countervailable duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.¹¹⁴ Accordingly, when selecting AFA rates, if we have cooperating respondents, as we do in this investigation, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).¹¹⁵ If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company’s industry could conceivably use.¹¹⁶

Commerce’s methodology is consistent with Section 502 of the Trade Preferences Extension Act of 2015 (TPEA), which the President of the United States signed into law on June 29, 2015. Section 502 of the TPEA added new subsection (d) to section 776 of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts

¹¹³ See, e.g., *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM Memorandum at “Application of Facts Available, Including the Application of Adverse Inferences”); see also *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying IDM (*Aluminum Extrusions* IDM) at “Application of Adverse Inferences: Non-Cooperative Companies.”

¹¹⁴ See, e.g., *Shrimp from China*, and accompanying IDM (*Shrimp* IDM) at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding “hierarchical methodology for selecting an AFA rate”).

¹¹⁵ For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at “1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program” and “2. Grant Under the Elimination of Backward Production Capacity Award Fund.”

¹¹⁶ See *Shrimp* IDM at 13-14.

otherwise available, Commerce may (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce’s existing practice of using an adverse facts available hierarchy in selecting a rate “among the facts otherwise available” in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an adverse facts available rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce “may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available.”¹¹⁷ No legislative history accompanied this provision of the TPEA. Accordingly, Commerce is left to interpret this “evaluation by the administering authority of the situation” language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

We find that the Act anticipates a two-step process for determining an appropriate adverse facts available rate in CVD cases: 1) Commerce may apply its hierarchy methodology and 2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of adverse facts available, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.¹¹⁸

In applying the adverse facts available rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹¹⁹ Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”¹²⁰ It is pursuant to this knowledge and experience that Commerce has

¹¹⁷ See Section 776(d)(2) of the Act.

¹¹⁸ This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B). Under that provision, “any dumping margin from any segment of the proceeding under the applicable antidumping order” may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

¹¹⁹ See Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, vol. 1, at 870, reprinted in 1994 U.S.C.C.A.N 4040, 4090; see also *Essar Steel*, 678 at 1276 (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate’ with Commerce’s investigation, not to impose punitive damages.”) (*De Cecco*).

¹²⁰ See *De Cecco*, 216 F.3d at 1032.

implemented its adverse facts available hierarchy in CVD cases to select an appropriate adverse facts available rate.¹²¹

In applying its adverse facts available hierarchy in CVD investigations, Commerce's goal is as follows: In the absence of necessary information from cooperative respondents, Commerce is seeking to find a rate that is a relevant indicator of how much the government of the country under investigation is likely to subsidize the industry at issue, through the program at issue, while inducing cooperation. Accordingly, in sum, the three factors that Commerce takes into account in selecting a rate are: 1) the need to induce cooperation, 2) the relevance of a rate to the industry in the country under investigation (*i.e.*, can the industry use the program from which the rate is derived), and 3) the relevance of a rate to a particular program, though not necessarily in that order of importance.

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a "pool" of available rates that Commerce can rely upon for purposes of identifying an adverse facts available rate for a particular program. In investigations for example, this "pool" of rates could include the rates for the same or similar programs used in either that same investigation, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among that "pool" of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

Under the first step of Commerce's investigation hierarchy, Commerce applies the highest non-zero rate calculated for a cooperating company for the identical program in the investigation. Under this step, we will even use a *de minimis* rate as adverse facts available if that is the highest rate calculated for another cooperating respondent in the same industry for the same program.

However, if there is no identical program match within the investigation, or if the rate is zero, then Commerce will shift to the second step of its investigation hierarchy, and either apply the highest non-*de minimis* rate calculated for a cooperating company in another countervailing duty proceeding involving the same country for the identical program, or if the identical program is not available, for a similar program. This step focuses on the amount of subsidies that the government has provided in the past under the investigated program. The assumption under this

¹²¹ Commerce has adopted a practice of applying its hierarchy in CVD cases. *See e.g., Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) and accompanying Issues and Decision Memorandum, Cmt. 4 at 28-31 (applying the adverse facts available hierarchical methodology within the context of CVD investigation); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) and accompanying Issues and Decision Memorandum at 11-15 (applying the adverse facts available hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. *See e.g., Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying Issues and Decision Memorandum at 7-8 (applying, outside of the adverse facts available hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

step is that the non-cooperating respondent under investigation uses the identical program at the highest above *de minimis* rate of any other company using the identical program.

Finally, if no such rate exists, under the third step of Commerce's investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.¹²²

In all three steps of Commerce's adverse facts available investigation hierarchy, if Commerce were to choose low adverse facts available rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the "reward" for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce's investigation adverse facts available hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.¹²³

Furthermore, we find that section 776(d)(2) applies as an exception to the selection of an adverse facts available rate under 776(d)(1); that is, after "an evaluation of the situation that resulted in the application of an adverse inference," Commerce may decide that given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate.

There are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy applied in accordance with section 776(d)(1) of the Act should be applied as adverse facts available. As explained above, Commerce is preliminarily applying adverse facts available because the GOC, TPA Metals, and each of the companies that failed to submit a response to the Q&V questionnaire chose not to cooperate by not providing the information Commerce requested. Therefore, we preliminarily find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

¹²² In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

¹²³ It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. *See, e.g., Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from China*, 72 FR 60632 (Oct. 25, 2007) and accompanying Issues and Decision Memorandum at 2, dated October 17, 2007 ("As AFA in the instant case, the Department is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed..."). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as adverse facts available under its hierarchy.

In determining the AFA rate we will apply to TPA Metals and to each of the companies that failed to submit a response to the Q&V questionnaire, we are guided by Commerce's methodology detailed above. We begin by selecting, as AFA, the highest calculated program-specific above-zero rates determined for the cooperating respondent in the instant investigation. Accordingly, we are applying the highest applicable subsidy rate calculated for Huanri for the following programs:

- GOC and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
- Small- and Medium-sized Enterprise (SME) International Market Exploration/Development Fund
- Export Assistance Grants
- Policy Loans to the Steel Propane Cylinders Industry
- Export Seller's Credit
- Provision of HRS for LTAR
- Provision of Electricity for LTAR

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

- Income Tax Reduction for High or New Technology Enterprises (HNTE)
- Income Tax Reductions for Research and Development (R&D) Expenses Under the Enterprise Income Tax Law (EITL)

The standard income tax rate for corporations in China in effect during the POI was 25 percent.¹²⁴ Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the two programs, combined, provide a 25 percent benefit). Consistent with past practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.¹²⁵

For all other programs not mentioned above,¹²⁶ we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a China CVD investigation or administrative review. For this preliminary determination, we are able to match, based on program names, descriptions, and benefit treatments, the following programs to the same or similar programs from other China CVD proceedings:

- Special Fund for Energy Savings Technology Reform
- SME Technology Innovation Fund
- Export Loans from Chinese State-Owned Banks

¹²⁴ See Initiation Checklist at 20.

¹²⁵ See, e.g., *Aluminum Extrusions* IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

¹²⁶ These are the remainder of the programs from the Initiation Checklist.

