



C-570-107  
Investigation  
POI: 01/01/2018 – 12/31/2018  
**Public Document**  
E&C/OV: Team

August 5, 2019

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Affirmative  
Determination: Countervailing Duty Investigation of Wooden  
Cabinets and Vanities and Components Thereof from the People's  
Republic of China

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## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of wooden cabinets and vanities and components thereof (wooden cabinets) 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 March 6, 2019, Commerce received petitions filed in proper form by the American Kitchen Cabinet Alliance (the petitioner)<sup>1</sup> seeking the imposition of antidumping duties (AD) and countervailing duties (CVD) on imports of wooden cabinets from China.<sup>2</sup> In accordance with section 702(b)(1) of the Act, the petitioner alleged that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to

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<sup>1</sup> The Alliance is comprised of AC Products, Inc., American Woodmark Corporation, Belmont Cabinet Co., Bertch Cabinet Manufacturing, The Corsi Group, Crystal Cabinet Works, Inc., Dura Supreme Cabinetry, Jim Bishop Cabinets, Inc., Kitchen Kompact, Inc., Koch & Co., Inc., Kountry Wood Products, LLC, Lanz Cabinets Incorporated, Leedo Cabinetry, Marsh Furniture Company, Master WoodCraft Cabinetry LLC, MasterBrand Cabinets, Inc., Nation's Cabinetry, Showplace Wood Products, Inc., Smart Cabinetry, Tru Cabinetry, Wellborn Cabinet, Inc., Wellborn Forest Products, Inc., Woodland Cabinetry, Inc., Woodmont Cabinetry, W. W. Wood Products, Inc.. The Alliance also has two additional members, the identities of which are proprietary.

<sup>2</sup> See the Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Wooden Cabinets and Vanities from the People's Republic of China," dated March 6, 2019 (the Petition).



producers of wooden cabinets in China and that imports of such products are materially injuring, or threatening material injury to, the domestic wooden cabinets industry in the United States.

On March 26, 2019, Commerce initiated an investigation with respect to 36 alleged countervailable subsidy programs provided by the GOC to the wooden cabinets industry in China.<sup>3</sup>

On April 8, 2019, Commerce issued quantity and value (Q&V) questionnaires<sup>4</sup> to the top 29 producers/exporters of subject merchandise, by value, that were publicly identified, with complete contact information, in the Petition. We also posted the Q&V questionnaire, along with filing instructions, on the Enforcement and Compliance website (<http://trade.gov/enforcement/news.asp>). On April 24, 2019, Commerce confirmed that all 29 Q&V questionnaires were delivered to their intended recipients.<sup>5</sup> On or before April 22, 2019, the deadline for submission of the Q&V questionnaires, Commerce received timely filed Q&V questionnaire responses from 105 exporters/producers. Of the 29 companies that were sent Q&V questionnaires individually, one company did not respond to the questionnaire.<sup>6</sup>

On May 31, 2019, Commerce selected The Ancientree Cabinet Co., Ltd. (Ancientree), Dalian Meisen Woodworking Co. Ltd. (Meisen), and Rizhao Foremost Woodwork Manufacturing Company Ltd. (Foremost), the three largest producers/exporters of the subject merchandise by volume, for individual examination as mandatory company respondents in this investigation.<sup>7</sup> Also on May 31, 2019, Commerce sent initial questionnaires to both the GOC and the company respondents in this investigation.<sup>8</sup> On June 14, 2019, Ancientree and Meisen submitted affiliation responses.<sup>9</sup> On June 18, 2019, Foremost submitted its affiliation response.<sup>10</sup> On June 24, 2019, and June 25, 2019, we sent affiliation supplemental questionnaires to the mandatory

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<sup>3</sup> See Memorandum, “Countervailing Duty Investigation Initiation Checklist: Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China,” dated March 26, 2019 (Initiation Checklist); *see also* *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 84 FR 12581 (April 2, 2019) (Initiation Notice).

<sup>4</sup> See Memorandum, “Parties Required to Respond to the Quantity and Value Questionnaire,” dated April 8, 2019; *see also* the Petition at Volume I, Exhibit I-9.

<sup>5</sup> See Memorandum, “Delivery of Quantity and Value Questionnaires,” dated April 24, 2019 (Delivery Memorandum).

<sup>6</sup> See Delivery Memorandum.

<sup>7</sup> See Memorandum, “Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components thereof from the People’s Republic of China: Respondent Selection,” dated May 31, 2019 (Respondent Selection Memorandum).

<sup>8</sup> See Letter, “Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Countervailing Duty Questionnaire,” dated May 31, 2019 (Initial Questionnaire).

<sup>9</sup> See Ancientree’s Letter, “Wooden Cabinets and Vanities from the People’s Republic of China: Affiliation Questionnaire Response,” dated June 14, 2019 (Ancientree AQR); and Meisen’s Letter, “Wooden Cabinets and Vanities from the People’s Republic of China: Section III Affiliation Questionnaire Response,” dated June 14, 2019 (Meisen AQR).

<sup>10</sup> See Foremost’s Letter, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: FWM’s Affiliated Companies Questionnaire Response,” dated June 18, 2019 (Foremost AQR).

respondents.<sup>11</sup> On June 27, 2019, Meisen and Foremost submitted supplemental affiliation responses, and on June 28, 2019, Ancientree submitted its supplemental affiliation response.<sup>12</sup>

On July 11, 2019, Ancientree submitted its response to the initial questionnaire on behalf of itself and its cross-owned affiliates, Jiangsu Hongjia Wood Co., Ltd. (Jiangsu Hongjia), Jiangsu Hongjia Wood Co., Ltd. Shanghai Branch (JH Shanghai Branch), and Shanghai Hongjia Wood Co., Ltd. (Shanghai Hongjia).<sup>13</sup> On that same date, Meisen submitted its initial questionnaire response on behalf of itself and its cross-owned affiliate, Dalian Hechang Technology Development Co., Ltd. (Dalian Hechang).<sup>14</sup> On July 12, 2019, Foremost submitted its initial questionnaire response on behalf of itself and five cross-owned companies, Foremost Worldwide Co., Ltd. (FWW), Foremost Groups, Ltd. (FGL), Rizhao Foremost Landbridge Wood Industries Co., Ltd. (FLB), and Foremost Group Holding Limited (FGHL).<sup>15</sup> On July 12, 2019, the GOC also submitted its initial questionnaire response.<sup>16</sup> On July 17 and 18, 2019, we sent supplemental questionnaires to the GOC, Ancientree, Meisen, and Foremost.<sup>17</sup> On July 21, 2019 and July 22, respectively, Ancientree and Meisen submitted supplemental responses.<sup>18</sup> On July

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<sup>11</sup> See Commerce's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Request for Additional Information," dated June 25, 2019 (Ancientree Affiliation Supplemental); Commerce's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Request for Additional Information," dated June 24, 2019 (Meisen Affiliation Supplemental); and Commerce's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Request for Additional Information," dated June 24, 2019 (Foremost Affiliation Supplemental).

<sup>12</sup> See Meisen's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Supplemental Affiliation Questionnaire Response," dated June 27, 2019 (Meisen Supp AQR); Foremost's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Foremost's Response to the Department's June 24, 2019 Affiliation Supplemental Questionnaire," dated June 27, 2019 (Foremost Supp AQR); and Ancientree's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Supplemental Affiliation Questionnaire Response," dated June 28, 2019 (Ancientree Supp AQR).

<sup>13</sup> See Ancientree's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Section III Questionnaire Response," dated July 11, 2019 (Ancientree IQR).

<sup>14</sup> See Meisen's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Section III Questionnaire Response," dated July 11, 2019 (Meisen IQR).

<sup>15</sup> See Foremost's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Foremost's CVD Questionnaire Response," dated July 12, 2019 (Foremost IQR).

<sup>16</sup> See GOC's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China, Case No. C-570-107: Initial Questionnaire Response," dated July 12, 2019 (GOC IQR).

<sup>17</sup> See Commerce's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Request for Additional Information," dated July 17, 2019 (GOC Supplemental); Commerce's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Supplemental Questionnaire," dated July 18, 2019 (Ancientree Supplemental); Commerce's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Request for Additional Information," dated June 18, 2019 (Meisen 2<sup>nd</sup> Affiliation Supplemental); Commerce's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Request for Additional Information," dated June 18, 2019 (Meisen Supplemental); and Commerce's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Supplemental Questionnaire," dated June 18, 2019 (Foremost Supplemental).

<sup>18</sup> See Ancientree's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Supplemental Questionnaire Response," dated July 21, 2019 (Ancientree SQR); Meisen's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Supplemental Questionnaire Response," dated July 22, 2019 (Meisen SQR); and Meisen's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: 2<sup>nd</sup> Supplemental Affiliation Questionnaire Response," dated July 22, 2019.

23, 2019, the GOC and Foremost submitted supplemental responses.<sup>19</sup> On July 25, 2019, we sent a second supplemental questionnaire to Foremost.<sup>20</sup> On July 29, 2019, Foremost submitted a second supplemental questionnaire response.<sup>21</sup>

On July 18, 2019, the petitioner, Ancientree, Meisen, and Foremost submitted benchmark information.<sup>22</sup> On July 23, 2019, the petitioner filed comments on the initial questionnaire responses, as well as Commerce's upcoming preliminary determination.<sup>23</sup> The petitioner filed additional comments on the upcoming preliminary determination on July 29, 2019.<sup>24</sup> On July 29, 2019, Ancientree and Meisen filed rebuttal benchmark comments.<sup>25</sup> Foremost submitted comments on the preliminary determination on July 31, 2019.<sup>26</sup>

On July 18, 2019, the petitioner timely submitted new subsidy allegations (NSA) for five programs.<sup>27</sup> The GOC and Ancientree submitted comments on the petitioner's NSAs on August 2, 2019.<sup>28</sup> We are still examining the NSAs and will decide whether to initiate an investigation with respect to the newly alleged subsidy programs after this preliminary determination. Should we initiate, we will issue a new subsidy allegation questionnaire to the relevant parties. We also intend to issue a post-preliminary analysis for any programs on which we initiate.

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<sup>19</sup> See GOC's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China, Case No. C-570-107: First Supplemental Questionnaire Response," dated July 23, 2019 (GOC SQR); and Foremost's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Foremost's CVD Supplemental Questionnaire Response," dated July 23, 2019 (Foremost SQR1).

<sup>20</sup> See Commerce's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Second Supplemental Questionnaire," dated July 25, 2019.

<sup>21</sup> See Foremost's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Foremost's CVD Second Supplemental Questionnaire Response," dated July 29, 2019 (Foremost SQR2).

<sup>22</sup> See the Petitioner's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Submission of Benchmark Information," dated July 18, 2019 (Petitioner's Benchmark Data); Ancientree's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Benchmark Submission," dated July 18, 2019 (Ancientree's Benchmark Data); Meisen's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Benchmark Information," dated July 18, 2019 (Meisen's Benchmark Data); and Foremost's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Foremost's Benchmark Submission," dated July 18, 2019 (Foremost's Benchmark Data).

<sup>23</sup> See the Petitioner's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Petitioner's Comments on Initial Questionnaire Responses and Pre-Preliminary Determination Comments," dated July 23, 2019.

<sup>24</sup> See the Petitioner's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Petitioner's Additional Pre-Preliminary Determination Comments," dated July 29, 2019.

<sup>25</sup> See Ancientree's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Rebuttal Benchmark Submission," dated July 29, 2019; and Meisen's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Rebuttal Benchmark Comments," dated July 29, 2019.

<sup>26</sup> See Foremost's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Foremost's CVD Pre-Preliminary Comments," dated July 31, 2019.

<sup>27</sup> See the Petitioner's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: New Subsidy Allegations," dated July 18, 2019.

<sup>28</sup> See the GOC's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China, Case No. C-570-107: Response to American Kitchen Cabinet Alliance's New Subsidy Allegations," dated August 2, 2019; and Ancientree's Letter, "Wooden Cabinets and Vanities from China: Ancientree's Rebuttal Comments on Petitioner's New Subsidy Allegations," dated August 2, 2019.

## **B. Postponement of Preliminary Determination**

On May 17, 2019, based on a request by the petitioner,<sup>29</sup> Commerce postponed the preliminary determination in this investigation to August 5, 2019, in accordance with section 703(c)(1) and (2) of the Act and 19 CFR 351.205(e).<sup>30</sup>

## **C. Period of Investigation**

The period of investigation (POI) is January 1, 2018 through December 31, 2018. This period corresponds to the most recently completed calendar year in accordance with 19 CFR 351.204(b)(2).

## **III. SCOPE COMMENTS**

In accordance with the *Preamble* to Commerce's regulations,<sup>31</sup> we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of that notice.<sup>32</sup> We received several comments concerning the scope of the AD and CVD investigations of wooden cabinets from China. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations concurrent with the preliminary determination of the companion AD investigation, which is currently due no later than October 2, 2019. The preliminary scope decision will be placed on the record of both the AD and CVD investigations and, interested parties will have the opportunity to comment prior to the final CVD determination.

## **IV. SCOPE OF THE INVESTIGATION**

The merchandise subject to this investigation consists of wooden cabinets and vanities that are for permanent installation (including floor mounted, wall mounted, ceiling hung or by attachment of plumbing), and wooden components thereof. Wooden cabinets and vanities and wooden components are made substantially of wood products, including solid wood and engineered wood products (including those made from wood particles, fibers, or other wooden materials such as plywood, strand board, block board, particle board, or fiberboard), or bamboo. Wooden cabinets and vanities consist of a cabinet box (which typically includes a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves) and may or may not include a frame, door, drawers and/or shelves. Subject merchandise includes wooden cabinets and vanities with or without wood veneers, wood, paper or other overlays, or laminates,

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<sup>29</sup> See the Petitioner's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Request to Postpone Preliminary Determination," dated May 2, 2019.

<sup>30</sup> See *Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Postponement of Preliminary Determination*, 84 FR 22437 (May 17, 2019). In accordance with Commerce's practice, 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).

<sup>31</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>32</sup> See *Initiation Notice*, 84 FR at 12581.

with or without non-wood components or trim such as metal, marble, glass, plastic, or other resins, whether or not surface finished or unfinished, and whether or not completed.

Wooden cabinets and vanities are covered by the investigation whether or not they are imported attached to, or in conjunction with, faucets, metal plumbing, sinks and/or sink bowls, or countertops. If wooden cabinets or vanities are imported attached to, or in conjunction with, such merchandise, only the wooden cabinet or vanity is covered by the scope.

