



C-570-109
Investigation
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September 6, 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 Ceramic Tile
from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of ceramic tile 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 April 10, 2019, Commerce received petitions filed in proper form by the Coalition for Fair Trade in Ceramic Tile (the petitioner) seeking the imposition of antidumping duties (AD) and countervailing duties (CVD) on imports of ceramic tile from the China.

On May 8, 2019, Commerce initiated the CVD investigation of ceramic tile from China, in accordance with section 702 of the Act.¹

In the *Initiation Notice*, we stated that, following the standard practice in CVD investigations, we would, where appropriate, select respondents based on U.S. Customs and Border Protection

¹ See *Ceramic Tile from the People's Republic of China: Initiation of Countervailing Duty Investigations*, 84 FR 20101 (May 8, 2019) (*Initiation Notice*).



(CBP) entry data for specified Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation during the period of investigation (POI).² Section 777A(e)(1) of the Act directs Commerce to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if Commerce determines it is therefore not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give Commerce discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise that can reasonably be examined.

Commerce obtained data for entries made for U.S. imports under the HTSUS numbers 6907.21.1005, 6907.21.1011, 6907.21.1051, 6907.21.2000, 6907.21.3000, 6907.21.4000, 6907.21.9011, 6907.21.9051, 6907.22.1005, 6907.22.1011, 6907.22.1051, 6907.22.2000, 6907.22.3000, 6907.22.4000, 6907.22.9011, 6907.22.9051, 6907.23.1005, 6907.23.1011, 6907.23.1051, 6907.23.2000, 6907.23.3000, 6907.23.4000, 6907.23.9011, 6907.23.9051, 6907.30.1005, 6907.30.1011, 6907.30.1051, 6907.30.2000, 6907.30.3000, 6907.30.4000, 6907.30.9011, 6907.30.9051, 6907.40.1005, 6907.40.1011, 6907.40.1051, 6907.40.2000, 6907.40.3000, 6907.40.4000, 6907.40.9011, and 6907.40.9051 during the POI, and released the data to interested parties for comment on April 30, 2019.³ The petitioner and Foshan Sanfi Imp & Exp Co., Ltd. (Sanfi) submitted comments on the CBP data.⁴

On May 7, 2019, Sanfi requested that Commerce investigate it as a voluntary respondent. On May 16, 2019, we released factual information regarding the CBP data indicating that certain errors were made with respect to entry volumes by certain exporters/producers.⁵ Further, on May 13 and 20, 2019, Sanfi submitted comments claiming that the CBP data contained widespread issues.⁶ Based on our analysis of the CBP data and the comments received, we issued quantity and value (Q&V) questionnaires to the ten largest producers/exporters listed in the CBP data as well as to Sanfi.⁷ We confirmed that two of the 11 Q&V questionnaires were undeliverable.⁸

As outlined in our Respondent Selection Memorandum, based upon the Q&V questionnaire responses, which included responses from all companies that received the Q&V questionnaires along with some voluntary responses, we selected Sanfi and Temgoo International Trading

² See *Initiation Notice*, 84 FR at 20103 - 20104.

³ See Commerce's Letter, "To All Interested Parties," dated April 30, 2019.

⁴ See Petitioner's Letter, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: Petitioner's Comments on Confidential Customs and Border Protection Data and Mandatory Respondent Selection," dated May 13, 2019; and Sanfi's Letter, "Ceramic Tile from the People's Republic of China: Comments on CBP Data and Request to Issue Quantity and Value Questionnaires," dated May 13, 2019.

⁵ See Memorandum, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: Release of CBP Factual Information," dated May 16, 2019.

⁶ See Sanfi's Letter, "Ceramic Tile from the People's Republic of China: Comments on CBP Data and Request to Issue Quantity and Value Questionnaires," dated May 13, 2019; and Letter from Sanfi, "Ceramic Tile from the People's Republic of China – Comments on CBP Factual Information," dated May 20, 2019.

⁷ See Memorandum, "Countervailing Duty Investigation of ceramic Tile from the People's Republic of China: Issuance of quantity and Value Questionnaires," dated June 5, 2019, and accompanying Q&V questionnaires.

⁸ See Memorandum, "Countervailing Duty Investigation Concerning Ceramic Tile from the People's Republic of China: Delivery Status of Quantity and Value Questionnaires Issued to Foshan Sanshui Revlon Ceramic Co., Ltd. and Fujian Huaxing Plastics Co., Ltd.," dated June 17, 2019.

Limited (Temgoo) as mandatory respondents.⁹ Consistent with section 777A(e)(2)(A)(ii) of the Act, these two companies accounted for the largest import volumes of the subject merchandise under consideration during the POI.

On June 17, 2019, Commerce issued a CVD questionnaire to the Government of China (GOC),¹⁰ and on July 2, 2019, Sanfi and Temgoo both submitted timely responses to section III, the affiliation portion of Commerce's Initial Questionnaire.¹¹ On July 30, 2019, the GOC and Sanfi timely filed its full Section III responses to Commerce's Initial Questionnaire.¹²

Between July 5, 2019 and August 21, 2019, Commerce issued supplemental questionnaires to Sanfi, Temgoo, and the GOC,¹³ to which Sanfi and the GOC responded.¹⁴ On July 10, 2019,

⁹ See Memorandum, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: Respondent Selection," dated June 17, 2019 at 6 (Respondent Selection Memorandum).