- Export Credit Guarantees
- Provincial Government of Guangdong Tax Offset for R&D
- Import Tariff and VAT Exemptions for Foreign Invested Enterprises (FIE) and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
- VAT Refunds for FIEs Purchasing Domestically-Produced Equipment
- Provision of Land for LTAR
- Export Buyer's Credit

For this preliminary determination, we are able to match, based on program name description, and treatment of the benefit, the following programs to similar programs from other China CVD proceedings (these are all programs reported as “other subsidies” by Huanri):

- Special Fund for Enterprise R&D of Application Technologies
- Labor Position Subsidy for Burden Alleviating Enterprises in Laizhou
- Provincial Patent of Invention Subsidy
- “8515 Program” Enterprise Technology Reform Subsidy in 2011
- “8515 Program” Enterprise Technology Reform Subsidy in 2012
- “8515 Program” Enterprise Technology Reform Subsidy in 2013
- “8515 Program” Enterprise Technology Reform Subsidy in 2015
- VAT Benefit on Deposit of Partial Fixed Assets
- VAT Benefit on Deposit of Used Fixed Assets

Accordingly, we preliminarily determine the AFA countervailable subsidy rate for each of the non-responsive companies to be 145.37 percent *ad valorem*. The Appendix contains a chart summarizing our calculation of this rate.

Corroboration of the AFA Rate

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. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”¹²⁷ The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.¹²⁸

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.¹²⁹ Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party

¹²⁷ See SAA at 870.

¹²⁸ *Id.*

¹²⁹ *Id.* at 869-870.

failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.¹³⁰

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.¹³¹

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

D. Application of AFA: Export Buyer’s Credit

As discussed below under the section “Programs Preliminarily Determined to be Countervailable,” Commerce is investigating the Export Buyer’s Credit Program. Commerce preliminarily determines that use of AFA is warranted in determining the countervailability of the Export Buyer’s Credit program because the GOC did not provide the requested information needed to allow Commerce to fully analyze this program.

In our Initial Questionnaire, we requested that the GOC provide the information requested in the Standard Questions Appendix “with regard to all types of financing provided by the China Export-Import Bank (China ExIm Bank) under the Buyer Credit Facility.”¹³² The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program, a description of the agencies and types of records maintained for administration of the program, a description of the program and the program application process, program eligibility criteria, and program use data. Rather than respond to the questions in the Standard Questions Appendix, the GOC stated it had confirmed “neither Huanri, nor its U.S. customers applied for, used, or benefited from this program during the POI... Therefore, the GOC understands that the {standard questions} appendix is not applicable.”¹³³

¹³⁰ See section 776(d) of the Act.

¹³¹ See, e.g., *Silica Fabric China* IDM at 14 (citing *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996)).

¹³² See Initial Questionnaire at 5.

¹³³ See GOC IQR at 14.

In our first supplemental questionnaire to the GOC, we again asked the GOC to respond to all items in the Standard Questions Appendix in addition to specific questions asking the GOC to provide specific information, such as a list of partner/correspondent banks involved in the program and the interest rates established during the POI for financing provided under this program. Instead of providing the requested information, the GOC stated that our questions were “not applicable” because Huanri did not use this program. We noted that “Exhibit Loan-12 of the GOC IQR contains the GOC’s 7th Supplemental Questionnaire Response from the CVD investigation of Certain Amorphous Silica Fabric from China {which} references ‘certain internal guidelines’ that were ‘adopted by the Export-Import Bank in 2013,’” and we asked the GOC to submit an English and Chinese version of those internal guidelines.¹³⁴ In its response, the GOC failed to provide the 2013 revisions.¹³⁵

The GOC’s response does not provide Commerce with the necessary information to determine whether respondents used this program. Through its deficient responses to Commerce’s initial and supplemental questionnaires, the GOC has withheld necessary information, including any information concerning the 2013 program revisions, thereby impeding Commerce’s ability to analyze the program’s operation or to determine how the program could be properly verified. The GOC is the only party that can answer questions about the internal administration of this program, and thus, absent the requested information, the GOC’s and respondent companies’ claims of non-use of this program are not verifiable. Furthermore, the responses provided by the GOC on this record appear similar to its previous responses with respect to this program which we have found lacking in prior China CVD proceedings.¹³⁶

Pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by Commerce and significantly impedes a proceeding, Commerce uses facts otherwise available. We find that the use of facts otherwise available is appropriate in light of the GOC’s refusal to provide the 2013 revisions. Furthermore, pursuant to section 776(b) of the Act, we find that the GOC has failed to cooperate by not acting to the best of its ability because it failed to provide necessary information based on its own analysis of whether the questions were applicable, notwithstanding Commerce’s request for the information. Accordingly, the application of AFA is warranted.

We preliminarily find, as AFA, that under this program the GOC bestowed a financial contribution pursuant to section 771(5)(D) of the Act, there was a benefit pursuant to section 771(5)(E) of the Act, and the program is specific pursuant to section 771(5A) of the Act. Thus, notwithstanding Huanri’s claims of non-use and certifications of non-use from its customers, we find that AFA is warranted.¹³⁷ Although Commerce has accepted certifications of non-use from

¹³⁴ See Letter, “Supplemental Questionnaire,” dated September 13, 2018.

¹³⁵ See GOC SQR1 at 1.

¹³⁶ See, e.g., *Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review*; 2015, 82 FR 57209 (December 4, 2017), and accompanying IDM at “Application of AFA to Export Buyer’s Credit Program,” unchanged in *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2015, 83 FR 26954 (June 11, 2018), and accompanying IDM at Comment 1.

¹³⁷ See Huanri IQR at 12-14 and Exhibit 12.3.

the respondents' customers to determine countervailability in prior proceedings investigating this program, as discussed above, information from the GOC indicates that this program was amended in 2013.¹³⁸ To fully analyze whether the current program is run in the same manner, as we have discussed in other proceedings investigating this program,¹³⁹ Commerce must be able to review the amendments to the program. Because the GOC has not provided the requisite information regarding the program's amendments, Commerce was unable to do so.

Based on the AFA rate selection hierarchy described above, for this program we are using an AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in the *Coated Paper from China Investigation Amended Final* proceeding, as the rate for these companies.¹⁴⁰

E. Application of AFA: Provision of Hot-Rolled Steel Inputs for LTAR

Government of China – Whether Certain Hot-Rolled Steel Producers are “Authorities”

The petitioners allege that the respondents received countervailable subsidies in the form of the provision of HRS for LTAR.¹⁴¹ We requested information from the GOC regarding the specific companies that produced the HRS that respondents purchased during the POI in order to determine whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.¹⁴² In prior CVD proceedings involving China, Commerce has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an “authority” within the meaning of section 771(5)(B) of the Act and that the price paid by the respondent for the input was for LTAR.¹⁴³

Furthermore, for HRS producers who were not majority government-owned enterprises during the POI, we requested information on the owners, members of the board of directors, or managers of the producers who are also government or Chinese Communist Party (CCP) officials or representatives during the POI. We requested this information as it applied to all ownership of such HRS producers back to the ultimate individual or state owners.¹⁴⁴ The GOC did not provide all the requested information for the HRS producers it reported as not being majority government-owned enterprises during the POI.¹⁴⁵ Specifically, the GOC stated that “{t}here is no central government database to search for the requested information as to whether

¹³⁸ See GOC IQR at Exhibit LOAN-12 at 6-8.