Subject merchandise includes the following wooden component parts of cabinets and vanities: (1) wooden cabinet and vanity frames (2) wooden cabinet and vanity boxes (which typically include a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves), (3) wooden cabinet or vanity doors, (4) wooden cabinet or vanity drawers and drawer components (which typically include sides, backs, bottoms, and faces), (5) back panels and end panels, (6) and desks, shelves, and tables that are attached to or incorporated in the subject merchandise.

Subject merchandise includes all unassembled, assembled and/or “ready to assemble” (RTA) wooden cabinets and vanities, also commonly known as “flat packs,” except to the extent such merchandise is already covered by the scope of antidumping and countervailing duty orders on *Hardwood Plywood from the People’s Republic of China*. See *Certain Hardwood Plywood Products from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 83 FR 504 (January 4, 2018); *Certain Hardwood Plywood Products from the People’s Republic of China: Countervailing Duty Order*, 83 FR 513 (January 4, 2018). RTA wooden cabinets and vanities are defined as cabinets or vanities packaged so that at the time of importation they may include: (1) wooden components required to assemble a cabinet or vanity (including drawer faces and doors); and (2) parts (*e.g.*, screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a cabinet or vanity. RTAs may enter the United States in one or in multiple packages.

Subject merchandise also includes wooden cabinets and vanities and in-scope components that have been further processed in a third country, including but not limited to one or more of the following: trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

Excluded from the scope of this investigation, if entered separate from a wooden cabinet or vanity are:

(1) Aftermarket accessory items which may be added to or installed into an interior of a cabinet and which are not considered a structural or core component of a wooden cabinet or vanity. Aftermarket accessory items may be made of wood, metal, plastic, composite material, or a combination thereof that can be inserted into a cabinet and which are utilized in the function of organization/accessibility on the interior of a cabinet; and include:

- Inserts or dividers which are placed into drawer boxes with the purpose of organizing or dividing the internal portion of the drawer into multiple areas for the purpose of containing smaller items such as cutlery, utensils, bathroom essentials, etc.

- Round or oblong inserts that rotate internally in a cabinet for the purpose of accessibility to foodstuffs, dishware, general supplies, etc.

(2) Solid wooden accessories including corbels and rosettes, which serve the primary purpose of decoration and personalization.

(3) Non-wooden cabinet hardware components including metal hinges, brackets, catches, locks, drawer slides, fasteners (nails, screws, tacks, staples), handles, and knobs.

Also excluded from the scope of this investigation are:

(1) All products covered by the scope of the antidumping duty order on *Wooden Bedroom Furniture from the People's Republic of China*. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China*, 70 FR 329 (January 4, 2005).

(2) All products covered by the scope of the antidumping and countervailing duty orders on *Hardwood Plywood from the People's Republic of China*. See *Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 83 FR 504 (January 4, 2018); *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order*, 83 FR. 513 (January 4, 2018).

Imports of subject merchandise are classified under Harmonized Tariff Schedule of the United States (HTSUS) statistical numbers 9403.40.9060 and 9403.60.8081. The subject component parts of wooden cabinets and vanities may be entered into the United States under HTSUS statistical number 9403.90.7080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## V. ALIGNMENT

In accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4), and based on the petitioner's request,<sup>33</sup> we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of wooden cabinets from China. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than December 16, 2019, unless postponed.<sup>34</sup>

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<sup>33</sup> See the Petitioner's Letter, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination," dated July 19, 2019.

<sup>34</sup> See *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 84 FR 12587 (April 2, 2019); see also *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 84 FR 37988 (August 5, 2019).

## **VI. INJURY TEST**

Because China is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry. On April 22, 2019, 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 wooden cabinets from China.<sup>35</sup>

## **VII. DIVERSIFICATION OF CHINA’S ECONOMY**

Concurrently with this decision memorandum, we are placing the following excerpts from the China Statistical Yearbook from the National Bureau of Statistics of China on the record of this investigation: 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.<sup>36</sup> 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.

## **VIII. 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 further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) 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 AFA rule to induce respondents to provide Commerce with complete and accurate information in a timely

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<sup>35</sup> See *Wooden Cabinets and Vanities from China*, 84 FR 17890 (April 26, 2019).

<sup>36</sup> See Memorandum, “China Statistical Yearbook Memorandum,” dated concurrently with this memorandum.

manner.”<sup>37</sup> 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.”<sup>38</sup> At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

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.”<sup>39</sup> It is Commerce’s practice to consider information to be corroborated if it has probative value.<sup>40</sup> In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.<sup>41</sup> However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.<sup>42</sup> Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.<sup>43</sup>

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 Commerce 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.<sup>44</sup>

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

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<sup>37</sup> See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>38</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

<sup>39</sup> See, e.g., SAA at 870.

<sup>40</sup> *Id.* at 870.

<sup>41</sup> *Id.* at 869.

<sup>42</sup> *Id.* at 869-870.

<sup>43</sup> See section 776(c)(2) of the Act.

<sup>44</sup> See section 776(d)(3) of the Act.

## B. Application of AFA: Non-Responsive Companies

As noted in the “Initiation and Case History” section above, Commerce issued Q&V questionnaires to the top 29 producers/exporters of subject merchandise, by value, that were publicly identified, with complete contact information, in the Petition.<sup>45</sup> We issued all Q&V questionnaires *via* ACCESS or Federal Express, and confirmed that all of the questionnaires were delivered.<sup>46</sup> Of the 29 companies that we confirmed had questionnaires delivered to them, all but one, Deway International Trade Co., Ltd. (Deway), timely and properly responded to our request for information. Accordingly, we preliminarily determine that Deway withheld necessary information that was requested of it, 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 Deway, pursuant to sections 776(a)(2)(A)-(C) of the Act. Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to the Q&V questionnaire, Deway 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 Deway does not obtain a more favorable result by failing to cooperate than if it had fully complied with our requests for information.

In its response to the affiliation section of the initial questionnaire, Foremost reported that a minor portion of its exports of subject merchandise to the United States were purchased from three unaffiliated companies.<sup>47</sup> As our initial questionnaire normally requires that such suppliers provide a full response to the initial questionnaire, Foremost sought an exemption from this reporting requirement, citing the small volumes of subject merchandise purchased from these suppliers, the burdens that would be placed on respondents and Commerce should these companies be required to provide full questionnaire responses, and Foremost’s inability to compel these companies to supply a response, as they are not affiliated with Foremost.<sup>48</sup> The petitioner opposed this request.<sup>49</sup> In the supplemental affiliation questionnaire issued to Foremost, we requested a full questionnaire response from the unaffiliated supplier company, accounting for the largest portion of the goods provided to Foremost for resale, Henan AiDiJia Furniture Co., Ltd. (AiDiJia). Foremost confirmed in its initial questionnaire response that it requested a full response from AiDiJia, and that AiDiJia was unwilling to cooperate in this investigation and provide a full questionnaire response.<sup>50</sup> In our supplemental questionnaire, we asked Foremost to provide copies of correspondence between itself and AiDiJia in order to provide further detail regarding Foremost’s efforts to gain cooperation from its supplier; Foremost provided the relevant correspondence, indicating AiDiJia’s unwillingness to undergo the expense or effort of complying with Commerce’s requests for information.<sup>51</sup> Accordingly,

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<sup>45</sup> See Respondent Selection Memorandum at 2.

<sup>46</sup> See Delivery Memorandum.

<sup>47</sup> See Foremost AQR at 3.

<sup>48</sup> See Foremost’s Letter, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Exclusion Request,” dated June 18, 2019.

<sup>49</sup> See the Petitioner’s Letter, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Opposition to Foremost Request to Exclude Unaffiliated Subject Merchandise Producers from Reporting,” dated June 19, 2019.

<sup>50</sup> See Foremost IQR at 7-8.

<sup>51</sup> See Foremost SQR1 at Exhibit Q1.

we preliminarily determine that Foremost acted to the best of its ability to compel participation from AiDiJia in this investigation, and that AiDiJia withheld necessary information that was requested of it, 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 AiDiJia, pursuant to sections 776(a)(2)(A)-(C) of the Act. Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to the Q&V questionnaire, AiDiJia 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 AiDiJia does not obtain a more favorable result by failing to cooperate than if it had fully complied with our requests for information.

We have included all programs upon which the Commerce initiated in this investigation to determine the AFA rate, as well as other programs that were reported by the respondents. We are drawing an adverse inference from the decisions of Deway and Foremost's unaffiliated supplier not to participate in this investigation that it, in fact, used these programs during the POI.

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.<sup>52</sup> 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.<sup>53</sup> 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

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<sup>52</sup> 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) (*Lawn Groomers from China*), and accompanying Issues and Decision Memorandum (IDM) 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) (*Aluminum Extrusions from China; 2011*), and accompanying IDM (Aluminum Extrusions IDM) at "Application of Adverse Inferences: Non-Cooperative Companies."

<sup>53</sup> See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM (Shrimp IDM) at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-74 (Fed. Cir. 2014) (*Essar Steel*) (upholding "hierarchical methodology for selecting an AFA rate").

apply the highest calculated rate for the identical program (excluding *de minimis* rates).<sup>54</sup> 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.<sup>55</sup>

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."<sup>56</sup> The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.<sup>57</sup>

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.<sup>58</sup> Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.<sup>59</sup>

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.<sup>60</sup>

In determining the AFA rate applicable to each of the non-responsive companies, 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 respondents in the

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<sup>54</sup> 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."

<sup>55</sup> See Shrimp IDM at 13-14.

<sup>56</sup> See SAA at 870.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 869-870.

<sup>59</sup> See section 776(d) of the Act.

<sup>60</sup> See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

instant investigation. Accordingly, we are applying the highest applicable subsidy rate calculated for the mandatory company respondents for the following programs:

- Policy Loans to the Wooden Cabinet and Vanity Industry
- Provision of Plywood for Less than Adequate Remuneration (LTAR)
- Provision of Electricity for LTAR
- Provision of Water for LTAR
- Provision of Provision of Land-Use Rights by the GOC to Encouraged Industries 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 Reductions under Article 28 of the Enterprise Income Tax
- Tax Offsets for Research and Development under the Enterprise Income Tax
- Preferential Income Tax Policy for Enterprises in the Northeast Region
- Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
- Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment

The standard income tax rate for corporations in China in effect during the POI was 25 percent.<sup>61</sup> Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, the five programs, combined, provide a 25 percent benefit). Consistent with past practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.<sup>62</sup>

For all other programs not mentioned above,<sup>63</sup> 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:

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<sup>61</sup> See CVD Initiation Checklist at 27.

<sup>62</sup> See, *e.g.*, Aluminum Extrusions IDM at “Application of Adverse Inferences: Non-Cooperative Companies.”

<sup>63</sup> The final 38 programs in the list below were self-reported by the company respondents. Otherwise, these are the remainder of the program from the *CVD Initiation*.

- Provision of Standing Timber for LTAR<sup>64</sup>
- Provision of Cut Timber for LTAR<sup>65</sup>
- Provision of Formaldehyde for LTAR<sup>66</sup>
- Provision of Urea for LTAR<sup>67</sup>
- Provision of Urea-Formaldehyde Resin for LTAR<sup>68</sup>
- Preferential Loans for State-Owned Enterprises<sup>69</sup>
- Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program<sup>70</sup>
- Provision of Land to SOEs by the GOC for LTAR<sup>71</sup>
- Value-Added Tax and Import Duty Exemptions for Use of Imported Equipment<sup>72</sup>
- Value-Added Tax Rebate Exemptions on Foreign Invested Enterprise Purchases of Chinese-Made Equipment<sup>73</sup>
- Foreign Trade Development Fund Grants<sup>74</sup>
- Export Assistance Grants
- Export Interest Subsidies
- Interest Loan Subsidies for the Forestry Industry
- Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
- Funds for Outward Expansion of Industries in Guangdong Province
- Provincial Fund for Fiscal and Technological Innovation

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<sup>64</sup> See *Chlorinated Isocyanurates from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012*, 79 FR 56560 (September 22, 2014), and accompanying IDM at 21-22 (“Electricity for LTAR”).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Consistent with recent investigations, we are using a single AFA rate for “Policy Lending to the Wooden Cabinets Industry” and “Preferential Loans to SOEs,” because an analysis of these two allegations in this investigation reveals that they would apply to the same loans provided by SOCBs. See, e.g., *Grain-Oriented Electrical Steel from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 59221 (October 1, 2014), and accompanying IDM (GOES IDM) at 7 *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 Amended Final*) and accompanying MEM at “Revised Net Subsidy Rate for the Gold Companies” (regarding “Preferential Lending to the Coated Paper Industry”). However, as we are applying a calculated rate for the policy lending program, this same rate will be applied to the “Preferential Loans for State-Owned Enterprise” program.

<sup>70</sup> See *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) (*Aluminum Extrusions from China; 2014*), and accompanying IDM at 18-21 (“Policy Loans to Chinese Aluminum Extrusion Producers”).

<sup>71</sup> See *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016) (*ITDCs from China*), and accompanying IDM at 13.

<sup>72</sup> See *Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Affirmative Determination*, 82 FR 14872 (March 23, 2017), and accompanying IDM.

<sup>73</sup> *Id.*

<sup>74</sup> For the remaining grant programs, see *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 27466 (June 15, 2017), and accompanying IDM at 6-7 (“Special Fund for Energy Saving Technology”).

- State Key Technology Renovation Fund
- Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers
- Shandong Province's Environmental Protection Industry Research and Development Funds
- Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
- Waste Water Treatment Subsidies
- Technology to Improve Trade Research and Development Fund
- 2016 Provincial Business Development Special Fund
- Small and Medium Enterprise International Market Development Fund
- International Market Development Fund for Medium-Small Enterprises
- Prize and Award of People's Government of Fengcheng Town
- Prize and Award of People's Government of Shanghai
- Financial Support Fund
- Financial Support Fund of People's Government of Fengcheng Town
- Foreign Trade Special Fund
- Labor & Employment Subsidy
- Rizhao Dong Gang District top 10 enterprise prize - Year 2009
- Rizhao Dong Gang District top 10 enterprise prize - Year 2010
- Rizhao Dong Gang District top 10 enterprise prize - Year 2011
- Special Funds for Industrial Enterprise Development
- Special Support Funds for Trade
- Top 10 Highest Tax Contribution Enterprise Prize - Year 2012
- Taiwanese Enterprises "Company Culture Building" Subsidy
- Enterprise Stability Subsidy
- Refund Administration Fee for Personal Tax Declaration
- Shandong Province Export Business Subsidy - Year 2015
- Prize for Pioneer in Business Development
- Senior Technician Subsidy
- Forest Product Processing Grant
- Reward to Little Giant Enterprises
- Credit Insurance Subsidy
- Reward for Technology Renovation
- Property Insurance Subsidy
- Fund for Encouraging the Development of FIE
- Rebate of VAT of Tax-Control System
- Rebate for Individual Income Tax Collection
- Grant for Labor and Social Security
- Rebate of Export Insurance Fee
- Reward for Safety Examination
- Rebate for VAT Collection

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for each of the non-responsive companies to be 229.24 percent *ad valorem*. The Appendix contains a chart summarizing our calculation of this rate.