¹⁰ See Commerce's Letter, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: Countervailing Duty Questionnaire, dated June 17, 2019 (Initial Questionnaire).

¹¹ See Sanfi's Letter, "Ceramic Tile from the People's Republic of China – Response to Affiliated Companies Section III Questionnaire," dated July 2, 2019 (Sanfi AFFR); and Temgoo's Letter, "Ceramic Tile from China; C-570-109; Response to Affiliated Parties Portion of Section III of the Department's Initial Questionnaire," dated July 2, 2019.

¹² See GOC's Letter, "Ceramic Tile from China; CVD Investigation; GOC Initial Questionnaire Response," dated July 30, 2019 (GOC July 30, 2019 IQR); and Sanfi's Letter, "Ceramic Tile from the People's Republic of China – Response to Section III Questionnaire," dated July 30, 2019 (Sanfi IQR).

¹³ See Commerce's Letter, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: Request for Additional Information Regarding Foshan Sanfi Imp & Exp Co., Ltd.'s Response to Other Companies Subject to Investigation Questions of Initial Questionnaire," dated July 5, 2019; and Commerce's Letter, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: Request for Additional Information Regarding Temgoo International Trading Ltd.'s Response to section III Identifying Affiliated Companies Questions of Initial Questionnaire," dated July 5, 2019; Commerce's Letter, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: First Request for Additional Information Regarding Foshan Sanfi Imp & Exp Co., Ltd.'s Responses," dated August 2, 2019; Commerce's Letter, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: Request for Additional Information Regarding the Government of the People's Republic of China's Response to the June 17, 2019 Initial Questionnaire," dated August 5, 2019 (GOC First Supplemental Questionnaire); Commerce's Letter, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: Second Request for Additional Information Regarding the Government of the People's Republic of China's Responses to the June 17, 2019 Initial Questionnaire and the August 5, 2019 First Supplemental Questionnaire," dated August 20, 2019 (GOC Second Supplemental Questionnaire); and Commerce's Letter, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: {Third} Request for Additional Information Regarding the Government of the People's Republic of China's Responses to the June 17, 2019 Initial Questionnaire and the August 5, 2019 First Supplemental Questionnaire," dated August 21, 2019 (GOC Third Supplemental Questionnaire).

¹⁴ See Sanfi's Letter, "Ceramic Tile from the People's Republic of China – Response to Supplemental Questionnaire on Affiliated Companies," dated July 15, 2019; Sanfi's Letter, "Ceramic Tile from the People's Republic of China – Response to Second Supplemental Questionnaire on Affiliated Companies," dated July 29, 2019; Sanfi's Letter, "Ceramic Tiles from the People's Republic of China – Initial Response to First Supplemental Questionnaire," dated August 5, 2019 (Sanfi Revised IQR); Sanfi's Letter, "Ceramic Tile from the People's Republic of China – Response to First Supplemental Questionnaire," dated August 13, 2019 (Sanfi First SQR); Sanfi's Letter, "Ceramic Tile from the People's Republic of China – response to Third Supplemental Questionnaire on Affiliated Companies," dated July 31, 2019; GOC's Letter, "Ceramic Tile from China; CVD Investigation; GOC First Supplemental Questionnaire Response," dated August 14, 2019 (GOC First SQR); GOC's Letter, "Ceramic Tile from China; CVD Investigation; GOC Second Supplemental Questionnaire Response," dated August 23, 2019 (GOC Second SQR);

Temgoo notified Commerce that it did not intend to respond to the remainder of Commerce's Initial Questionnaire.¹⁵

B. Postponement of Preliminary Determination

On June 24, 2019, based on a request by the petitioner,¹⁶ Commerce postponed the deadline for the preliminary determination to the full 130 days permitted under sections 703(c)(1)(B) and (c)(2) of the Act and 19 CFR 351.205(f)(1) because it determined that this investigation was extraordinarily complicated and required additional time to issue a preliminary determination.¹⁷ The current deadline is September 6, 2019.

C. Period of Investigation

The 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).

D. 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,¹⁸ we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of ceramic tile 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 January 21, 2020, unless postponed.

III. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,¹⁹ we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage and encouraged interested parties to submit comments by May 20, 2019, and rebuttal comments by May 30, 2019.²⁰

and GOC's Letter, "Ceramic Tile from China; CVD Investigation; GOC Third Supplemental Questionnaire Response," dated August 23, 2019 (GOC Third SQR).

¹⁵ See Temgoo's Letter, "Ceramic Tile from China; C-570-109; Notification of Non-Submission of Questionnaire Response," dated July 10, 2019 (Temgoo Non-Participation Letter).

¹⁶ See Petitioner's Letter, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: Petitioner's Request for Postponement of the Preliminary Determination," dated June 7, 2019.