¹³⁹ See, e.g., *Truck and Bus Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606 (January 27, 2017) (*Truck and Bus Tires from China*), and accompanying IDM at Comments 2-6.

¹⁴⁰ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201, 70202 (Nov.17, 2010) (*Coated Paper from China Investigation Amended Final*) (identifying a revised *ad valorem* subsidy rate of 10.54 percent under “Preferential Lending to the Coated Paper Industry”).

¹⁴¹ See Initiation Checklist at 19.

¹⁴² See Initial QNR, Section II, at 24-28 and the Input Producer Appendix.

¹⁴³ See e.g., *Steel Pipe from China* IDM at “Hot-Rolled Steel for Less Than Adequate Remuneration;” *Kitchen Shelving and Racks from China* IDM at “Provision of Wire Rod for Less Than Adequate Remuneration.”

¹⁴⁴ See Initial Questionnaire at 38.

¹⁴⁵ *Id.* at Exhibit HRS-1 at 17-20; see also GOC SQR1 at 8.

any individual owner, member of the board of directors, or senior manager is a Government or CCP official {and} {t}he industry and commerce administration does not require companies to provide such government.”¹⁴⁶ Further, the GOC argued that “{e}ven if an owner, a director, or a manager of a supplier is a member or representative of any of these organizations, this circumstance would not make the management and business operations of the company in which he/she serves subject to any intervention by the GOC.”¹⁴⁷

The information we requested regarding the role of CCP officials in the management and operations of these producers is necessary for our determination as to whether these producers are “authorities” within the meaning of section 771(5)(B) of the Act. The GOC did not indicate that it had attempted to contact the CCP or that it consulted any other sources. The GOC’s responses in prior CVD proceedings involving China demonstrate that it is, in fact, able to access information similar to what we request.¹⁴⁸ Additionally, pursuant to section 782(c) of the Act, if the GOC could not provide any of the requested information, it should have promptly explained to Commerce what attempts it undertook to obtain this information and proposed alternative forms of providing the information.¹⁴⁹

We preliminarily find that the GOC has withheld necessary information that was requested of it and, thus, that Commerce must rely on “facts otherwise available” in issuing its preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, we preliminarily find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that AFA is warranted pursuant to section 776(b) of the Act. As AFA, we are preliminarily finding that each of the producers of HRS, for which the GOC failed to provide complete information which is necessary for our financial contribution analysis, are “authorities” within the meaning of section 771(5)(B) of the Act.¹⁵⁰ As such, we find 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.¹⁵¹ Therefore, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that the respondents

¹⁴⁶ See GOC IQR at Exhibit HRS-1 at 18.

¹⁴⁷ *Id.* at 13.

¹⁴⁸ See *High Pressure Steel Cylinders from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying Issues and Decisions Memorandum at 13.

¹⁴⁹ Section 782(c)(1) of the Act states, “{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.”

¹⁵⁰ See GOC IQR at Exhibit HRS-13.

¹⁵¹ See Memorandum, “The relevance of the Chinese Communist Party for the limited purpose of determining whether particular enterprises should be considered to be “public bodies” within the context of a countervailing duty investigation,” dated May 18, 2012 (CCP Memorandum); see also Memorandum, “Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-The-Road Tires from the People’s Republic of China: An Analysis of Public Bodies in the People’s Republic of China in Accordance With the WTO Appellate Body’s Findings in WTO DS379,” dated May 18, 2012 (Public Body Memorandum).

received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.

Government of China – Whether the Provision of Hot-Rolled Steel is Specific

For purposes of Commerce’s *de facto* specificity analysis, we asked the GOC to provide a list of industries that purchase HRS in China.¹⁵² In response to our questions concerning specificity, the GOC contends that the provision of HRS is not specific, stating that “{t}he GOC does not collect official data regarding the industries in China that purchase or consume the HRS directly.”¹⁵³ The GOC further contends that there are “a vast number of uses for hot-rolled steel {and that the} types of consumers that may purchase hot-rolled steel are highly varied within the economy.”¹⁵⁴ Moreover, the GOC explains that the selling price of HRS is determined by negotiations between the seller and the buyer according to market principles.¹⁵⁵ Further, the GOC stated that it does not impose any limitation on the consumption of these inputs and that the input producers are free to sell their product to any purchaser and at any price.¹⁵⁶

These contentions notwithstanding, Commerce also requested that the GOC “{p}rovide 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.”¹⁵⁷ The GOC did not provide this requested information for hot-rolled steel inputs purchased by the steel propane cylinders industry, instead stating that “{t}he GOC does not collect official data regarding the industries in China that purchase or consume the hot-rolled steel directly {and that} no hot-rolled steel producer compiles its sales volume and value ‘by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry.’”¹⁵⁸ While the GOC provided some information, such as excerpts from various sources that identify which industries produce steel and which industries use steel in China,¹⁵⁹ this information is insufficient because it does not include relevant data regarding the industries in China that actually purchased HRS, nor does it include the volume or the value of the industry’s purchases for the POI and the prior two years, as we requested.¹⁶⁰

Consequently, consistent with past proceedings,¹⁶¹ we preliminarily determine that necessary information is not available on the record. Moreover, the GOC withheld information that was requested, and, as a result, 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.

¹⁵² See Initial Questionnaire at 9.

¹⁵³ See, e.g., GOC IQR at 26 and 34.

¹⁵⁴ *Id.* at 34.

¹⁵⁵ *Id.* at 35.

¹⁵⁶ *Id.*

¹⁵⁷ See Initial Questionnaire at 9.

¹⁵⁸ See GOC IQR at 34.

¹⁵⁹ *Id.* at 34-35.

¹⁶⁰ See Initial Questionnaire at 8.

¹⁶¹ See, e.g., *Utility Scale Wind Towers from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 33422 (June 6, 2012) (unchanged in *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*)).

Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. Consequently, we preliminarily determine that an adverse inference is warranted in the application of facts available.¹⁶² In drawing an adverse inference, we find that the purchasers of HRS provided for LTAR are limited in number within the meaning of section 771(5A)(D)(iii)(I) of the Act. We note that that Commerce has previously found a similar program (*i.e.*, the provision of hot-rolled/cold-rolled coiled steel) is only provided to steel consuming industries, and thus, is only provided to a limited number of industries.¹⁶³

Government of China – Whether the Hot-Rolled Steel Market is Distorted

We asked the GOC several questions regarding the structure of the HRS industry and production and consumption of HRS during the POI and the prior two years. Specifically, we requested information on the number of producers, the total volume and value of Chinese domestic consumption and production, the total volume and value of imports of the input, a list of the industries that purchase HRS, a discussion of the laws, plans or policies that address the pricing of HRS, and share of domestic production that is accounted for by companies in which the government maintains a majority ownership or a controlling management interest.

We request such information to inform our 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 value of domestic production and the total volume and value of Chinese domestic consumption of HRS. Instead of providing the requested information, the GOC stated that the information was not available.¹⁶⁴ In addition, the GOC did not provide a discussion of any laws, plans, or policies addressing the pricing of HRS, its levels of production, importation, exportation, or capacity development. Instead, the GOC provided the Price Law of the PRC¹⁶⁵ and stated that it "is unable to address this question because the hot-rolled steel industry is very large, diversified, and dynamic in nature."¹⁶⁶ Finally, as noted above, the GOC did not provide a list of industries in China that directly purchase HRS or the amounts pertaining to this. The GOC stated that it does not collect official data regarding the industries that consume HRS directly.¹⁶⁷ Further, the GOC did not indicate that it made any efforts to coordinate with others or obtain this information.