### C. Application of AFA: Export Buyer's Credits

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 necessary 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 ExIm under the Buyer Credit Facility."<sup>75</sup> 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 "none of the U.S. customers of the mandatory respondents has been provided with loans under this program, thus, GOC believes the answer to a Standard Questions Appendix is not required."<sup>76</sup>

In its initial CVD questionnaire response, the GOC stated that the EX-IM Bank confirmed that it strictly limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million.<sup>77</sup> In that same response, the GOC provided a copy of its *7th Supplemental Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China*.<sup>78</sup> Information in that document indicates that the GOC revised this program in 2013 to eliminate this minimum requirement.<sup>79</sup> Thus, we requested in our Initial CVD Questionnaire that the GOC also provide original and translated copies of any laws, regulations or other governing documents cited by the GOC in the Export Buyer's Credit Supplemental Questionnaire Response. This request included the 2013 *Administrative Measures* revisions (2013 Revisions) to the Export Buyer's Credit program. In its response, the GOC failed to provide the 2013 Revisions.<sup>80</sup> We, therefore, again requested that the GOC provide the 2013 Revisions.<sup>81</sup> In response, the GOC stated that the 2013 guidelines are internal to the EX-IM

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<sup>75</sup> See Initial Questionnaire Section II at 33-34.

<sup>76</sup> See GOC IQR at 70.

<sup>77</sup> *Id.* at Exhibit EXPORT-2.

<sup>78</sup> *Id.* at Exhibit EXPORT-1 (Export Buyer's Credit Supplemental Questionnaire Response); see also *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017).

<sup>79</sup> *Id.*; see also Memorandum, "Placement of Additional Information on the Record," dated concurrently with this memorandum (Additional Documents Memorandum), at Attachment 2 (Citric Acid Verification Report at 2).

<sup>80</sup> See GOC IQR at 71.

<sup>81</sup> See GOC SQR at 8.

Bank, non-public, and not available for release. The GOC further claimed to have no authority to force the EX-IM Bank to provide a copy of the 2013 guidelines, and that they would therefore not be provided.<sup>82</sup> Through its response to Commerce's initial and supplemental questionnaires, the GOC has twice refused to provide the requested information or any information concerning the 2013 program revision, which is necessary for Commerce to analyze how the program functions.

We requested the 2013 Revisions because information on the record of this proceeding indicated that the 2013 Revisions affected important program changes. For example, the 2013 Revisions may have eliminated the 2 million USD contract minimum associated with this lending program.<sup>83</sup> By refusing to provide the requested necessary information, which is necessary for Commerce to analyze how the program functions, and instead asking Commerce to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyers' Credit remained in effect, the GOC impeded Commerce's understanding of how this program operates and how it can be properly verified.

Additional information in the GOC's initial questionnaire response also indicated that the loans associated with this program are not limited to direct disbursements through the EX-IM Bank.<sup>84</sup> Specifically, this record information indicates that customers can open loan accounts for disbursements through this program with other banks.<sup>85</sup> The funds are first sent from the EX-IM Bank to the importer's account, which could be at the EX-IM Bank or other banks, and that these funds are then sent to the exporter's bank account.<sup>86</sup> Given the complicated structure of loan disbursements for this program, Commerce's complete understanding of how this program is administered is necessary. Thus, the GOC's refusal to provide the 2013 Revisions, which provide internal guidelines for how this program is administered by the EX-IM Bank, impeded Commerce's ability to conduct its investigation of this program.

In response to our request that it provide a list of all partner/correspondent banks involved in disbursement of funds under the program, the GOC claimed that none of the respondents' U.S. customers applied for or used this program.<sup>87</sup> A second request for this information prompted a similar response from the GOC, in which it once again claimed that the program was not used, and that the question was therefore not applicable.<sup>88</sup> Commerce cannot verify claims of non-use by the respondents or their U.S. customers without a complete set of administrative measures on the record that would provide guidance to Commerce in querying the records and electronic databases of the EX-IM Bank, and if it does not know the names of the intermediary banks that might appear in the books and records of the recipient of the credit (*i.e.*, the loan) or the cash disbursement made pursuant to the credit. Without fully understanding how this program operates, we cannot ascertain what a proper database search entails. For example, we do not know whether the searches should have been performed using the U.S. customers' names or on other entities (*e.g.*, the partner/correspondent banks that worked with the U.S. customers rather

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<sup>82</sup> *Id.*

<sup>83</sup> See Additional Documents Memorandum at Citric Acid Verification Report.

<sup>84</sup> See GOC IQR at Exhibit EXPORT-1.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> See GOC IQR at 72.

<sup>88</sup> See GOC SQR at 9.

than the U.S. customers themselves). Additionally, there will not necessarily be an account in the name “China ExIM Bank” or “EX-IM Bank” in the books and records (*e.g.*, subledger, tax return, bank statements) of either the exporter or the U.S. customer. Nor do we know whether there are different electronic systems for different types of credits. Similar to the obstacles we would face in attempting to verify usage at the exporter or U.S. customer, Commerce would not know what indicia to look for in searching for usage or even what records or databases we need to examine in conducting the verification (*i.e.*, without a complete set of laws, regulations, administrative measures, Commerce would not even know what books and records the EX-IM Bank maintains in the ordinary course of its operations). Essentially, Commerce is unable to verify the little information on the record indicating non-usage (*e.g.*, the claims of the GOC and emails and certifications from U.S. customers<sup>89</sup>), with the exporters, U.S. customers, or at the EX-IM Bank itself given the refusal of the GOC to provide the 2013 Revisions and a complete list of correspondent/partner/intermediate banks. Therefore, we determine that the GOC has not cooperated to the best of its ability and, as AFA, find that the respondents used and benefited from this program.

Pursuant to section 776(a)(1) of the Act, we find that necessary information is missing from the record for Commerce to have a clear understanding of how this program operates and to be able to verify purported claims of non-use of this program. Furthermore, 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, which is necessary information for Commerce to make a determination regarding this program.

Further, pursuant to section 776(b) of the Act, we find that the GOC failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted. Specifically, the GOC has not provided complete information concerning the administration and operation of the program (*e.g.*, the 2013 Revisions), including how loans are disbursed, such as through intermediate or correspondent banks, the identities of which the GOC has withheld from Commerce, or whether the EX-IM Bank employs threshold criteria, such as a minimum 2 million USD contract value. This information is necessary to understand fully how the Export Buyer’s Credits program operates, and is, therefore, critical to Commerce’s ability to verify the program’s operation and the accuracy of the GOC’s claims, including with respect to the respondents’ claimed non-use of this program. By not providing us with this critical information, we find that the GOC failed “to do the maximum it is able to do.”<sup>90</sup>

For these reasons, we preliminarily find, as AFA, that under this program the GOC bestowed a financial contribution pursuant to section 771(5)(D) of the Act, provided a benefit pursuant to section 771(5)(E) of the Act, and is contingent on exports within the meaning of sections 771(5A)(A) and (B) of the Act. Regarding specificity, although the record regarding this program suffers from significant deficiencies, we note that the GOC’s description of the program

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<sup>89</sup> Ancientree and Meisen submitted declarations from their U.S. customers claiming non-use of this program. *See* Ancientree IQR at Exhibit II-12; *see also* Meisen IQR at Exhibit 14.

<sup>90</sup> *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

and supporting materials (albeit found to be deficient) demonstrates that through this program, state-owned banks, such as the EX-IM Bank, provide loans at preferential rates for the purchase of exported goods from China.<sup>91</sup> In addition, the program was alleged by the petitioner as an example of a possible export subsidy.<sup>92</sup> Finally, Commerce has found this program to be an export subsidy in the past.<sup>93</sup> Thus, taking all such information into consideration indicates the provision of export buyer's credits is contingent on exports within the meaning of section 771(5A)(A) and (B) of the Act.

### *Selection of the AFA Rate*

It is our practice in CVD proceedings to determine an 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.<sup>94</sup> When selecting AFA rates, section 776(d) of the Act provides that we may use a countervailable subsidy rate determined for the same or a similar program in a CVD 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 Commerce considers reasonable to use, including the highest of such rates.<sup>95</sup> Accordingly, when selecting AFA rates, if we have cooperating respondents, as in this investigation, we first determine if there is an identical program in the instant investigation and use the highest calculated rate for the identical program. If there is no identical program for which we calculated 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).<sup>96</sup> If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in any CVD

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<sup>91</sup> See GOC IQR at Exhibits EXPORT-1, EXPORT-2, and EXPORT-3.

<sup>92</sup> See the Petition Volume III at 111.

<sup>93</sup> See, e.g., *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 17382 (April 25, 2019), and accompanying IDM at Comment 16.

<sup>94</sup> See, e.g., *Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination with Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018) (*Aluminum Sheet from China Prelim*), and accompanying Preliminary Decision Memorandum (PDM) at "X: Use of Facts Otherwise Available and Adverse Inferences: A. Application of Total AFA: Chalco Ruimin and Chalco-SWA," unchanged in *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018) (*Aluminum Sheet from China Final*), and accompanying IDM; see also *Aluminum Extrusions from China; 2011*, and accompanying IDM at "VI. Use of Facts Otherwise Available and Adverse Inferences: Application of Adverse Inferences: Non-Cooperative Companies"; and *Lawn Groomers from China*, and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences."

<sup>95</sup> See *Shrimp IDM* at 12-14; see also *Essar Steel*, 753 F.3d at 1373-74 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

<sup>96</sup> For purposes of selecting AFA program rates, we normally consider 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 "E. Various Grant Programs: 1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

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.<sup>97</sup>

Commerce's methodology is consistent with section 776(d)(1)(A) of the Act, which states that when applying an adverse inference in selecting from the facts otherwise available, we 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 we consider reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for our 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 we "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."<sup>98</sup> No legislative history accompanied this provision. Accordingly, we are 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.

The Act anticipates a two-step process for determining an appropriate AFA 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.<sup>99</sup>

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, we seek 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."<sup>100</sup> Further,

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<sup>97</sup> See Shrimp IDM at 13-14.

<sup>98</sup> See section 776(d)(2) of the Act.

<sup>99</sup> This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B) of the Act. 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.

<sup>100</sup> See SAA at 870; see also *Essar Steel*, 753 F.3d at 1373 (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, aberrational, or uncorroborated margins.") (*De Cecco*)).

“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.”<sup>101</sup> It is pursuant to this knowledge and experience that we have implemented our AFA hierarchy in CVD cases to select an appropriate AFA rate.<sup>102</sup>

In applying our AFA hierarchy in CVD investigations, Commerce’s goal is as follows: in the absence of necessary information from cooperative respondents, we are 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 we take 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 we 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’ investigation hierarchy, we apply the highest non-zero rate calculated for a cooperating company for the identical program in the investigation. Under this step, we will use a *de minimis* rate as AFA 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 we 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

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<sup>101</sup> See *De Cecco*, 216 F.3d at 1032.

<sup>102</sup> We have adopted a practice of applying this 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 IDM 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 IDM at 11-15 (applying the adverse facts available hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, we may not always apply the AFA hierarchy. See, *e.g.*, *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the adverse facts available hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

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 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, we apply 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.<sup>103</sup>

In all three steps of Commerce's AFA investigation hierarchy, if we were to choose low AFA 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), we strike a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.<sup>104</sup>

Furthermore, we find that section 776(d)(2) of the Act applies as an exception to the selection of an AFA rate under section 776(d)(1) of the Act; that is, after "an evaluation of the situation that resulted in the application of an adverse inference," we 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 AFA.

Notwithstanding the mandatory respondents' claims of non-use, we find AFA is warranted for the Export Buyer's Credit program. To fully analyze whether the program is run in the same manner, as we have discussed in other proceedings investigating this program, 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.

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<sup>103</sup> 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.

<sup>104</sup> 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., CFS from China* IDM at 2 ("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/exporter in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did not 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.

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 Amended Final* proceeding.<sup>105</sup>

#### **D. Application of AFA: Provision of Electricity for LTAR**

As discussed below under the section “Programs Preliminarily Determined to be Countervailable,” Commerce is investigating whether the GOC provided electricity for LTAR. The GOC did not provide complete responses to Commerce’s questions regarding the alleged provision of electricity for LTAR. These questions solicited information needed to determine whether the provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provides a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision is specific within the meaning of section 771(5A) of the Act.

In order for Commerce to analyze the financial contribution and specificity of this program, we requested that the GOC provide information regarding the roles of provinces and 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.<sup>106</sup> 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 market mechanisms and reflects the market supply and demand, and as a consequence, {Commerce} should not keep an outdated view of the Chinese electricity market and the pricing system.”<sup>107</sup> Specifically, the GOC claims that as of the issuance of the “Notice of National Development and Reform Commission on Adjusting Schedule of Coal-fired Power Generation Grid Purchase Price and Sale Price of Industrial and Commercial Electricity of Each Province

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<sup>105</sup> See *Coated Paper from China 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”).

<sup>106</sup> See Initial Questionnaire at Section II: Electricity Appendix.

<sup>107</sup> See GOC IQR at 63.

(District or City) {2015 No. 748},” and “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},” the NDRC no longer reviews, *i.e.*, approves, electricity pricing schedules submitted to it by the provinces.<sup>108</sup> Therefore, according to the GOC, Provincial Price Proposals no longer exist and did not exist during the POI. Furthermore, the GOC also stated that, as a result of Notice 748, provincial price departments develop and establish grid and electricity sales prices.<sup>109</sup> Consequently, according to the GOC, the NDRC no longer has any impact on prices, which are set autonomously at the provincial level.

Notice 748 is based upon consultations between the NDRC and the National Energy Administration.<sup>110</sup> Article 1 contained therein stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.<sup>111</sup> Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts. Article 2 indicates that the “{t}he reduction of coal-fired power generation price” would be “mainly used for reducing the price of industrial and commercial electricity.”<sup>112</sup> Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.<sup>113</sup> Articles 6 and 7, respectively, indicate that provincial pricing authorities shall “develop and issue specific adjustment plan of electricity price and sales price in accordance with {the} average price adjustment standards of Annex 1, and reported to {the NDRC} for the record,” and that the “above price adjustment should be implemented since April 20, 2015.”<sup>114</sup> Finally, Article 10 directs that, “{l}ocal price departments shall organize and arrange carefully to put in place the electricity price adjustment measures.”<sup>115</sup>

NDRC Notice 3105, also based upon consultations between the NDRC and the National Energy Administration, directs additional price reductions, and stipulates at Articles II and X that local price authorities shall implement in time the price reductions included in its Annex and report resulting prices to NDRC.<sup>116</sup> 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 stipulates that relevant provisional pricing authorities determine and issue electricity prices within their own jurisdictions, as the GOC states to be the case.<sup>117</sup> 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.<sup>118</sup>

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

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<sup>108</sup> *Id.* at Exhibits ELEC-10 and ELEC-4.

<sup>109</sup> *Id.* at Exhibits ELEC-10.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at Exhibit ELEC-4.

<sup>117</sup> *Id.* at Exhibits ELEC-10 and ELEC-4.

<sup>118</sup> *Id.*

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 were calculated, and how cost increases impacted final prices. 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. The GOC stated that when setting prices, “the price authorities will conduct investigations on price and cost, and request relevant companies or industry associations to provide the necessary information,” and that “changes in such cost items as labor, capital, electricity transmission, and distribution are monitored by the price authorities via investigation and inspection of relevant company expenses.”<sup>119</sup> In reference to a specific electricity price adjustment that took place since mid-2016, the GOC stated that “provincial agencies (*e.g.*, provincial price bureaus or reform and development commissions) are delegated authority to prepare and publish the price adjustment packages/schedules for their own jurisdictions respectively, and there are no provincial price proposals created and there is no NDRC review” and that the “relevant provincial agencies are only required to provide their final adjusted electricity prices schedules to the NDRC for its records.”<sup>120</sup> However, the GOC failed to explain, in detail, how the pricing values indicated in the adjustments were derived, including the specific factors or information relied upon. In our supplemental questionnaire, we requested that the GOC explain how the NDRC monitors compliance with the price changes directed in Notice 748 and what action the NDRC would take were any province not to comply with the directed price changes. The GOC’s response failed to explain what actions the NDRC would take in the event of non-compliance with a directed price change.<sup>121</sup>

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.

Consequently, we preliminarily determine, in accordance with sections 776(a)(1), (a)(2)(A) and (a)(2)(C) of the Act, that information necessary to our analysis of financial contribution and specificity is not available on the record; that the GOC withheld information requested by Commerce; and, that the GOC significantly impeded this proceeding, respectively. Thus, we must rely on “facts available” in making our preliminary determination. Moreover, we preliminarily determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to comply with our repeated requests for information. As a result, an adverse inference is warranted in the application of facts available.<sup>122</sup> In applying AFA, we find that the GOC’s provision of electricity constitutes a financial contribution within

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<sup>119</sup> *Id.* at Exhibit ELEC-1.

<sup>120</sup> *Id.*

<sup>121</sup> *See* GOC SQR at 5.

<sup>122</sup> *See* section 776(b) of the Act.

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 relying on AFA in selecting the benchmark for determining the existence and amount of the benefit.<sup>123</sup> The benchmark rates we selected are derived from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, see “Provision of Electricity for LTAR.”

### **E. Application of AFA: Provision of Plywood, Veneers, Urea for LTAR**

#### *GOC – Whether Plywood, Veneers, and Urea Producers Are “Authorities”*

As discussed below, under the section “Programs Preliminarily Found to Be Countervailable,” Commerce is investigating whether the GOC provided plywood, veneers, and urea for LTAR. As part of its analysis, Commerce sought information that would allow it to analyze whether the domestic producers providing these inputs to the company respondents are “authorities” within the meaning of section 771(5)(B) of the Act. 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.<sup>124</sup>

In the Initial Questionnaire, we asked the GOC to respond to the specific questions regarding the producers of these inputs and to respond to the *Input Producer Appendix* for each producer which produced the inputs purchased by the respondents.<sup>125</sup> We instructed the GOC to coordinate with the respondents to obtain a complete list of the input producers, including the producers of inputs purchased through a supplier.<sup>126</sup> In response to the Initial Questionnaire, Ancientree, Meisen, and Foremost identified certain companies that produced and supplied these input purchases during the POI,<sup>127</sup> which the GOC confirmed in its questionnaire response.<sup>128</sup>

With respect to the respondents’ purchases of plywood and veneers, while the GOC ultimately provided the identities of certain of the producers of plywood and veneers inputs, it did not provide all the information requested of it in the Initial Questionnaire, as discussed below. The

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<sup>123</sup> *Id.*

<sup>124</sup> 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 “Hot-Rolled Steel for Less Than Adequate Remuneration”; and *Kitchen Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying IDM at “Provision of Wire Rod for Less than Adequate Remuneration.”

<sup>125</sup> See Initial Questionnaire, Section II at 15-22; and “Input Producer Appendix.”

<sup>126</sup> *Id.*

<sup>127</sup> See Ancientree IQR at 19; Meisen IQR at 32; and Foremost IQR at 26-27.

<sup>128</sup> See GOC IQR at 27-52; Exhibit VEN-1; and Exhibit PLY-1.

GOC provided no response with respect to urea in its initial questionnaire response,<sup>129</sup> and when asked again to provide the requested information, stated that the only purchaser of this input during the POI purchased only a *de minimis* amount of the input.<sup>130</sup>

In our initial and supplemental questionnaire to the GOC, Commerce requested certain information be provided with respect to the producers of veneers and plywood, including articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, articles of association, business group registrations, business licenses, and tax registration documents.<sup>131</sup> In response to our request for this information, the GOC provided the ownership structure and basic registration information for Foremost's suppliers of veneers, and for most of the companies supplying plywood to the company respondents.<sup>132</sup>

With respect to those entities producing plywood and veneers that were reported as being non-majority government-owned enterprises that produce plywood purchased by Ancientree, Meisen, and Foremost; and veneers purchased by Foremost during the POI, while the GOC provided ownership structure and basic registration information supplied by the Enterprise Credit Information Publicity System (ECIPS), the GOC did not provide other relevant documentation requested by Commerce, including company by-laws, annual reports, and articles of association.<sup>133</sup> Instead, the GOC claimed that the information provided by the ECIPS was authoritative evidence of an enterprise's ownership structure in China.<sup>134</sup> We noted in our supplemental questionnaire that the GOC's response with respect to ownership information, as requested in the input producer appendix, was deficient with respect to veneers and plywood, and again asked for the information requested in the initial questionnaire; again the GOC claimed that the information previously provided by the ECIPS was a sufficient demonstration of the ownership status of the domestic companies that supplied veneers and plywood to the company respondents during the POI.<sup>135</sup>

Additionally, the GOC did not provide the requested information with respect to Commerce's request for a full response regarding the structure and role of the Chinese Communist Party (CCP) in managing the business affairs of companies that are not majority-owned by the government, and the membership status of persons identified as owners of enterprises supplying the company respondents with plywood, veneers, and urea. The GOC responded that "the facts {presented GOC IQR} and related WTO jurisprudence demonstrate that the 'nine entity' questions are irrelevant to this proceeding and do not go to whether the suppliers at issue are 'public bodies' for the purposes of {Commerce's} LTAR analysis," and that "GOC has consistently maintained and clarified that the CCP, National/ Provincial/ Local People's Congresses and CPPCC do not constitute government agencies."<sup>136</sup> In response to Commerce's supplemental questionnaire, in which Commerce reiterated the same requests for information,

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<sup>129</sup> See GOC IQR at 56.

<sup>130</sup> See GOC SQR at 4.

<sup>131</sup> See Initial Questionnaire, at Section II, "Input Producer Appendix;" and GOC Supplemental at 1.

<sup>132</sup> See GOC IQR at Exhibits VEN-1, VEN-2, PLY-1, and PLY-2.

<sup>133</sup> See GOC IQR at Exhibits VEN-2 and PLY-2; and GOC SQR at 2.

<sup>134</sup> See GOC IQR at Exhibit VEN-1.

<sup>135</sup> See GOC SQR at 2.

<sup>136</sup> See GOC IQR at Exhibits VEN-1 and PLY-1.

the GOC again refused to provide a complete response with regard to all requested documentation.<sup>137</sup>

As we explained in the Additional Documents Memorandum,<sup>138</sup> we understand the CCP to exert significant control over economic activities in China. Thus, Commerce finds, as it has in prior CVD proceedings,<sup>139</sup> that the information requested regarding the role of CCP officials and CCP committees in the management and operations of Ancientree's, Meisen's, and Foremost's input suppliers not majority-owned by the government is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act.

As discussed above, the GOC did not provide complete responses to our numerous requests for information with respect to plywood and veneer producers which the GOC claimed to be non-majority government-owned enterprises, including requests for information pertaining to ownership or management by CCP officials. Such information is necessary to our determination of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act. Therefore, we determine that necessary information is not available on the record, and that the GOC withheld information that was requested of it with regard to the input purchases by Ancientree, Meisen, and Foremost, and impeded this investigation.<sup>140</sup> Accordingly, Commerce must rely on "facts otherwise available" in reaching a determination in this respect. Further, we find that the GOC failed to cooperate by not acting to the best of its ability to comply with requests for information regarding the producers of the plywood, veneers, and urea from which Ancientree, Meisen, and Foremost purchased during the POI because the GOC did not provide the requested information.<sup>141</sup> Consequently, we find that an adverse inference is warranted in the application of facts available.<sup>142</sup>

As explained in the Public Bodies Memorandum, an entity with significant CCP presence on its board or in management or in party committees may be controlled such that it possesses, exercises or is vested with government authority.<sup>143</sup> Thus, in selecting from among the facts otherwise available with an adverse inference, we preliminarily determine that the non-majority government-owned domestic producers of the plywood purchased by Ancientree, Meisen, and Foremost, and the veneers and urea purchased by Foremost, are "authorities" within the meaning of section 771(5)(B) of the Act, and that the respondents 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.

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<sup>137</sup> See GOC SQR at 2.

<sup>138</sup> See Additional Documents Memorandum at Attachment 1.

<sup>139</sup> See *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014), and accompanying IDM at Comment 5.

<sup>140</sup> See sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act.

<sup>141</sup> See sections 776(a) and (b) of the Act.

<sup>142</sup> See section 776(b) of the Act.

<sup>143</sup> See Memorandum, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Public Bodies Memorandum," dated concurrently with this memorandum (Public Bodies Memorandum).

*GOC – Whether the Provision of Plywood, Veneers, and Urea Inputs Are Specific*

For purposes of Commerce’s *de facto* specificity analysis, we asked the GOC to provide a list of industries in China that purchase plywood and veneers directly, and to provide the amounts (volume and value) purchased by each of the industries.<sup>144</sup> Specifically, our questionnaire asked the GOC to provide lists of the industries in China that purchase plywood and veneers directly, using consistent levels of industrial classification, and to:

Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use the resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.<sup>145</sup>

The GOC did not provide this information, nor did it explain the efforts it made to compile this information. Instead, the GOC stated that it “does not collect official data regarding the industries in China the purchase or consume” veneers or plywood,<sup>146</sup> and instead provided an excerpt of the national standard on “Industries Classification in National Economy,” which reflect all the economic activities in China and the chapter on manufacturing sectors including all the timber sectors, and an excerpt of the general categorization of all economic activities under the United Nations’ “International Standard Industrial Classification for All Economic Activities (ISIC),” which formed the basis on which the Chinese national classification standards were developed.<sup>147</sup> As noted above, the GOC provided no response to our questions with respect to urea.

This information submitted by the GOC, however, is insufficient because it does not report the actual Chinese industries that purchased plywood, veneers, and urea, the volume and value of each industry’s respective purchases for the POI, and the prior two years, as requested, and which is necessary for our *de facto* specificity analysis. Consequently, and consistent with past proceedings,<sup>148</sup> we preliminarily determine, in accordance with section 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, that necessary information is not available on the record, and that the GOC withheld information that was requested of it, and that the GOC significantly impeded this proceeding, respectively. Thus, we are relying on “facts available” in making our preliminary determination.

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<sup>144</sup> See Initial Questionnaire, Section II, at pages 16-17 and 19-20.

<sup>145</sup> *Id.*

<sup>146</sup> See GOC IQR at 33 and 45.

<sup>147</sup> See GOC IQR at Exhibits GEN-7 and GEN-8.

<sup>148</sup> See, e.g., *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 44562 (September 25, 2017) (*CDMT from China Prelim*), and accompanying PDM at 22-24, unchanged in *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*).

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 selecting from among the facts available pursuant to section 776(b) of the Act. In drawing an adverse inference from among the facts available, we find that the purchasers of plywood, veneers, and urea provided for LTAR are limited in number, and that the program is therefore *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

### *GOC – Whether the Plywood, Veneers, and Urea Markets Are Distorted*

We asked the GOC several questions regarding the structure of the plywood, veneers, and urea industries, including requesting production and consumption information for these markets during the POI and the prior two years.<sup>149</sup> 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 these inputs, a discussion of the laws, plans or policies that address the pricing of these inputs, and the 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 number of veneers producers, and the total volume and value of both domestic production and consumption of veneers.<sup>150</sup> Instead of providing the requested information, the GOC stated that the information was not collected or compiled by the authorities.<sup>151</sup> The GOC did provide this information with respect to plywood.<sup>152</sup> In addition, the GOC did not provide a discussion of any laws, plans, or policies addressing the pricing of plywood and veneers, their levels of production, importation, exportation, or capacity development. Instead, the GOC provided the Price Law of China,<sup>153</sup> and asserted that it allows for “autonomous rights in pricing when relevant prices are not subject to government pricing or government guided prices.”<sup>154</sup> The GOC provided no information regarding urea in its initial questionnaire response.<sup>155</sup> When asked again for the GOC to provide information, the GOC claimed that the only purchase of urea by a respondent was *de minimis*, and again did not respond to our request for information.<sup>156</sup>

In addition to these data, we requested that the GOC identify the total volume and value of domestic production that is accounted for by companies in which the government maintains a majority interest, along with a list of these enterprises, and conversely, additional data related to the total volume and value of production of companies in which the GOC maintains some

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<sup>149</sup> See Initial Questionnaire at 8-12.