We preliminarily determine 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 GOC-maintained databases concerning the value and volume of

¹⁶² See section 776(b) of the Act.

¹⁶³ See *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017) (*Tool Chests from China*), and accompanying IDM at Comment 4; see also *CDMT from China* IDM at Comment 3.

¹⁶⁴ See GOC's IQR at 25.

¹⁶⁵ *Id.* at Exhibit HRS-3.

¹⁶⁶ *Id.* at 30

¹⁶⁷ *Id.* at 24-25.

production by enterprises producing input products.¹⁶⁸ 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 which is intended to bring clarity to companies registered in China.¹⁶⁹ Based on this experience, we are 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 a state-owned enterprise (SOE). Therefore, we determine that information related to the operation and ownership of companies within the HRS industry are in fact available to the GOC.

Because the GOC refused to provide the requested information regarding the HRS industry in China, *i.e.*, information regarding the total value of domestic production that is accounted for by companies in which the government maintains an ownership or management interest either directly or through other government entities, we determine that the GOC withheld necessary information with regard to the Chinese hot-rolled steel industry and market for the POI and, therefore, must rely on facts otherwise available. Further, because the GOC refused to meaningfully respond to our information on laws, plans, policies specific to pricing, production, cross-border trades, and development capacity of HRS, we find that the GOC 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 HRS market in China, despite the fact that it was able to provide similar information in another proceeding. Consequently, we find that an adverse inference is warranted in the application of facts available.¹⁷⁰ Accordingly, as adverse facts available, we preliminarily determine that the GOC’s involvement in the HRS market in China results in significant distortion of the prices of hot-rolled steel industry 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 HRS for LTAR.

F. 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. These questions requested information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act.

¹⁶⁸ 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 IDM at Comment 2.

¹⁶⁹ 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).

¹⁷⁰ See section 776(b) 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, Commerce requested, *inter alia*: Provincial Price Proposals for each province in which mandatory respondents or any company “cross-owned” with those respondents is located for applicable tariff schedules that were in effect during the POI; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POI; the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process; the price adjustment conferences that took place between the NDRC and the provinces, grids, and power companies with respect to the creation of all tariff schedules that were applicable to the POI; the cost elements and adjustments that were discussed between the provinces and the NDRC in the price adjustment conferences; and how the NDRC determines that the provincial level price bureaus have accurately reported all relevant cost elements in their price proposals with respect to generation, transmission and distribution.¹⁷¹ Commerce requested this information in order to determine the process by which electricity prices and price adjustments are derived, to identify entities that manage and impact price adjustment processes, and to examine cost elements included in the derivation of electricity prices in effect throughout China during the POI.

In its initial questionnaire response, the GOC stated that “the electricity price in China is based on purely market mechanisms and reflects the market supply and demand, and as a consequence, the Department should not keep an outdated view of the Chinese electricity market and the pricing system.”¹⁷² As a result of notices such as the “NDRC Notification on Lowering the On-Grid Price of Coal-Fired Electricity and Electricity for Industrial and Commercial-Use {2015 No. 748},” and the “Notice of National Development and Reform Commission on Lowering Coal-Fired Electricity On-grid Price and General Industrial and Commercial Electricity Price {2015 No. 3105},” according to the GOC, the provincial governments act “largely independently” to issue and approve electricity price schedules, which are then submitted to the NDRC for its records.¹⁷³ Therefore, according to the GOC, Provincial Price Proposals no longer exist and did not exist during the POI.¹⁷⁴ Furthermore, the GOC also stated that the provincial governments determine electricity prices within their jurisdictions.¹⁷⁵ Consequently, according to the GOC, the NDRC’s only role is to record the electricity price schedules submitted by the provincial governments, and that the NDRC no longer has any impact on electricity prices.

Notice 748 is based upon consultations between the NDRC and the National Energy Administration.¹⁷⁶ Article 1 contained therein stipulates a lowering of the on-grid sales price of coal-fired electricity by a certain amount per kilowatt hour.¹⁷⁷ Article 2 indicates that this reduction in coal-fired electricity prices is intended to “reduc{e} the price of industrial and

¹⁷¹ See Initial Questionnaire at Section II: Electricity Appendix.

¹⁷² See GOC IQR at 42.

¹⁷³ *Id.* at Exhibit ELEC-1 at 1-4; see also GOC SQR1 at 9.

¹⁷⁴ See GOC IQR at Exhibit ELEC-1 at 1.

¹⁷⁵ *Id.* at 42.

¹⁷⁶ *Id.* at Exhibit ELEC-13.

¹⁷⁷ *Id.*

commercial electricity.”¹⁷⁸ Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity and coordinate uniform prices across three specific provinces.¹⁷⁹ Articles 6 and 7, respectively, indicate that provincial pricing authorities shall “develop and issue specific {electricity price} adjustment plan{s} in accordance with the average price adjustment standards of Annex 1, and report to {the National Development and Reform Commission},” and that the “price adjustment should be implemented since April 20th, 2015.”¹⁸⁰ Lastly, Article 10 directs that, “Local price departments shall organize and arrange carefully to put in place the electricity price adjustments measures.”¹⁸¹

NDRC Notice 3105, also based upon consultations between the NDRC and the National Energy Administration, directs local price authorities, under Articles II and X, to implement the price reductions included in Notice 3105 Annex and report resulting prices to NDRC.¹⁸² Consequently, both Notice 748 and Notice 3105 explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Neither Notice 748 nor Notice 3105 explicitly stipulate that relevant provisional pricing authorities determine and issue electricity prices within their own jurisdictions, as the GOC states to be the case.¹⁸³ Instead, both notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices.

With respect to price derivation at the provincial level, Commerce requested information regarding the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process. Specifically, Commerce asked how increases in cost elements led to retail price increases, the derivations of those cost increases, how cost increases are calculated, and how cost increases impacted the final electricity prices.¹⁸⁴ The GOC stated that the “the NDRC takes the role as a check and balancing mechanism, while the provincial governments conduct a leading role. In addition, the provincial governments’ roles in setting electricity prices are getting more independent and dynamic.”¹⁸⁵ Furthermore, after the provincial authorities make specific calculations based on the principles set by the NDRC, the “NDRC delegates its authority to prepare and publish the schedules of electricity tariff rates for their own jurisdictions under the Notices published and enforced by the NDRC to the provincial government agencies respectively under the law of electrical power (Art. 40).”¹⁸⁶ In reference to a specific electricity price adjustment that took place since mid-2016, the GOC stated that “provinces gained more independence to be able to adjust their electricity sell price, adjust the electricity price at different times during 2016, and adjust the price of different electricity pricing categories or in a different range. The adjusted electricity tariff schedules were approved by the

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* at Exhibit ELEC-4.

¹⁸³ *Id.* at Exhibit ELEC-1

¹⁸⁴ See Initial Questionnaire at Section II: Electricity Appendix.