<sup>150</sup> See GOC IQR at 28-29.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 40-41, and GOC SQR at 4.

<sup>153</sup> See GOC IQR at Exhibit GEN-4.

<sup>154</sup> *Id.* at 30.

<sup>155</sup> *Id.* at 56.

<sup>156</sup> See GOC SQR 4.

interest that is less than a majority. The GOC stated only that it collected no such data with respect to veneers,<sup>157</sup> and repeated the statement when again asked for the data.<sup>158</sup> For plywood, the GOC indicated that 0.78 percent of the total volume of domestic production of plywood is accounted for by companies in which the government maintains a majority share, but provided no such information related to the value of the plywood production by companies in which the government holds a majority share, or a list of such companies, as requested.<sup>159</sup> Furthermore, the GOC provided no information regarding the production volume and value of plywood by companies in which the GOC held an interest that was less than a majority,<sup>160</sup> even after Commerce again requested this information.<sup>161</sup>

Because the GOC refused to provide the requested information regarding the plywood, veneers, and urea industries in China, we determine that information necessary for a full analysis of these markets is missing from the record, that the GOC withheld necessary information with regard to the Chinese plywood, veneers, and urea industries and markets for the POI, and significantly impeded the investigation, within the meaning of section 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, respectively. Therefore, we are relying on facts otherwise available.

Furthermore, we preliminarily determine that the GOC's refusal to provide the information requested constitutes a lack of cooperation under section 776(b) of the Act. The GOC has previously provided, and Commerce has verified, information from other GOC-maintained databases concerning the value and volume of production by enterprises producing input products.<sup>162</sup> Specifically, 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.<sup>163</sup> 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.<sup>164</sup> Therefore, we believe that information related to the operation and ownership of companies within these industries and, thus, information regarding the domestic production and consumption levels of plywood, veneers, and urea, are in fact available to the GOC.

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<sup>157</sup> See GOC IQR at 30.

<sup>158</sup> See GOC SQR at 3.

<sup>159</sup> See GOC IQR at 41.

<sup>160</sup> *Id.* at 42.

<sup>161</sup> See GOC SQR at 4.

<sup>162</sup> 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 (*Citric Acid 2013*).

<sup>163</sup> 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 PDM at 21-22, unchanged in *Countervailing Duty Investigation of Stainless Steel 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), and accompanying IDM.

<sup>164</sup> *Id.*

Moreover, because the GOC refused to respond meaningfully to our request for information on laws, plans, policies specific to pricing, production, cross-border trades, and development capacity of plywood and veneers without substantiation or proper explanation, 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 markets in China for these inputs, despite the fact that it was able to provide similar information on other input products in another proceeding.<sup>165</sup> Consequently, we find that an adverse inference is warranted in the application of facts available.<sup>166</sup> Accordingly, as AFA, we preliminarily determine that the GOC’s involvement in the plywood, veneers, and urea markets in China results in the significant distortion of prices in the plywood, veneer, and urea industries, such that they cannot be used as a tier one benchmarks, and hence, the use of external benchmarks, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the provision of plywood, veneers and urea for LTAR. Consequently, we find that an adverse inference is warranted in the application of facts available.<sup>167</sup> Accordingly, as AFA, we preliminarily determine that the GOC’s involvement in the plywood, veneers, and urea markets in China results in the significant distortion of prices in the plywood, veneer, and urea industries, such that they cannot be used as a tier one benchmarks, and hence, the use of external benchmarks, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the provision of plywood, veneers, and urea for LTAR.

#### **F. Application of AFA: Provision of Water for LTAR**

As discussed below, under the section “Programs Preliminarily Found to Be Countervailable,” Commerce is investigating whether the GOC provided water to producers and exporters of wooden cabinets for LTAR. As part of its analysis, Commerce sought information that would allow it to analyze whether the provision of water for LTAR to the company respondents is specific under section 771(5A) of the Act. Commerce therefore requested that the GOC provide information necessary to conduct our specificity analysis, including the total number of recipient companies, the total amount of assistance provided for both the company respondents and as well as all other companies that used the program during the POI and the preceding three years. We also asked for information that would allow us to analyze whether this program was specific on an industry basis, by asking for a complete list of industries that used the program, as well as the total amount of assistance provided to each industry.

In its response, the GOC stated that “[t]here is no such program entitled “Provision of Water for LTAR” or any other program that provides preferential water rates to specific companies/industries,” yet the GOC has confirmed that Foremost’s water supplier was a government-owned entity.<sup>168</sup> The GOC provided no information that would allow us to conduct our *de facto* specificity analysis regarding this program. Consequently, and consistent with past proceedings,<sup>169</sup> we preliminarily determine that necessary information is not available on the record, that the GOC withheld information that was requested of it, and that the GOC

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<sup>165</sup> See *Citric Acid 2013*, and accompanying IDM at Comment 2.

<sup>166</sup> See section 776(b) of the Act.

<sup>167</sup> *Id.*

<sup>168</sup> See GOC IQR at Exhibit Water-1.

<sup>169</sup> See, e.g., *CDMT from China Prelim*, and accompanying PDM at 22-24, unchanged in *CDMT from China*.

significantly impeded this proceeding, in accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, respectively. Thus, we are relying on “facts available” in making our preliminary determination regarding the specificity of the “Provision of Water for LTAR” program.

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 selecting from among the facts available pursuant to section 776(b) of the Act. In drawing an adverse inference from among the facts available, we find that the enterprises and industries that purchase water for LTAR are limited in number, and that the program is therefore *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

### **G. Application of AFA: Other Subsidies**

Ancientree, Meisen, and Foremost reported in their initial questionnaire response that they and their cross-owned affiliates received direct government grants or tax benefits during the POI and during the average useful life (AUL) period.<sup>170</sup> In our initial questionnaire, we requested that the GOC coordinate with the company respondents in order to provide responses the appropriate appendices. The GOC instead argued that it would be inappropriate to provide any questionnaire responses with respect to programs on which Commerce had not initiated an investigation, and therefore did not provide complete responses to Commerce’s questions regarding these programs that were self-reported by the company respondents.<sup>171</sup> These questions requested information needed to analyze the programs and determine whether the grants confer a financial contribution pursuant to section 771(5)(D) of the Act and whether they are specific within the meaning of section 771(5A)(B) of the Act. In a supplemental questionnaire, we again sought information on these programs by asking the GOC to complete the relevant appendices. The GOC again refused to provide any information, absent what the GOC considers to be a formal initiation of an investigation into the self-reported programs.<sup>172</sup>

Lacking necessary information from the GOC, Commerce must rely on “facts available” in making our preliminary determination, in accordance with section 776(a)(1) of the Act. In relying on the facts available in this case, we consider that the GOC’s statement that an answer to the “Other Subsidies” question is premature in regard to these programs amounts to a refusal by the GOC to act to the best of its ability in complying with a request for information. We therefore preliminarily find that information necessary to our analysis of financial contribution and specificity is not available on the record, that the GOC withheld information requested by Commerce, and that the GOC significantly impeded this proceeding, in accordance with sections 776(a)(1), (a)(2)(A) and (a)(2)(C) of the Act, respectively. Thus, we must rely on “facts available” in making our preliminary determination. Moreover, we preliminarily determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to comply with our repeated requests for information. As a result, an adverse inference is warranted in the application of facts available. We therefore preliminarily determine that each of

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<sup>170</sup> See Ancientree IQR at 29-30; Meisen IQR at 41-42; and Foremost IQR at 40-41.

<sup>171</sup> See GOC IQR at 75-76.

<sup>172</sup> See GOC SQR at 12.

the programs self-reported by the company respondents are specific within the meaning of section 771(5A) of the Act and confer a financial contribution pursuant to section 771(5)(D) of the Act. We determined that a benefit exists for each program in the amount of the funds provided or revenue forgone, in accordance with 19 CFR 351.504(a) and 19 CFR 351.509(a), respectively.

## **IX. SUBSIDIES VALUATION**

### **A. Allocation Period**

Commerce normally allocates the benefits from non-recurring subsidies over the AUL of renewable physical assets used in the production of subject merchandise.<sup>173</sup> 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 10 years, on the basis of U.S. Internal Revenue Service Publication 946 (2017).<sup>174</sup> No party submitted comments challenging this AUL period. Therefore, we preliminarily find that it is appropriate to use the 10-year AUL period to allocate benefits received in the form of 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 a subsidy approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidy is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

### **B. Attribution of Subsidies**

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 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. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

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

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<sup>173</sup> See 19 CFR 351.524(b).

<sup>174</sup> See U.S. Internal Revenue Service Publication 946 (2017), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

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.<sup>175</sup>

Thus, Commerce’s regulations make clear that we must look at the facts presented in each case to determine 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.<sup>176</sup>

#### *Ancientree*

As discussed above, we selected Ancientree as a mandatory respondent. Ancientree responded to Commerce’s questionnaire on behalf of itself and its affiliates Jiangsu Hongjia, JH Shanghai Branch, and Shanghai Hongjia.<sup>177</sup>

Ancientree produces the subject merchandise.<sup>178</sup> Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Ancientree to its own sales.

Jiangsu Hongjia is the main input supplier for production of the subject merchandise.<sup>179</sup> Ancientree reported that Jiangsu Hongjia supplied the wood materials to Ancientree in the POI, and that Jiangsu Hongjia and Ancientree shared the same office and management in their normal business operations.<sup>180</sup> Jiangsu Hongjia is owned by the son of the general manager of

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<sup>175</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

<sup>176</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>177</sup> See Ancientree AQR.

<sup>178</sup> *Id.* at 3.

<sup>179</sup> *Id.* at 4.

<sup>180</sup> *Id.*

Ancientree.<sup>181</sup> Ancientree also stated that its factory buildings and workshops belonged to Jiangsu Hongjia.<sup>182</sup>

Based on the totality of the evidence regarding the relationship between Ancientree and Jiangsu Hongjia, we preliminarily determine that Ancientree and Jiangsu Hongjia are cross-owned pursuant to 19 CFR 351.525(b)(6)(vi) because record evidence indicates that Ancientree is in a position to use or direct the individual assets of Jiangsu Hongjia in essentially the same ways that it can use its own assets. Because Jiangsu Hongjia is providing an input that is primarily dedicated to the production of downstream products, we have preliminarily attributed Jiangsu Hongjia's subsidies to Ancientree in accordance with 19 CFR 351.525(b)(6)(iv). This is consistent with our practice in other proceedings with similar circumstances.<sup>183</sup>

JH Shanghai Branch operates as the sales office for Ancientree.<sup>184</sup> Ancientree reported that JH Shanghai Branch is the branch company of Jiangsu Hongjia in Shanghai, working as the sales office for Ancientree or Jiangsu Hongjia as part of its normal business operations. It did not have any separate business activities.<sup>185</sup> JH Shanghai Branch reported not receiving any subsidies during the POI or during the AUL period.<sup>186</sup> Therefore, the issue of whether to attribute non-recurring subsidies received by JH Shanghai Branch is moot.

Shanghai Hongjia produced subject merchandise prior to the POI but stopped production and sales of merchandise prior to the POI.<sup>187</sup> Shanghai Hongjia reported receiving non-recurring subsidies prior to the company being dissolved.<sup>188</sup> In applying the "0.5 percent test" to these subsidies, we determine that the benefits received by Shanghai Hongjia during the AUL period and prior to the POI are expensed in the years of receipt, with none allocable to the POI.<sup>189</sup> Therefore, the issue of attributing non-recurring subsidy benefits received by Shanghai Hongjia is moot.

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<sup>181</sup> *Id.*

<sup>182</sup> See Ancientree IQR at 23-25; and Jiangsu Hongjia's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Jiangsu Hongjia Section III Questionnaire Response," dated July 11, 2019 (Jiangsu Hongjia IQR).

<sup>183</sup> See, e.g., *Certain Steel Wheels From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 76 FR 55012, 55017-18 (September 6, 2011), unchanged in *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 "III. Attribution of Subsidies."

<sup>184</sup> See Ancientree AQR at 4.

<sup>185</sup> *Id.*

<sup>186</sup> See JH Shanghai Branch's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Shanghai Branch Section III Questionnaire Response," dated July 11, 2019 (JH Shanghai Branch IQR).

<sup>187</sup> See Ancientree Supp AQR at 3.

<sup>188</sup> See Shanghai Hongjia's Letter, "Wooden Cabinets and Vanities from the People's Republic of China: Shanghai Hongjia Section III Questionnaire Response," dated July 11, 2019 (Shanghai Hongjia IQR) at Exhibit II-5.

<sup>189</sup> See Memorandum, "Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Ancientree Preliminary Determination Calculations," dated concurrently with this memorandum (Ancientree Preliminary Analysis Memorandum) at Attachment 1 - Grants.

## *Meisen*

As discussed above, we selected Meisen as a mandatory respondent. Meisen responded to Commerce's questionnaire on behalf of itself and its affiliate Dalian Hechang.<sup>190</sup>

Meisen is wholly owned by Dalian Hechang, which is the holding company of Meisen and as such is cross-owned with Meisen within the meaning of 19 CFR 351.525(b)(6)(vi). Meisen produces the subject merchandise.<sup>191</sup> Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Meisen to its own sales. Dalian Hechang has no plant or sales office and reported receiving no subsidies during the POI or AUL period; therefore, the issue of attribution with respect to this company is moot.

## *Foremost*

As discussed above, we selected Foremost as a mandatory respondent. Foremost responded to Commerce's questionnaire on behalf of itself and its affiliates FWW, FGL, FLB, and FGHL, which we determine to be cross-owned with Foremost within the meaning of 19 CFR 351.525(b)(6)(vi).<sup>192</sup>

Foremost produces the subject merchandise.<sup>193</sup> Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Foremost to its own sales. Foremost is wholly owned by FWW, which also acts as a trading company selling products on behalf of Foremost, as well as other affiliated and unaffiliated entities. FWW reported receiving no subsidies during the POI or AUL period, and therefore the issue of attribution with respect to this company is moot. FLB provided warehousing and administrative services to Foremost during the POI and had no other production or sales. However, Foremost reported that from 2009 through 2017, FLB produced or sold subject merchandise,<sup>194</sup> and that the company received benefits from programs we are investigating in this proceeding. We are, therefore, attributing subsidies received by FLB during the AUL period to Foremost in accordance with 19 CFR 351.525(b)(6)(ii). Finally, FGL and FGHL are holding companies that wholly own FWW and FLB, respectively.<sup>195</sup> Foremost reported that both FGL and FGHL are privately held holding companies incorporated in the Cayman Islands. As FGL and FGHL are neither located nor incorporated in China and, furthermore, have reported receiving no subsidies during the POI or AUL period, the issue of attribution with respect to these two companies is moot.

## **C. Denominators**

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents' receipt of benefits under each program. As

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<sup>190</sup> See Meisen AQR.

<sup>191</sup> *Id.* at Volume II.

<sup>192</sup> See Foremost AQR.

<sup>193</sup> See Foremost IQR.

<sup>194</sup> See Foremost AQR at 5.

<sup>195</sup> *Id.* at 5-6.

discussed in further detail under “Programs Preliminarily Determined to be Countervailable,” where the program has been found to be countervailable as a domestic subsidy, we used the recipient’s total sales as the denominator (or, when appropriate, the total combined sales of the cross-owned affiliates, as described above). Where the program has been found to be contingent upon export activities, we used the recipient’s total export sales as the denominator. All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, *see* Ancientree Preliminary Calculation Memorandum,<sup>196</sup> Meisen Preliminary Calculation Memorandum,<sup>197</sup> and Foremost Preliminary Calculation Memorandum.<sup>198</sup>

## **X. BENCHMARKS AND INTEREST RATES**

We are investigating loans received by Ancientree, Meisen, and Foremost from state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.<sup>199</sup> The derivation of the interest rate benchmark and discount rates used to value these subsidies is discussed below.

### **A. Short-Term and Long-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, we use comparable commercial loans reported by the company as a benchmark.<sup>200</sup> 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.”<sup>201</sup>

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.<sup>202</sup> On July 21, 2017, Commerce conducted a reassessment of China’s financial system for CVD benchmarking purposes.<sup>203</sup> Based on this re-assessment, Commerce concluded that, despite reforms to date, the Government of China’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

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<sup>196</sup> *See* Ancientree Preliminary Analysis Memorandum.

<sup>197</sup> *See* Memorandum, “Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Meisen Preliminary Calculation Memo,” dated concurrently with this memorandum (Meisen Preliminary Analysis Memorandum).

<sup>198</sup> *See* Memorandum, “Countervailing Duty Investigation of Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Foremost Preliminary Calculation Memorandum,” dated concurrently with this memorandum (Foremost Preliminary Analysis Memorandum).

<sup>199</sup> *See* 19 CFR 351.524(b)(1).

<sup>200</sup> *See* 19 CFR 351.505(a)(3)(i).

<sup>201</sup> *See* 19 CFR 351.505(a)(3)(ii).

<sup>202</sup> *See CFS from China* IDM at Comment 10.

<sup>203</sup> *See* Memorandum, “Review of China’s Financial System,” under cover dated concurrently with this memorandum.

loans received by the respondent 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.<sup>204</sup>

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China* and more recently updated in *Thermal Paper from China*.<sup>205</sup> 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.<sup>206</sup> Beginning in 2010, however, China fell within the upper-middle income category and remained there from 2011 to 2017.<sup>207</sup> 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.<sup>208</sup>

After Commerce identifies the appropriate interest rates, the next step in constructing the benchmark has been 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.<sup>209</sup> For 2010, however, the regression does not yield that outcome for China's income group.<sup>210</sup> This contrary

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<sup>204</sup> See, e.g., *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82 FR 46754 (October 6, 2017), and accompanying PDM at 21, unchanged in *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) (*OTR from China 2015 Final Results*).

<sup>205</sup> See *CFS from China*, and accompanying 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.

<sup>206</sup> See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups>; see also Memorandum "Interest Rate Benchmark Memorandum," dated concurrently with this memorandum (Interest Rate Benchmark Memorandum).

<sup>207</sup> *Id.*

<sup>208</sup> See, e.g., Shrimp PDM at "Benchmarks and Discount Rates," unchanged in *Shrimp from China*.

<sup>209</sup> See Interest Rate Benchmark Memorandum; see also Ancientree Preliminary Analysis Memorandum, Meisen Preliminary Analysis Memorandum, and Foremost Preliminary Analysis Memorandum.

<sup>210</sup> See Interest Rate Benchmark Memorandum.

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 "upper middle income" by the World Bank for 2010-2017 and "lower middle income" for 2001-2009.<sup>211</sup> First, we did not include those economies that Commerce considered to be non-market economies 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.<sup>212</sup> Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.<sup>213</sup>

## **B. Long-Term RMB-Dominated 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.<sup>214</sup>

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.<sup>215</sup> Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.<sup>216</sup>

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<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> See, e.g., *Thermal Paper from China*, and accompanying IDM at 10.

<sup>215</sup> 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.

<sup>216</sup> See Interest Rate Benchmark Memorandum.

The resulting inflation-adjusted benchmark lending rates are provided in the preliminary calculation memoranda for the respondents.<sup>217</sup>

### **C. Discount Rates**

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the GOC provided non-recurring subsidies.<sup>218</sup>

### **D. Input Benchmarks**

All mandatory company respondents reported purchases of plywood, and Foremost reported the purchase of both veneers and urea during the POI.<sup>219</sup>

19 CFR 351.511(a)(2) sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three).<sup>220</sup> For all of these inputs, as discussed above under “Use of Facts Otherwise Available and Adverse Inferences,” we preliminarily determine that all of the domestic input producers of plywood, veneers, and urea that were purchased by the company respondents are “authorities” under section 771(5)(B) of the Act. Therefore, prices from these companies’ domestic input producers are not suitable as benchmark prices. Furthermore, these company respondents reported having no import purchases of these inputs. Accordingly, we determine that “tier one” prices are unavailable for benchmark purposes. Consequently, we are relying on “tier two” (world market) prices for calculating benchmarks for the provision of plywood, veneers, and urea, in accordance with 19 CFR 351.511(a)(2)(ii).

The petitioner, Ancientree, Meisen, and Foremost provided UN Comtrade price data for certain HTS categories covering plywood; the petitioner and Foremost provided UN Comtrade price data for certain HTS categories covering veneers; and the petitioner alone provided benchmark data for urea, from UN Comtrade.<sup>221</sup>

These proposed benchmark values are for goods comparable to the plywood, veneers, and urea that the company respondents purchased, and we preliminarily calculated the benchmarks for plywood, veneers, and urea using the data submitted by the petitioner. While the underlying UN

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<sup>217</sup> See Meisen Preliminary Analysis Memorandum and Foremost Preliminary Analysis Memorandum.

<sup>218</sup> See Ancientree Preliminary Analysis Memorandum, Meisen Preliminary Analysis Memorandum, and Foremost Preliminary Analysis Memorandum.

<sup>219</sup> See Ancientree IQR at 19; Meisen IQR at 32; and Foremost IQR at 26-27.

<sup>220</sup> See 19 CFR 351.511(a)(2).

<sup>221</sup> See the Petitioner’s Benchmark Data; Ancientree’s Benchmark Data; Meisen’s Benchmark Data; and Foremost’s Benchmark Data.

Comtrade data submitted by the petitioner and the company respondents were obtained from the same source, a comparison of the monthly per unit average values (in KG) that the UN Comtrade data submitted by the company respondents included data that were double-counted; for example, the UN Comtrade data submitted by Ancientree includes exports for the European Union as a whole, as well as for individual member countries.<sup>222</sup> The petitioner explained that it had excluded such data in order to avoid double-counting.<sup>223</sup> As noted above in the section entitled, “*GOC – Whether the Plywood, Veneers, and Urea Markets Are Distorted*,” we are finding that the markets for these inputs in China are distorted. As such, the use of data that include Chinese prices is not suitable for benchmark purposes.

Pursuant to 19 CFR 351.511(a)(2)(iv), benchmarks should reflect “delivered prices” and include import and delivery charges. Accordingly, we added international freight charges, VAT, and import duties on applicable purchases, to calculate the price that a respondent would have paid on the world market for these inputs.<sup>224</sup>

The petitioner, Ancientree, Meisen, and Foremost provided ocean freight rates to be considered as benchmarks.<sup>225</sup> For the preliminary determination, we relied on the simple average of the public monthly ocean freight data provided by the petitioner, Meisen, and Foremost. We did not use the ocean freight rates submitted by Ancientree because the information lacked a weight element (*i.e.* weight in KG) to calculate a per unit price.

#### **E. Benchmark for Government Provision of Land-Use Rights for LTAR**

As explained in detail in previous investigations, Commerce cannot rely on the use of the so-called “tier one” and “tier two” benchmarks described above to assess the benefits from the provision of land for LTAR in China. Specifically, in *Sacks from China*, Commerce determined that “Chinese land prices are distorted by the significant government role in the market,” and hence, no usable “tier one” benchmarks exist.<sup>226</sup> Furthermore, Commerce also found that “tier two” benchmarks (world market prices that would be available to purchasers in China) are not appropriate.<sup>227</sup>

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<sup>222</sup> See Ancientree’s Benchmark Data; Meisen’s Benchmark Data; and Foremost’s Benchmark Data.

<sup>223</sup> See the Petitioner’s Benchmark Data at Exhibit 1 and Exhibit 2.

<sup>224</sup> See Ancientree Preliminary Analysis Memorandum, Meisen Preliminary Analysis Memorandum, and Foremost Preliminary Analysis Memorandum.

<sup>225</sup> See the Petitioner’s Benchmark Data; Meisen’s Benchmark Data; and Foremost’s Benchmark Data.

<sup>226</sup> See, e.g., *Laminated Woven Sacks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *Laminated Woven Sacks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Sacks from China*).

<sup>227</sup> *Id.*

On October 2, 2018, Commerce completed a memorandum analyzing developments in China's land market since 2007.<sup>228</sup> The Land Analysis Memorandum was prepared to assess the continued application of Commerce's land for LTAR benchmark methodology, as established in 2007 in *Sacks from China*.<sup>229</sup> As discussed in the Land Analysis Memorandum, although reforms in China's land markets have improved the use-rights of some landholders, such improvements have not been comprehensive, and reforms have been implemented on an *ad hoc* basis.<sup>230</sup> The reforms to date have not addressed the fundamental institutional factors that underlie the Chinese government's monopoly control over land-use, which precludes landholders from putting their land to its best use and realizing the market value of their landholdings.<sup>231</sup> The GOC still owns all land in China, and exercises direct control over the sale of land-use rights and land pricing in the primary market and indirect control in the secondary market.<sup>232</sup>

As a result, and consistent with our methodology established in *Sacks from China*, we determine that we cannot use any first-tier, domestic Chinese land prices for benchmarking purposes. We also determine that because land is generally not simultaneously available to an in-country purchaser while located and sold out-of-country on the world market, we cannot use second-tier world prices as a benchmark for land-use rights. Finally, because land prices in China are not consistent with market principles, and they reflect the government's control and allocation of land-use on an administrative basis, we will continue to use land-use prices outside of China as a third-tier benchmark. Accordingly, consistent with our past practice, we are relying on the use of so-called "tier three" benchmarks for purposes of calculating a benefit for this program.

In this investigation, no party submitted benchmark information for land prices. Therefore, we are placing on the record benchmark information to value land from "Asian Marketview Reports" by CB Richard Ellis (CBRE) for Thailand for 2010.<sup>233</sup> We used this benchmark in the CVD investigations of *Solar Cells from China* and *Plywood from China*,<sup>234</sup> and more recently in *Steel Racks*.<sup>235</sup> We initially selected this information in the *Sacks from China* investigation after considering a number of factors, including national income levels, population density, and

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<sup>228</sup> See Memorandum, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Land Analysis Memorandum," dated concurrently with this memorandum (Land Analysis Memorandum) at Attachment 1.

<sup>229</sup> *Id.* at 2.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> See Memorandum, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Asian Marketview Report" dated concurrently with this memorandum (Land Benchmark Data Memorandum) (containing "Asian Marketview Report" pricing data).

<sup>234</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China*), and accompanying IDM (Solar Cells IDM), at 6 and Comment 11; see also *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in part*, 82 FR 53473 (November 16, 2017) (*Plywood from China*), and accompanying IDM (Plywood IDM).

<sup>235</sup> See *Certain Steel Racks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 62297 (December 3, 2018) (*Steel Racks*), and accompanying PDM at 35-36.

producers' perceptions that Thailand is a reasonable alternative to China as a location for Asian production.<sup>236</sup> We find that these benchmarks are suitable for this preliminary determination, adjusted accordingly for inflation, and we relied on it for our calculation of benefits relating to purchases of land-use rights by the company respondents.

We will continue to examine benchmark prices on a case-by-case basis and will consider the extent to which proposed benchmarks represent prices in a comparable setting (*e.g.*, a country proximate to China; the country's level of economic development, etc.). Therefore, we invite parties to submit alternative benchmark data that is consistent with the guidance provided in *Sacks from China* and the Land Analysis Memorandum.<sup>237</sup> Parties will have seven days after the publication of this memorandum to provide information to rebut, clarify, or correct information in the Land Analysis Memorandum or the Land Benchmark Data Memorandum.

## **XI. ANALYSIS OF PROGRAMS**

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

### **A. Programs Preliminarily Determined to Be Countervailable**

#### **1. Policy Loans to the Wooden Cabinets Industry**

The petitioner alleges that policy banks and state-owned commercial banks (SOCBs) in China make loans to wooden cabinets producers on preferential terms as a matter of national level government policy.<sup>238</sup> Commerce has countervailed policy lending programs in previous investigations.<sup>239</sup> Ancientree, Foremost, and Meisen reported having loans from policy banks or SOCBs that were outstanding during the POI.<sup>240</sup>

When examining a policy lending program, Commerce examines 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. If we make such a finding, 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.<sup>241</sup>

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<sup>236</sup> The complete history of our reliance on this benchmark is discussed in the above-referenced *Solar Cells from China* IDM. In that discussion, we reviewed our analysis from the *Sacks from China* investigation and concluded the CBRE data remained a valid land benchmark.

<sup>237</sup> See Land Analysis Memorandum at 30-31.

<sup>238</sup> See CVD Initiation Checklist at 16.