¹⁸⁵ See GOC IQR at Exhibit ELEC-1 at 2.

¹⁸⁶ *Id.* at Exhibit ELEC-1 at 3.

government of each province and submitted to the NDRC for review.”¹⁸⁷ However, the GOC failed to explain, in detail, how the pricing values indicated in the Appendix were derived, including the specific factors or information relied upon by the NDRC.

Commerce additionally requested that the GOC explain, for each province in which a respondent or cross-owned company is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored into Price Proposals, and how cost element increases and final price increases were allocated across the province and across tariff end-user categories.¹⁸⁸ The GOC failed to provide a complete response to this request. The GOC reiterated that “{w}ith regard to adjustments that took place in 2016 and 2017, no Price Proposals were involved. Therefore, the question relating to the proposal is not applicable.”¹⁸⁹

As explained above, the GOC failed to fully explain the roles and nature of the cooperation between the NDRC and provinces in deriving electricity price adjustments. The information provided by the GOC indicates that despite its claim that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, the NDRC continues to play a major role in setting and adjusting prices. Furthermore, the GOC failed to explain both the derivation of price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves.¹⁹⁰ Consequently, we preliminarily determine that the GOC withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, Commerce must rely on “facts available” in making our preliminary determination.¹⁹¹ Moreover, pursuant to 776(b) of the Act, 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. We also note that the GOC did not ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available.¹⁹² In drawing an adverse inference, we find that the GOC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. The GOC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we are also drawing an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.¹⁹³ The benchmark rates were selected from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, see “Provision of Electricity for LTAR” section.

¹⁸⁷ *Id.* at Exhibit ELEC-1 at 3-4.

¹⁸⁸ See Initial Questionnaire at Section II: Electricity Appendix.

¹⁸⁹ See GOC IQR at Exhibit ELEC-1 at 7.

¹⁹⁰ See GOC IQR at 41-43 and Exhibit ELEC-1 at 1-10; see also GOC SQR1 at 8-9.

¹⁹¹ See section 776(a)(2)(A) of the Act.

¹⁹² See section 776(b) of the Act.

¹⁹³ See section 776(b)(4) of the Act.

XII. Analysis of Programs

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

A. Programs Preliminarily Determined to Be Countervailable

1. Policy Loans to the Steel Propane Cylinders Industry

The petitioners allege that the GOC provides policy loans to the steel propane cylinders industry. Under China's National Five-Year Plans, according to the petitioners, the GOC has consistently promoted the steel processing industry, including the production of steel propane cylinders.¹⁹⁴

When examining a policy lending program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support such objectives or goals. Where such plans or policy directives exist, then it is our practice to find that a policy lending program exists that is *de jure* specific to the targeted industry (or producers that fall under that industry) within the meaning of section 771(5A)(D)(i) of the Act. Once that finding is made, we rely upon the analysis undertaken in *CFS from China* to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.¹⁹⁵

Record information indicates the GOC placed great emphasis on targeting the steel propane cylinder industry for development throughout recent years. For example, the *National 11th Five-Year Plan for Economic and Social Development (2006-2010)* (11th Five-Year Plan) urges the development of high valued added exports and for Chinese companies to "...continue {to} develop processing trade, make efforts to enhance industrial level and processing depth, reinforce domestic ability to provide the auxiliary items and promote domestic industrial upgrading."¹⁹⁶ The 11th Five-Year Plan sets forth the goal of promoting industrial restructuring and development in eastern China and, in particular, "{c}onstructing bases of advanced equipment {and} top quality steel."¹⁹⁷ In order to achieve this goal, the 11th Five-Year Plan prioritizes the "development of advanced manufacturing... {and} develop{ing} intensive processing and top class products."¹⁹⁸ In addition, the 11th Five-Year Plan states that the GOC intends to "strengthen the cooperation of the policies in credit, land, environmental protection, safety and science and technology with the industrial policy and use economic means to promote the development of industries."¹⁹⁹

The provincial government of Shandong pursued the national economic development goals set

¹⁹⁴ See the Petition at Volume V at 18-24.

¹⁹⁵ See *CFS from China*, and accompanying IDM at Comment 8.

¹⁹⁶ See GOC IQR at Exhibit LOAN-6 at 144.

¹⁹⁷ *Id.* at Exhibit LOAN-6 at 124.

¹⁹⁸ *Id.* at Exhibit LOAN-6 at 125.

¹⁹⁹ *Id.* at Exhibit LOAN-6 at 158.

forth by the GOC under the *11th Five-Year National and Economic Social Development Plan of Shandong Province* (Shandong 11th Five-Year Plan), which supported the economic growth and “opening up” of the province by implementing the national steel industry policy, developing high-performance steel products, and promoting international trade.²⁰⁰

The GOC continued its support of the steel propane cylinder industry through the *12th Five-Year Outline of the Guidelines for National Economics and Social Development of the People’s Republic of China (2011-15)* (12th Five-Year Plan), which states that the industrial restructuring and reorganization should be undertaken with the objective of “transform{ing} and improv{ing} the consumer goods industry” and promoting “the enlargement and enhancement of manufacturing industries.”²⁰¹ In addition, the 12th Five-Year Plan promotes the growth of “a number of advanced manufacturing bases with international competitiveness,” using a regionally-based design to “develop modern industrial clusters with distinctive characteristics, a prominent brand image, and a sound service platform.”²⁰² The 12th Five-Year Plan seeks to maintain “current advantage{s} in export markets” while “{supporting} new advantages based on technology, branding, quality and service” to “extend the value-added chain in China.”²⁰³ Further, the 12th Five-Year Plan seeks to create a “favorable environment to activate the development of SMEs... {by} increase{ing} the size and percentage of lending to SMEs, and broaden{ing} channels of direct financing.”²⁰⁴

The current *National 13th Five-Year Plan of Economic and Social Development (2016-2020)* (13th Five-Year Plan) continues these objectives, and calls for a focus on the steel industry, among others, in order to “encourage more of China’s equipment {and} technology... to go global by engaging in international cooperation on production capacity and equipment manufacturing through overseas investments, project contracting, technology cooperation, equipment exporting, and other means, with a focus on industries such as steel... {and} engineering machinery.”²⁰⁵ The 13th Five-Year Plan further encourages the “transform{ation} and upgrade {of} major manufacturing technologies and improv{ing} policies to support enterprises... thereby helping key manufacturing sectors move into the medium-high end {and} improv{ing} the supply of consumer goods.”²⁰⁶ To achieve this goal, the 13th Five-Year Plan states support for the development of “specialized small and medium enterprises,” such as downstream processors.²⁰⁷ The 13th Five-Year Plan promotes the development of “a number of competitive, well-known brands” through improvements in both product quality and product supervision.²⁰⁸ Finally, the 13th Five Year-Year Plan calls for lowering business costs by reducing taxes and fees, “maintain{ing} proper liquidity and interest rates,” and extending credit by creating a “national financing guaranty fund.”²⁰⁹

²⁰⁰ *Id.* at Exhibit LOAN-7 at 43-44 and 50.

²⁰¹ *Id.* at Exhibit LOAN-6 at 273.

²⁰² *Id.* at Exhibit LOAN-6 at 273-274.