<sup>239</sup> See, *e.g.*, *Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013), and accompanying IDM (Steel Sinks IDM) at 24-25; see also Countervailing Duty Investigation of *Plywood from China*, and accompanying Plywood IDM at 39-40.

<sup>240</sup> See Ancientree IQR at Exhibit II-5; Foremost IQR at Exhibit Loan-1; and Meisen IQR at Exhibit 6.

<sup>241</sup> See *CFS from China*, and accompanying IDM at Comment 8; see also *Thermal Paper from China*, and accompanying IDM at "Government Policy Lending Program."

Based on our review of the record, we preliminarily determine that loans received by the wooden cabinets industry from SOCBs were made pursuant to government directives. We determine that the GOC, through its directives, has policies in place encouraging the use of loans to encourage and support the growth of favored industries, including those using timber, which would include the wooden cabinet industry. For instance, the Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment for Implementation (No. 40 (2005)) (Decision 40) states in its preamble that “[a]ll relevant administrative departments shall speed up the formulation and amendment of policies on public finance, taxation, credit, land, import and export, etc., effectively intensify the coordination and cooperation with industrial policies, and further improve and promote the policy system on industrial structure adjustment” with respect to the listed industrial categories.<sup>242</sup> In Chapter II “Directions and Key Points of Industrial Structure Adjustment,” Article 4, Decision 40 additionally states that “We shall develop materials forests, timber forest bases in light of local circumstances, and *raise the rate of comprehensive utilization of timbers*” (emphasis added).<sup>243</sup> Additionally, Chapter 8 (Industrial Optimization) of the “National Economic and Social Development Twelfth Five Year Plan of Shandong Province” indicates that the industry under consideration falls within “Section I Upgrading and Development of Traditional Industries” category.<sup>244</sup> Section I includes the building materials industry, and it is axiomatic that plywood is a building material.

Based on the record information described above, we preliminarily determine that the GOC has a policy in place to encourage the development and production of wooden cabinets through policy lending. The loans to wooden cabinets producers from policy banks and SOCBs in the China constitute financial contributions from “authorities” within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.<sup>245</sup> Finally, we determine that the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the GOC’s policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the wooden cabinets industry.

To calculate the benefit from this program, we used the benchmarks discussed under the “Benchmarks and Interest Rates” section.<sup>246</sup> On this basis, we preliminarily determine subsidy rates of 0.10 percent, 1.24 percent, and 0.17 percent *ad valorem*, for Ancientree, Foremost, and Meisen, respectively.

## **2. 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 preliminarily determine that the GOC’s provision of export

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<sup>242</sup> See GOC IQR at Exhibit LOAN-10.

<sup>243</sup> *Id.*

<sup>244</sup> See GOC IQR at Exhibit LOAN-7.

<sup>245</sup> See section 771(5)(E)(ii) of the Act; see also 19 CFR 351.505(a)(1).

<sup>246</sup> See 19 CFR 351.505(c).

buyer's credit confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A)(B) of the Act, respectively. Furthermore, we determine on the basis of AFA that Ancientree, Foremost, and Meisen benefitted from this program during the POI within the meaning of section 771(5)(E) of the Act. Consistent with Commerce's AFA rate selection methodology discussed above, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for Ancientree, Foremost, and Meisen, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.<sup>247</sup>

### **3. Provision of Plywood for LTAR**

Commerce is examining whether the GOC or other "authorities" within China provided plywood for LTAR during the POI. Ancientree, Foremost, and Meisen all reported that they purchased plywood from unaffiliated parties during the POI.<sup>248</sup>

As explained in the "Use of Facts Otherwise Available and Adverse Inferences" section above, we preliminarily find, based on AFA, that the domestic producers that provided plywood to the company respondents are "authorities" within the meaning of section 771(5)(B) of the Act, and that the company respondents received a financial contribution in the form of a provision of a good for LTAR, pursuant to section 771(5)(D)(iii) of the Act.<sup>249</sup>

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

As discussed in the "Input Benchmarks" section above, we are relying on an external benchmark for determining the benefit from the provision of plywood for LTAR under section 771(5)(E)(ii) of the Act. To derive the benchmark prices, we included ocean freight and inland freight that would be incurred to deliver inputs to the respondents' production facilities.<sup>250</sup> We also added to the benchmark prices the appropriate import duties and VAT applicable to imports of plywood into China, as provided by the GOC.<sup>251</sup>

We compared these monthly benchmark prices to the purchase prices paid by Ancientree, Foremost, and Meisen for individual domestic transactions, including VAT and delivery charges. We determined the benefit as the difference between the benchmark prices and the prices

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<sup>247</sup> See *Coated Paper from China 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").

<sup>248</sup> See Foremost IQR at Exhibit Input-2-3, Ancientree IQR at Exhibit II-7, and Meisen IQR at Exhibit 9.

<sup>249</sup> 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 at 48-50.

<sup>250</sup> See Foremost, Ancientree, and Meisen Preliminary Analysis Memoranda, respectively.

<sup>251</sup> See GOC IQR at Exhibit GEN-17. Consistent with *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014) (*Citric Acid from China; 2011 Review*), and accompanying IDM at 90. In *Citric Acid from China; 2011 Review*, we utilized the Most Favored Nation import duty rate because it reflects the general tariff rate applicable to world trade.

reported. We divided the total benefits received by the appropriate sales denominators, as described in the “Subsidies Valuation” section above.

On this basis, we preliminarily determine subsidy rates of 0.01 percent, 0.26 percent, and 3.66 percent *ad valorem*, for Ancientree,<sup>252</sup> Foremost,<sup>253</sup> and Meisen,<sup>254</sup> respectively.

#### **4. Provision of Electricity for LTAR**

For the reasons explained above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we preliminarily determine that GOC has provided electricity to the company respondents for LTAR, based on AFA. Therefore, we preliminarily determine that the GOC’s provision of electricity confers a financial contribution in the form of the provision of a good for LTAR under section 771(5)(D)(iii) of the Act, and that it is *de jure* specific under section 771(5A)(D)(i) of the Act.

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

Consistent with our approach in *Wind Towers from China*, we first calculated each company’s variable electricity costs by multiplying the monthly kilowatt hours (kWh) consumed at each price category (*e.g.*, peak, normal, and valley, where appropriate) by the corresponding electricity rates paid during each month of the POI.<sup>255</sup> Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by the respective company during the POI from the monthly benchmark variable electricity costs.

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

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<sup>252</sup> See Ancientree Preliminary Analysis Memorandum.

<sup>253</sup> See Foremost Preliminary Analysis Memorandum.

<sup>254</sup> See Ancientree Preliminary Analysis Memorandum.

<sup>255</sup> See *Wind Towers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from China*), and accompanying IDM at 21-22.

we divided the benefit by the appropriate total sales denominator, as discussed in the “Subsidies Valuation” section.

On this basis, we preliminarily determine subsidy rates of 0.26 percent, 1.55 percent, and 0.94 percent, *ad valorem*, for Ancientree,<sup>256</sup> Foremost,<sup>257</sup> and Meisen,<sup>258</sup> respectively.

## **5. Provision of Water for LTAR**

Commerce is investigating whether the GOC provided water for LTAR to producers and exporters of wooden cabinets during the POI. Foremost reported purchasing water during the POI,<sup>259</sup> and the GOC reported that Foremost’s water suppliers are government-owned companies.<sup>260</sup>

As the GOC has confirmed that Foremost’s suppliers of water were government-owned entities during the POI, we preliminarily find that this program provides a financial contribution under section 771(5)(D)(iii) in the form of the provision of a good for LTAR. As discussed above, in the section entitled “Application of AFA: Provision of Water for LTAR,” we find that the provision of water for LTAR is *de facto* specific under section 771(5A)(D)(iii) of the Act.

To measure whether a company received a benefit with regard to its base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to the company by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the company’s consumption quantities by the highest rates listed in the available water schedules for Rizhao City, Shandong Province, and Hongze District, Jiangsu Province, the only information on the record regarding water rates in China. To calculate the benefit, we subtracted the monthly per-unit price paid by the company during the POI from the benchmark “special use” rate. We then calculated the total benefit received during the POI under this program by summing the benefits for each month. To calculate the net subsidy rate attributable to the company, we divided the benefit by the appropriate total sales denominator, as discussed in the “Subsidies Valuation” section.

On this basis, we preliminarily determine a subsidy rate of 0.05 percent, *ad valorem* for Foremost.<sup>261</sup>

## **6. Provision of Land-Use Rights by the GOC to Encouraged Industries for LTAR**

Commerce is examining whether the GOC has encouraged the development of the wooden cabinets industry through the provision of land-use rights for LTAR. Both Foremost and Meisen reported purchasing land-use rights that were in effect during the POI.<sup>262</sup>

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<sup>256</sup> See Ancientree Preliminary Analysis Memorandum.

<sup>257</sup> See Foremost Preliminary Analysis Memorandum.

<sup>258</sup> See Ancientree Preliminary Analysis Memorandum.

<sup>259</sup> See Foremost IQR at 31 and Exhibit WTR-1.

<sup>260</sup> See GOC IQR at Exhibit Water-1.

<sup>261</sup> See Foremost Preliminary Analysis Memorandum.

<sup>262</sup> See Foremost AQR at 33-35; *see also* Meisen AQR at 35-36.

In examining this program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for preferential land pricing to support such objectives or goals. The GOC's national five-year plans identify the provision of land and land financing as policy tools to direct economic development for key objectives. For example, the national 13<sup>th</sup> FYP states that, "Approval procedures related to the projects and initiatives included in this plan will be streamlined and priority will be given to them in site selection, land availability, and funding arrangements."<sup>263</sup> The 13<sup>th</sup> FYP identifies development goals for the region in which Foremost and Meisen operate as including "orderly relocation of industries" to the region and to "set up a number of centers for emerging strategic and high-tech industries, and develop a number of industrial clusters."<sup>264</sup>

The 12<sup>th</sup> FYP similarly identifies land management policies as development tools, referencing the importance of the Guidance Catalogue's encouraged industries alongside implementing differential land management policy: "Modify and perfect the current industrial guidance catalogue, clarify the encouraged, limited and prohibited industrial for different principle function areas. Implement the differential land management policy, scientifically set the different land using scale, and carry out strict land use control."<sup>265</sup>

The 11<sup>th</sup> FYP instructs strengthened support for industrial policy, especially for high-tech industries, alongside strengthened cooperation of land policies: "Strengthen and improve industrial policy work, reinforce the unified planning for domestic industry development and for investment introduction, 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. Strengthen the support for the weak links of high-tech industries and equipment manufacturing industry, mainly support research and development and foster core competitive power."<sup>266</sup> It further calls for giving development priority to the high-tech industry and intensive processing by enhancing the efficiency of land resources and the functions of special economic zones.<sup>267</sup>

The GOC has identified the agriculture and forestry industry for priority development in the Guidance Catalogue, which includes the "development of technologies for wood-based composite materials and structural artificial boards," as well as the "production and comprehensive utilization of wood-based composite materials and bamboo construction materials," as encouraged.<sup>268</sup> Decision 40 identifies the Guidance Catalogue as "the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc."<sup>269</sup> Decision 40 also directs all local, provincial, and municipal governments under the Central Government's control to cooperate closely and intensify the effectiveness of

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<sup>263</sup> See GOC IQR at Exhibit Loan-6, Chapter 80, Section 2.

<sup>264</sup> *Id.* at Chapter 37, Section 3.

<sup>265</sup> *Id.* at Chapter 19, Section 2.

<sup>266</sup> *Id.* at Chapter 47.

<sup>267</sup> *Id.* at Chapter 19.

<sup>268</sup> See GOC IQR at Exhibit Loan-8.

<sup>269</sup> *Id.* at Exhibit Loan-10.

implementing industrial policies, and instructs that the relevant provisions of the state will apply to other preferential policies on encouraged industry projects.

As detailed above, national and provincial level development plans provide for priority land supply and financing arrangements for priority development projects. These plans also consistently identify the wooden cabinets industry as a target for economic development. Thus, given the evidence demonstrating the GOC's use of preferential pricing policies to develop the wooden cabinets sector, together with evidence of similar policies in the provinces where respondents are located, we preliminarily determine there is a program to provide land for LTAR to producers of wooden cabinets within the meaning of section 771(5A)(D)(i) of the Act. Because the Chinese government owns all land in China,<sup>270</sup> we preliminarily determine that the entities that provided the land to the respondents are "authorities" within the meaning of section 771(5)(B) of the Act, and that the respondents 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. Given the total government ownership of the land market, we preliminarily determine that the domestic market for land was distorted through the GOC's ownership.

To determine the benefit pursuant to section 771(5)(E)(iv) of the Act, we first multiplied the Thailand industrial land benchmarks discussed above under the "Benchmarks and Discount Rates" section, by the total area of the aforementioned companies' land. We then subtracted the net price actually paid for the land to derive the total unallocated benefit. We next conducted the "0.5 percent test" of 19 CFR 351.524(b)(2) for the year(s) of the relevant land-rights agreement by dividing the total benefit for the respective year(s) by the relevant sales. For those benefits that pass the 0.5 percent test, we allocated the total benefit amounts across the terms of the land use agreement, using the standard allocation formula of 19 CFR 351.524(d), and determined the amount attributable to the POI. We then divided this amount by the appropriate total sales denominator, as discussed in the "Subsidies Valuation" section.

On this basis, we preliminarily determine subsidy rates of 6.80 percent and 0.40 percent *ad valorem*, for Foremost and Meisen, respectively.

## **7. Tax Offsets for Research and Development Under the Enterprise Income Tax Law**

Commerce is examining whether the GOC is providing support to companies by allowing them to deduct from their taxable income certain R&D expenses. Meisen reported using this program during the POI.<sup>271</sup>

The GOC states that this program was established according to Article 30 of the Enterprise Income Tax Law of the PRC and Article 95 of the Implementing Regulations of the Enterprise Income Tax Law of the PRC, effective on January 1, 2008.<sup>272</sup> Under the program, if eligible R&D expenditures for new technologies, new products, or new manufacturing methods are

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<sup>270</sup> *Id.* at 107.

<sup>271</sup> *See* Meisen IQR at 27.