²⁰³ *Id.* at Exhibit LOAN-6 at 322.

²⁰⁴ *Id.* at Exhibit LOAN-6 at 274.

²⁰⁵ *Id.* at Exhibit LOAN-6 at 606.

²⁰⁶ *Id.* at Exhibit LOAN-6 at 525.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at Exhibit LOAN-6 at 526.

²⁰⁹ *Id.* at Exhibit LOAN-6 at 527.

A key tool in the GOC's economic development plans is preferential lending. In the *10th Five-Year Plan for the National Economic and Social Development of the People's Republic of China (2001-2005)* (10th Five-Year Plan), the GOC established a goal "to reduce financing cost {by} utiliz{ing} the international commercial loans such as banking group loans."²¹⁰ The GOC continued to use preferential lending to pursue economic development goals through the 13th Five-Year Plan, which sets a target of maintaining "proper liquidity and interest rates, creat{ing} new direct financing product suitable to the needs of enterprises, and establishing a national financing guaranty fund."²¹¹

Additional record evidence indicates financial support directed specifically toward certain encouraged industries, including the steel propane cylinder industry. For example, the *Decision of the State Council on Promulgating the Interim Provisions Promoting Industrial Structure Adjustment for Implementation (Guo Fa {2005} No. 40)* (Decision 40) declares the need for the GOC "to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc." based on the directives established in industrial guidance catalogues.²¹² Decision 40 indicates that the *Catalogue for the Guidance of Industrial Structure Adjustment (2005)* and the *Catalogue for the Guidance of Foreign Investment Industries* is an important basis for investment guidance and government administration of policies such as public finance, taxation, and credit."²¹³ Decision 40 further indicates that financial institutions "shall provide credit support in compliance with credit principles" to projects in "encouraged" industries.²¹⁴ The 2017 version of *Catalogue for the Guidance of Foreign Investment Industries* specifically includes the "manufacturing and processing of metallic packaging products" industry, a classification which appears to include subject merchandise, as encouraged.²¹⁵

Thus, given the evidence demonstrating the GOC's objective of developing advanced manufacturing and the metallic packaging products industry (of which steel propane cylinders is a part), as well as promoting exports and the development of well-known brands, through preferential loans, we preliminarily determine there is a program of preferential policy lending specific to producers of steel propane cylinders the meaning of section 771(5A)(D)(i) of the Act. We also preliminarily find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are "authorities."²¹⁶ The loans provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.²¹⁷

Huanri reported loans from SOCBs for which it made interest payments during the POI.²¹⁸ Thus, to calculate whether Huanri received a benefit from this program, we compared the amount of

²¹⁰ *Id.* at Exhibit LOAN-6 at 36.

²¹¹ *Id.* at Exhibit LOAN-6 at 527.

²¹² *Id.* at Exhibit LOAN-10 at 11.

²¹³ *Id.* at Exhibit LOAN-10 at 11-12.

²¹⁴ *Id.* at Exhibit LOAN-10 at 14.

²¹⁵ *Id.* at Exhibit LOAN-17 at 230.

²¹⁶ *See, e.g., CFS from China*, and accompanying IDM at Comment 1.

²¹⁷ *See* section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a).

²¹⁸ *See* Huanri IQR at Exhibit 9.

interest Huanri paid on the outstanding loans to the amount of interest the company would have paid on comparable commercial loans. In conducting this comparison, we used the interest rates described in the “Benchmarks and Interest Rates” section above.²¹⁹ To calculate the net countervailable subsidy rate under this program we divided the benefit by Huanri’s total POI sales. On this basis, we preliminarily determine a subsidy rate of 2.16 percent *ad valorem* for Huanri.²²⁰

2. Export Seller’s Credit

The China ExIm Bank provides support to exporters through a variety of means, including the export seller’s credit.²²¹ The Export Seller’s Credit program provides loans to Chinese companies to finance their export of manufactured vessels, equipment, general mechanical and electronic products, and high and new-technology as well as agricultural products.²²² According to the GOC, the China ExIm Bank “conducts independent evaluation pursuant to internal rules and makes its decision on whether to provide export sellers’ credit to a company.”²²³

Huanri reported having outstanding loans from the China ExIm Bank during the POI which were provided under this program. We find that the loans provided by the China ExIm Bank under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. The loans also provide a benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings, and, therefore, this program is specific under sections 771(5A)(A)-(B) of the Act.

To calculate the benefit under this program, we compared the amount of interest Huanri paid on the outstanding loans to the amount of interest the company would have paid on comparable commercial loans. In conducting this comparison, we used the interest rates described in the “Benchmarks and Interest Rates” section above. We divided the total benefit amount by Huanri’s export sales during the POI. On this basis, we preliminarily determine a subsidy rate of 0.98 percent *ad valorem* for Huanri.

3. Export Buyer’s Credit

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, our preliminary determination regarding the GOC’s provision of export buyer’s credit is based on AFA. As AFA, we determine that the GOC’s provision of export buyer’s credit confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. Furthermore, we determine on the basis of AFA that Huanri benefitted from this program during the POI within the meaning of section 771(5)(E) of

²¹⁹ See 19 CFR 351.505(c).

²²⁰ See Preliminary Calculation Memorandum.

²²¹ See Initiation Checklist at 9-10.

²²² See GOC IQR at Exhibit LOAN-15 at 1.

²²³ *Id.* at Exhibit LOAN-15 at 4.

the Act. Consistent with Commerce’s AFA rate selection methodology, we preliminarily determine a countervailable subsidy rate of 10.54 percent *ad valorem* for Huanri, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.²²⁴

4. 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 adverse facts 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.

The GOC submitted the electricity rate schedules for each province in effect during the POI. Many of the provinces had two electricity rate schedules that were in effect during the POI, one schedule for January 1 through June 30, 2017, and a second schedule for July 1 through December 31, 2017.²²⁵ To determine the existence and amount of any benefit under this program, we selected the highest provincial rates in China for each electricity user category (*e.g.*, “large-scale industry” and “general industry and commerce”), electricity rate category (*e.g.* “high peak” or “pinnacle;” “peak;” “normal” or “basic;” and “valley,” “low,” or “trough”), and “basic fees” (*e.g.*, maximum demand or transformer capacity) used by Huanri.²²⁶ We compared each of Huanri’s monthly electricity invoices during the POI to the highest provincial rate for the given electricity user category, electricity rate category, and basic fees in effect in China for that month.²²⁷

Consistent with our approach in *Wind Towers from China*,²²⁸ we first calculated Huanri’s variable electricity costs by multiplying the monthly kilowatt hours (kWh) consumed at each price category (*e.g.*, high peak, peak, normal, and valley, where appropriate) by the corresponding electricity rates paid by Huanri during each month of the POI.²²⁹ 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 Huanri during the POI from the monthly benchmark variable electricity costs.

To measure whether Huanri received a benefit with regard to its base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to Huanri by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the company’s consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or

²²⁴ See *Coated Paper from China Investigation Amended Final*, 75 FR at 70202 (identifying a revised *ad valorem* subsidy rate of 10.54 percent under “Preferential Lending to the Coated Paper Industry.”)