<sup>272</sup> *See* GOC IQR at Exhibit TAX-6.

expensed and not capitalized as intangible assets, an additional 50 percent on top of the actual expense accrual may be deducted from taxable income.<sup>273</sup> Benefits are only available to companies that qualify as high and new technology enterprises.<sup>274</sup> We preliminarily determine that this program constitutes a countervailable subsidy. We preliminarily find that this income tax deduction provides a financial contribution in the form of revenue forgone by the GOC under section 771(5)(D)(ii) of the Act, and a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily find that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus, is *de jure* specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax Meisen would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by Meisen's total sales, as discussed in the "Subsidies Valuation" section.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.26 percent *ad valorem* for Meisen.<sup>275</sup>

## **8. Income Tax Reductions under Article 28 of the Enterprise Income Tax**

Commerce is examining whether the GOC is providing support to certain companies by allowing them to reduce their tax liabilities. Meisen reported use of this program during the POI.<sup>276</sup>

The GOC has reported that this program was established according to Article 28 of Enterprise Income Law of the PRC and Article 93 of the Implementing Regulations of the Enterprise Income Tax Law of the PRC, effective on January 1, 2008, to support and encourage development of high and new technology enterprise.<sup>277</sup> Companies utilizing the program can benefit from a preferential income tax rate of 15 percent, rather than the usual 25 percent.<sup>278</sup> Furthermore, the GOC states that this program is available to all companies that qualify as high or new technology companies.<sup>279</sup> We preliminarily determine that this program confers a countervailable subsidy. We preliminarily find that this income tax deduction provides a financial contribution in the form of revenue forgone by the GOC under section 771(5)(D)(ii) of the Act, and a benefit to the recipient in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). Because benefits under this program are, by law, provided only to high and new technology enterprises, we preliminarily find that this program is *de jure* specific under section 771(5A)(D)(i) of the Act.

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<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> See Meisen Preliminary Analysis Memorandum

<sup>276</sup> See Meisen IQR at 23.

<sup>277</sup> See GOC IQR at Exhibit TAX-1.

<sup>278</sup> *Id.* at Exhibit TAX-5.

<sup>279</sup> *Id.* at Exhibit TAX-1.

To calculate the benefit from this program, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax Meisen would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator, as discussed in the “Subsidies Valuation” section.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.48 percent *ad valorem* for Meisen.

## 9. “Other Subsidies”

Ancientree, Foremost, and Meisen self-reported various recurring and non-recurring subsidies received from the GOC during the POI or AUL period, on behalf of themselves or their respective cross-owned affiliates.<sup>280</sup> The subsidies self-reported by Foremost, which conferred a measurable benefit, are as follows (rates included in parentheses):

- (1) Article 30 Income Tax Deduction (0.03 percent)
- (2) Equipment Subsidy (1.31 percent)

The subsidies self-reported by Ancientree, which conferred a measurable benefit, are as follows:

- (1) Prize and Supporting Fund for Model Enterprises (0.06 percent)

The subsidies self-reported by Meisen, which conferred a measurable benefit, are as follows:

- (1) Subsidy for high-tech enterprise application 2018 (0.03 percent)

As discussed above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we preliminarily determine, pursuant to section 776(a)(1) of the Act, that these subsidies constitute financial contributions under section 771(5)(D)(i) of the Act and are specific under section 771(5A) of the Act. Further, we preliminarily determine that each of these subsidies confers a benefit equal to the amount of the grant in accordance with 19 CFR 351.504(a) or, in the case of the Article 30 Income Tax Deduction, the amount of revenue forgone, in accordance with 19 CFR 351.509(a). To calculate the benefit from non-recurring subsidies received under these programs,<sup>281</sup> we followed the methodology described in 19 CFR 351.524(b)(2). Benefits received prior to the POI, but during the AUL period, that failed the 0.5 percent test described in 19 CFR 351.524(b)(2) were expensed in their respective years of receipt. To calculate the *ad valorem* subsidy rate for these subsidies, we divided the benefit conferred under each of these programs by the appropriate POI sales denominator.

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<sup>280</sup> See Foremost IQR at OTH-2, Ancientree IQR at Exhibit II-13, and Meisen IQR at Exhibit 15. See also the Preliminary Analysis Memoranda.

<sup>281</sup> We preliminarily find that all of the self-reported grants reported by the company respondents are non-recurring subsidies, while Foremost’s Article 30 Income Tax Deduction that was received during the POI is a recurring subsidy.

**B. Programs Preliminarily Determined Not to be Used or Not to Confer a Measurable Benefit During the POI**

1. Provision of Standing Timber for LTAR
2. Provision of Cut Timber for LTAR
3. Provision of Veneers for LTAR
4. Provision of Formaldehyde for LTAR
5. Provision of Urea for LTAR
6. Provision of Urea-Formaldehyde for LTAR
7. Provision of Land to SOE's by the GOC for LTAR
8. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Plan
9. Preferential Loans for State Owned Enterprises
10. Foreign Trade Development Fund Grants
11. Export Assistance Grants
12. Export Interest Subsidies
13. Interest Loan Subsidies for the Forestry Industry
14. Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands
15. Funds for Outward Expansion of Industries in Guangdong Province
16. Provincial Fund for Fiscal and Technological Innovation
17. State Key Technology Renovation Fund
18. Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers
19. Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
20. Waste Water Treatment Subsidies
21. Technology to Improve Trade Research and Development Fund
22. Preferential Income Tax Policy for Enterprises in the Northeast Region
23. Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China
24. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically Produced Equipment
25. Value-Added Tax and Import Duty Exemptions for Use of Imported Equipment
26. Value-Added Tax Rebate Exemptions on FIE Purchases of Chinese-Made Equipment
27. Export Seller's Credit

Additionally, certain subsidies self-reported by Ancientree, Foremost, and Meisen did not confer a measurable benefit.<sup>282</sup> Based on the record evidence, we preliminarily determine that the benefits from these programs were fully expensed prior to the POI or are less than 0.005 percent *ad valorem* when attributed to the respondents' applicable sales, as discussed in the "Attribution of Subsidies" section above. Full lists of these programs are contained in the respondents' calculation memoranda.<sup>283</sup>

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<sup>282</sup> See Foremost IQR at OTH-2, Ancientree IQR at Exhibit II-13, and Meisen IQR at Exhibit 15.

<sup>283</sup> See the Preliminary Analysis Memoranda.

**XII. ITC NOTIFICATION**

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an 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, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after Commerce makes its final affirmative determination.

**XIII. RECOMMENDATION**

We recommend that you approve the preliminary findings described above.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

8/5/2019

X



Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**APPENDIX**

**AFA Rate Calculation**

<b>A. Provision of Inputs for LTAR</b>	<b>Rate</b>	<b>Source</b>
Provision of Standing Timber for LTAR	20.06%	Highest Rate for Similar program Based on Benefit Type
Provision of Cut Timber for LTAR	20.06%	Highest Rate for Similar program Based on Benefit Type
Provision of Veneers for LTAR	20.06%	Highest Rate for Similar program Based on Benefit Type
Provision of Plywood for LTAR	3.66%	Benefit Calculated - Foremost, Ancientree, Meisen
Provision of Formaldehyde for LTAR	20.06%	Highest Rate for Similar program Based on Benefit Type
Provision of Urea for LTAR	20.06%	Highest Rate for Similar program Based on Benefit Type
Provision of Urea-Formaldehyde Resin for LTAR	20.06%	Highest Rate for Similar program Based on Benefit Type
Provision of Electricity for LTAR	1.55%	Benefit Calculated - Foremost, Ancientree, Meisen
Provision of Water for LTAR	0.05%	Benefit Calculated - Foremost, Ancientree
<b>B. Provision of Land for LTAR</b>		
Provision of Land-Use Rights by the GOC to Encouraged Industries for LTAR	6.80%	Benefit Calculated - Foremost and Meisen
Provision of Land to SOEs by the GOC for LTAR		
<b>C. Loans and Credit</b>		
Policy Loans to the Wooden Cabinet and Vanity Industry	1.24%	Highest Rate for Similar program Based on Benefit Type
Preferential Loans for SOEs		Highest Rate for Similar program Based on Benefit Type
Loan and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program	2.05%	Highest Rate for Similar program Based on Benefit Type
<b>D. Grant Programs</b>		
Foreign Trade Development Fund Grants	0.58%	Highest Rate for Similar program Based on Benefit Type

Export Assistance Grants	0.58%	Highest Rate for Similar program Based on Benefit Type
Export Interest Subsidies	0.58%	Highest Rate for Similar program Based on Benefit Type
Interest Loan Subsidies for the Forestry Industry	0.58%	Highest Rate for Similar program Based on Benefit Type
Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands	0.58%	Highest Rate for Similar program Based on Benefit Type
Funds for Outward Expansion of Industries in Guangdong Province	0.58%	Highest Rate for Similar program Based on Benefit Type
Provincial Fund for Fiscal and Technological Innovation	0.58%	Highest Rate for Similar program Based on Benefit Type
State Key Technology Renovation Fund	0.58%	Highest Rate for Similar program Based on Benefit Type
Shandong Province's Special Fund for the Establishment of Key Enterprise Technology Centers	0.58%	Highest Rate for Similar program Based on Benefit Type
Shandong Province's Environmental Protection Industry Research and Development Funds	0.58%	Highest Rate for Similar program Based on Benefit Type
Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises	0.58%	Highest Rate for Similar program Based on Benefit Type
Waste Water Treatment Subsidies	0.58%	Highest Rate for Similar program Based on Benefit Type
Technology to Improve Trade Research and Development Fund	0.58%	Highest Rate for Similar program Based on Benefit Type

<b>E. Income Tax Programs</b>		
Income Tax Reductions under Article 28 of the Enterprise Income Tax	25%	Benefit Calculated - Meisen
Tax Offsets for Research and Development under the Enterprise Income Tax		Highest Rate for Similar program Based on Benefit Type
Preferential Income Tax Policy for Enterprises in the Northeast Region		Highest Rate for Similar program Based on Benefit Type
Forgiveness of Tax Arrears for Enterprises Located in the Old Industrial Bases of Northeast China		Highest Rate for Similar program Based on Benefit Type
Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment		Highest Rate for Similar program Based on Benefit Type
<b>F. Value-Added Tax Programs</b>		
Value-Added Tax and Import Duty Exemptions for Use of Imported Equipment	9.71%	Highest Rate for Similar program Based on Benefit Type
Value-Added Tax Rebate Exemptions on FIE Purchases of Chinese-Made Equipment	9.71%	Highest Rate for Similar program Based on Benefit Type
<b>G. Export Credit Subsidies</b>		
Export Seller's Credit	10.54%	Highest Rate for Similar program Based on Benefit Type
Export Buyer's Credit	10.54%	Highest Rate for Similar program Based on Benefit Type
<b>H. Other Subsidies</b>		
Equipment Subsidy	1.26%	Calculated Benefit-Foremost
Prize and Supporting Fund for Model Enterprises	0.06%	Calculated Benefit-Ancientree
2016 Provincial Business Development Special Fund	0.58%	Highest Rate for Similar program Based on Benefit Type
Subsidy for High-Tech Enterprise Application	0.03%	Calculated Benefit-Meisen
International Market Development Fund for Medium-Small Enterprises	0.58%	Highest Rate for Similar program Based on Benefit Type
Forest Product Processing Grant	0.58%	Highest Rate for Similar program Based on Benefit Type

Reward to Little Giant Enterprises	0.58%	Highest Rate for Similar program Based on Benefit Type
Credit Insurance Subsidy	0.58%	Highest Rate for Similar program Based on Benefit Type
Reward for Technology Renovation	0.58%	Highest Rate for Similar program Based on Benefit Type
Property Insurance Subsidy	0.58%	Highest Rate for Similar program Based on Benefit Type
Fund for Encouraging the Development of FIE	0.58%	Highest Rate for Similar program Based on Benefit Type
Rebate of VAT of Tax-Control System	0.58%	Highest Rate for Similar program Based on Benefit Type
Rebate for Individual Income Tax Collection	0.58%	Highest Rate for Similar program Based on Benefit Type
Grant for Labor and Social Security	0.58%	Highest Rate for Similar program Based on Benefit Type
Rebate of Export Insurance Fee	0.58%	Highest Rate for Similar program Based on Benefit Type
Reward for Safety Examination	0.58%	Highest Rate for Similar program Based on Benefit Type
Rebate for VAT Collection	0.58%	Highest Rate for Similar program Based on Benefit Type
Small and Medium Enterprise International Market Development Fund	0.58%	Highest Rate for Similar program Based on Benefit Type
Prize and Award of People's Government of Shanghai	0.58%	Highest Rate for Similar program Based on Benefit Type
Financial Support Fund	0.58%	Highest Rate for Similar program Based on Benefit Type
Prize and Award of People's Government of Fengcheng Town	0.58%	Highest Rate for Similar program Based on Benefit Type
Financial Support Fund of People's Government of Fengcheng Town	0.58%	Highest Rate for Similar program Based on Benefit Type
Foreign Trade Special Fund	0.58%	Highest Rate for Similar program Based on Benefit Type
Labor & Employment Subsidy	0.58%	Highest Rate for Similar program Based on Benefit Type
Rizhao Dong Gang District top 10 Enterprise Prize - Year 2010	0.58%	Highest Rate for Similar program Based on Benefit Type
Special Funds for Industrial Enterprise Development	0.58%	Highest Rate for Similar program Based on Benefit Type

Rizhao Dong Gang District top 10 Enterprise prize - Year 2009	0.58%	Highest Rate for Similar program Based on Benefit Type
Special Support Funds for Trade	0.58%	Highest Rate for Similar program Based on Benefit Type
Rizhao Dong Gang District top 10 enterprise prize - Year 2011	0.58%	Highest Rate for Similar program Based on Benefit Type
Top 10 Highest Tax Contribution Enterprise Prize - Year 2012	0.58%	Highest Rate for Similar program Based on Benefit Type
Taiwanese Enterprises “Company Culture Building” subsidy	0.58%	Highest Rate for Similar program Based on Benefit Type
Refund Administration Fee for Personal Tax Declaration	0.58%	Highest Rate for Similar program Based on Benefit Type
Shandong Province Export Business Subsidy - Year 2015	0.58%	Highest Rate for Similar program Based on Benefit Type
Prize for Pioneer in Business Development	0.58%	Highest Rate for Similar program Based on Benefit Type
Enterprise Stability Subsidy	0.58%	Highest Rate for Similar program Based on Benefit Type
Senior Technician Subsidy	0.58%	Highest Rate for Similar program Based on Benefit Type

**Total AFA Rate: 229.24%**