²²⁵ See GOC IQR at Exhibits ELEC-11 and ELEC-12

²²⁶ *Id.*; see also Preliminary Calculation Memorandum.

²²⁷ See Preliminary Calculation Memorandum; see also *Drill Pipe from China* IDM at 10-12.

²²⁸ See *Wind Towers from China*.

²²⁹ *Id.*, and accompanying IDM at 21-22.

transformer capacity costs paid by Huanri during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from Huanri's variable electricity payments and base rate payments.²³⁰

To calculate the net subsidy rate attributable to Huanri, we divided the benefit by the company's total sales during the POI, excluding sales of services and other adjustments as described in the "Subsidies Valuation" section above. On this basis, we preliminarily determine that Huanri received a countervailable subsidy rate of 1.73 percent *ad valorem*.²³¹

5. Provision of Hot-Rolled Steel for LTAR

Commerce is examining whether the GOC or other "authorities" within China provided Huanri with HRS for LTAR. Huanri reported that it purchased hot-rolled coiled steel from unaffiliated parties during the POI.²³²

Financial Contribution

The GOC indicated that certain producers of hot-rolled steel that provided inputs to respondents are majority-owned by the government.²³³ As explained in the Public Body Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.²³⁴ 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.²³⁵ Therefore, we preliminarily determine that these entities constitute "authorities" within the meaning of section 771(5)(B) of the Act and that Huanri received a financial contribution from them in the form of a provision of a good, pursuant to section 771(5)(D)(iii) of the Act.²³⁶

We are otherwise basing our determination of the GOC's provision of HRS for LTAR on AFA. As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we determine that certain Chinese producers that produced hot-rolled steel purchased by Huanri during the POI are "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, we determine that the GOC's provision of hot-rolled steel provides a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act. We find that Huanri used this program during the POI.²³⁷

²³⁰ See Preliminary Calculation Memorandum.

²³¹ *Id.*

²³² See Huanri IQR at Exhibit 13.

²³³ See GOC IQR at Exhibits HRS-13 (the HRS producers that Huanri's input suppliers purchased HRS from), HRS-17 (business registration for the HRS producers), HRS-21 (Huanri's HRS input suppliers).

²³⁴ See Public Body Memorandum.

²³⁵ *Id.*

²³⁶ See, e.g., *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 52301 (September 3, 2014), and accompanying IDM Memorandum at 48-50.

²³⁷ See Huanri IQR at Exhibit 13.

Specificity

Additionally, as explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that the GOC is providing hot-rolled steel to a limited number of industries and enterprises, and, hence, that the subsidies under this program are specific pursuant to section 771(5A)(D)(iii) of the Act.

Market Distortion

Further, as discussed in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we have preliminarily determined, as AFA, that the domestic market for hot-rolled steel is distorted through the intervention of the GOC. Thus, we are relying on an external benchmark for determining the benefit from the provision of hot-rolled steel for LTAR under section 771(5)(E)(ii) of the Act.

Benefit

In order to determine the existence and amount of any benefit conferred by the producers to the Huanri pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for HRS. Commerce’s regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. The potential benchmarks listed in the regulation, in order of preference are: (1) market prices from actual transactions within the country under investigation for the government-provided good (*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) prices consistent with market principles based on an assessment by Commerce of the government-set price (tier three).

As discussed above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we preliminarily determine, on the basis AFA, that the Chinese market for HRS is distorted such that market prices from actual transactions within the country under investigation for HRS are not appropriate for use as tier-one benchmarks. Commerce is, accordingly, selecting external benchmark prices, *i.e.*, “tier two” or world market prices, for our LTAR analysis consistent with Commerce’s regulations.²³⁸ To derive the benchmark prices, we included ocean freight and inland freight that would be incurred to deliver inputs to the respondents’ production facilities.²³⁹ We also added to the benchmark prices the appropriate import duties applicable to imports of hot-rolled steel into China, as provided by the GOC.²⁴⁰ Additionally, we added the appropriate VAT of 17 percent to the benchmark prices.²⁴¹

²³⁸ See 19 CFR 351.511.

²³⁹ See Preliminary Calculation Memorandum at Attachment 1.

²⁴⁰ See GOC IQR at 32-33. Consistent with *Citric Acid from China; 2011 Review*, we have utilized the Most Favored Nation import duty rate because it reflects the general tariff rate applicable to world trade. See *Citric Acid from China; 2011 Review*, and accompanying IDM at 90.

²⁴¹ See GOC IQR at 32-33.

We compared these monthly benchmark prices to the purchase prices paid by Huanri for individual domestic transactions, including VAT and delivery charges. We determined the benefit as the difference between the benchmark prices and the prices reported by Huanri. We divided the total benefits received by the total product sales of Huanri, net of intra-company sales.²⁴² On this basis, for the provision of hot-rolled coiled steel for LTAR, we preliminarily determine a net countervailable subsidy rate of 27.36 percent *ad valorem* for Huanri.²⁴³

B. Programs Preliminarily Determined Not to Confer a Measurable Benefit to Huanri

Huanri reported receiving benefits under various programs, some of which Commerce initiated on and others that Huanri self-reported.²⁴⁴ Based on the record evidence, we preliminarily determine that the benefits from certain programs were fully expensed prior to the POI or are less than 0.005 percent *ad valorem* when attributed to the Huanri's applicable sales as discussed in the "Attribution of Subsidies" section above. Consistent with Commerce's practice,²⁴⁵ we have not included those programs in our preliminary subsidy rate calculation for Huanri.

- GOC and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
- SME International Market Exploration/Development Fund
- Export Assistance Grants
- Special Fund for Enterprise R&D of Application Technologies
- Labor Position Subsidy for Burden Alleviating Enterprises in Laizhou
- Provincial Patent of Invention Subsidy
- "8515 Program" Enterprise Technology Reform Subsidy in 2011
- "8515 Program" Enterprise Technology Reform Subsidy in 2012
- "8515 Program" Enterprise Technology Reform Subsidy in 2013
- "8515 Program" Enterprise Technology Reform Subsidy in 2015
- VAT Benefit on Deposit of Partial Fixed Assets
- VAT Benefit on Deposit of Used Fixed Assets

²⁴² See Preliminary Calculation Memorandum at Attachment 1.

²⁴³ *Id.*

²⁴⁴ See Huanri IQR at Exhibit 16.

²⁴⁵ See e.g., *CFS from China*, and accompanying IDM at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE;" *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying IDM at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District;" *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at "Programs Used By the Alnan Companies;" and *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016), and accompanying IDM at "Tax Deduction for Research and Development Expenses."

C. Programs Preliminarily Determined to Be Not Used by Huanri

- Special Fund for Energy Savings Technology Reform
- SME Technology Innovation Fund
- Export Loans from Chinese State-Owned Banks
- Export Credit Guarantees
- Income Tax Reduction for HNTEs
- Income Tax Deductions for R&D Expenses Under the EITL
- Provincial Government of Guangdong Tax Offset for R&D
- Income Tariff and VAT Exemptions for Foreign-Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
- VAT Refunds for FIEs Purchasing Domestically-Produced Equipment
- Provision of Land for LTAR

XIII. Calculation of the All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act state that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. In this investigation, the only rate that is not zero or *de minimis* or based entirely on the facts available is the rate calculated for Huanri. Consequently, we are assigning the rate calculated for Huanri as the “all-others” rate (*i.e.*, 42.77 percent *ad valorem*).

XIV. ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order, without the written consent of the Assistant Secretary for Enforcement and Compliance. In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after Commerce makes its final determination.

XV. Disclosure and Public Comment

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.²⁴⁶ Case briefs or other written comments for all non-scope issues may be submitted to Enforcement and Compliance *via* Commerce’s electronic records system, ACCESS, no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs,

²⁴⁶ See 19 CFR 351.224(b).

limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.²⁴⁷

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.²⁴⁸ This summary should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.²⁴⁹ Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined. Prior to the date of the hearing, Commerce will contact all parties that submitted case or rebuttal briefs to determine if they wish to participate in the hearing. Commerce will then distribute a hearing schedule to the parties prior to the hearing and only those parties listed on the schedule may present issues raised in their briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.²⁵⁰ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,²⁵¹ on the due dates established above.

XVI. Verification

As provided in section 782(i)(1) of the Act, we intend to verify the factual information submitted in response to Commerce's questionnaires.

²⁴⁷ See 19 CFR 351.309(c)(1)(i) and (d)(1).

²⁴⁸ See 19 CFR 351.309(c)-(2); see also 19 CFR 351.303 (for general filing requirements).

²⁴⁹ See 19 CFR 351.310(c).

²⁵⁰ See 19 CFR 351.303(b)(2)(i).

²⁵¹ See 19 CFR 351.303(b)(1).

XVII. Recommendation

We recommend that you approve the preliminary findings described above.

Agree

Disagree

10/19/2018

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

APPENDIX

AFA Rate Calculation

Program	AFA Rate	Source of AFA Rate	Hierarchy Basis for AFA Rate
Export Loans from Chinese State-Owned Banks	10.54%	<i>Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 75 FR 70201, 70202 (November 17, 2010) (Coated Paper from China)</i>	Highest Calculated Rate for a Similar Lending Program (based on the treatment of the benefit): Preferential Lending to the Coated Paper Industry.
Export Seller's Credit Program	0.98%	Huanri's Calculated Rate (see Preliminary Calculation Memorandum)	Highest Calculated Program-Specific Rate Determined for the Cooperating Respondent in the Instant Investigation
Export Credit Guarantees	10.54%	<i>Coated Paper from China</i>	Highest Calculated Rate for a Similar Lending Program (based on the treatment of the benefit): Preferential Lending to the Coated Paper Industry.
Export Buyer's Credit	10.54%	<i>Coated Paper from China</i>	Highest Calculated Rate for a Similar Lending Program (based on the treatment of the benefit): Preferential Lending to the Coated Paper Industry.

Provision of Land for LTAR	5.24%	<i>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</i> , 82 FR 53473 (November 16, 2017)	Highest Calculated Rate for a Similar Land Program (based on the treatment of the benefit): Provision of Land-Use Rights by the GOC for LTAR)
Provision of Electricity for LTAR	1.73%	Huanri's Calculated Rate (<i>see</i> Preliminary Calculation Memorandum)	Highest Calculated Program-Specific Rate Determined for the Cooperating Respondent in the Instant Investigation
Income Tax Reductions for Research and Development Expenses Under the Enterprise Income Tax Law	25.00%	Petition, Volume V at 34 and Exhibit CVD-PRC-35 at Article 4	Corporate Income Tax Rate
Import Tariff Reductions to Foreign-Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries	9.71%	<i>New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review</i> , 75 FR 64268, 64275 (October 19, 2010), unchanged in the final (<i>see New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review</i> , 76 FR 23286 (April 26, 2011))	Highest Calculated Rate for a Similar Program (based on treatment of the benefit): VAT and Import Duty Exemptions on Imported Materials.

GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands	0.00%	Huanri's Calculated Rate (see Preliminary Calculation Memorandum)	Highest Calculated Program-Specific Rate Determined for the Cooperating Respondent in the Instant Investigation
Special Fund for Energy Savings Technology Reform	0.62%	<i>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) (Isos from China-2014).</i>	Highest Calculated Rate for the Identical Program: Special Fund for Energy Saving Technology
SME International Market Exploration/Development Fund	0.00%	Huanri's Calculated Rate (see Preliminary Calculation Memorandum)	Highest Calculated Program-Specific Rate Determined for the Cooperating Respondent in the Instant Investigation
SME Technology Innovation Fund	0.62%	<i>Isos from China-2014</i>	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
Export Assistance Grants	0.00%	Huanri's Calculated Rate (see Preliminary Calculation Memorandum)	Highest Calculated Program-Specific Rate Determined for the Cooperating Respondents in the Instant Investigation
Policy Loans to the Steel Propane Cylinder Industry	2.16%	Huanri's Calculated Rate (see Preliminary Calculation Memorandum)	Highest Calculated Program-Specific Rate Determined for the Cooperating Respondent in the Instant Investigation

Income Tax Reduction for High or New Technology Enterprises	25.00%	Petition, Volume V at 33-34 and Exhibit CVD-PRC-35 at Article 4	Corporate Income Tax Rate
Provincial Government of Guangdong Tax Offset for R&D	0.04%	<i>Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination</i> , 76 FR 18521 (April 4, 2011)	Highest Calculated Rate for the Identical Program: Provincial Government of Guangdong Tax Offset for R&D
VAT Refunds for Foreign Invested Enterprises Purchasing Domestically-Produced Equipment	9.71%	<i>New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review</i> , 75 FR 64268, 64275 (October 19, 2010), unchanged in the final (<i>see New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review</i> , 76 FR 23286 (April 26, 2011))	Highest Calculated Rate for a Similar Program (based on treatment of the benefit): VAT and Import Duty Exemptions on Imported Materials.
Provision of Hot-Rolled Steel for LTAR	27.36%	Huanri's Calculated Rate (<i>see Preliminary Calculation Memorandum</i>)	Highest Calculated Program-Specific Rate Determined for the Cooperating Respondent in the Instant Investigation
Special Fund for Enterprise R&D of Application Technologies	0.62%	<i>Isos from China-2014</i>	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology

Labor Position Subsidy for Burden Alleviating Enterprises in Laizhou	0.62%	<i>Isos from China-2014</i>	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
Provincial Patent of Invention Subsidy	0.62%	<i>Isos from China-2014</i>	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
“8515 Program” Enterprise Technology Reform Subsidy in 2011	0.62%	<i>Isos from China-2014</i>	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
“8515 Program” Enterprise Technology Reform Subsidy in 2012	0.62%	<i>Isos from China-2014</i>	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
“8515 Program” Enterprise Technology Reform Subsidy in 2013	0.62%	<i>Isos from China-2014</i>	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
“8515 Program” Enterprise Technology Reform Subsidy in 2015	0.62%	<i>Isos from China-2014</i>	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
VAT Benefit on Deposit of Partial Fixed Assets	0.62%	<i>Isos from China-2014</i>	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology

VAT Benefit on Deposit of Used Fixed Assets	0.62%	<i>Isos from China-2014</i>	Highest Calculated Rate for a Similar Program (based on the treatment of the benefit): Special Fund for Energy Saving Technology
Total Preliminary AFA Subsidy Rate:	145.37%		