¹⁷ See *Ceramic Tile from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 84 FR 29497 (June 24, 2019) (postponing the preliminary determination to 130 days after initiation).

¹⁸ See Petitioner's Letter, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: Request to Align Countervailing Duty Final Determination with Companion Antidumping Final Determination," dated August 15, 2019.

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

²⁰ See *Initiation Notice*, 84 FR at 20102.

We received comments concerning the scope of the AD and CVD investigations. After analyzing these comments, Commerce preliminarily finds no basis for altering the scope language from what appeared in the *Initiation Notice*. See the Preliminary Scope Decision Memorandum.²¹ We will issue a final scope decision on the records of the ceramic tile investigations after considering any party comments.

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is ceramic flooring tile, wall tile, paving tile, hearth tile, porcelain tile, mosaic tile, flags, finishing tile, and the like (hereinafter ceramic tile). Ceramic tiles are articles containing a mixture of minerals including clay (generally hydrous silicates of alumina or magnesium) that are fired so the raw materials are fused to produce a finished good that is less than 3.2 cm in actual thickness. All ceramic tile is subject to the scope regardless of end use, surface area, and weight, regardless of whether the tile is glazed or unglazed, regardless of the water absorption coefficient by weight, regardless of the extent of vitrification, and regardless of whether or not the tile is on a backing. Subject merchandise includes ceramic tile with decorative features that may in spots exceed 3.2 cm in thickness and includes ceramic tile “slabs” or “panels” (tiles that are larger than 1 meter² (11 ft.²)).

Subject merchandise includes ceramic tile that undergoes minor processing in a third country prior to importation into the United States. Similarly, subject merchandise includes ceramic tile produced that undergoes minor processing after importation into the United States. Such minor processing includes, but is not limited to, one or more of the following: beveling, cutting, trimming, staining, painting, polishing, finishing, additional firing, or any other processing that would otherwise not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

Subject merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings of heading 6907: 6907.21.1005, 6907.21.1011, 6907.21.1051, 6907.21.2000, 6907.21.3000, 6907.21.4000, 6907.21.9011, 6907.21.9051, 6907.22.1005, 6907.22.1011, 6907.22.1051, 6907.22.2000, 6907.22.3000, 6907.22.4000, 6907.22.9011, 6907.22.9051, 6907.23.1005, 6907.23.1011, 6907.23.1051, 6907.23.2000, 6907.23.3000, 6907.23.4000, 6907.23.9011, 6907.23.9051, 6907.30.1005, 6907.30.1011, 6907.30.1051, 6907.30.2000, 6907.30.3000, 6907.30.4000, 6907.30.9011, 6907.30.9051, 6907.40.1005, 6907.40.1011, 6907.40.1051, 6907.40.2000, 6907.40.3000, 6907.40.4000, 6907.40.9011, and 6907.40.9051. Subject merchandise may also enter under subheadings of headings 6914 and 6905: 6914.10.8000, 6914.90.8000, 6905.10.0000, and 6905.90.0050. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this investigation is dispositive.

²¹ See Memorandum, “Ceramic Tile from the People’s Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated September 6, 2019 (Preliminary Scope Decision Memorandum).

V. 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 June 3, 2018, the ITC preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of ceramic tile from China.²²

VI. PRELIMINARY NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

The petitioner submitted information alleging that, pursuant to section 703(e)(1) of the Act, and 19 CFR 351.206, critical circumstances exist with respect to imports of ceramic tile from China.²³ Based on the U.S. Census Bureau data provided in this submission, we preliminarily find that this information does not support an affirmative critical circumstances finding.²⁴ Pursuant to 19 CFR 351.206(h)(1), “{i}n determining whether of the subject merchandise have been massive under section 705(a)(2)(B) or section(a)(3)(B) of the Act, the Secretary normally will examine: (i) {t}he volume and value of imports; (2) {s}easonal trends; and, (3) {t}he share of domestic consumption accounted for by the imports.”

Section 703(e)(1) of the Act provides that Commerce will determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect: (A) that “the alleged countervailable subsidy” is inconsistent with the Agreement on Subsidies and Countervailing Measures of the World Trade Organization, and (B) that “there have been massive imports of the subject merchandise over a relatively short period.”

In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 703(e)(1)(B) and 19 CFR 351.206(i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately before the date when the proceeding begins (*i.e.*, the date of publication of the notice of initiation)²⁵ (*i.e.*, the “base period”) to a comparable period of at least three months following the same date (*i.e.*, the “comparison period”). Commerce’s regulations provide that, generally, imports must increase by at least 15 percent during the “comparison period” to be considered “massive.”²⁶

Here, we preliminarily find that the volume of U.S. imports did not increase by 15 percent from the base to the comparison period. Further, parties to the investigation have argued that the U.S. Census Bureau data has been reported on a landed duty-paid basis, which is likely impacted by the increase in the Section 301 duties at start of 2019. As such, they argue that the value figure

²² See *Ceramic Tile from China: Investigation Nos. 701-TA-621 and 731-TA-1447 (Preliminary)*, Publication 4898, June 2019; see also *Ceramic Tile from China*, 84 FR 25561 (June 3, 2019).

²³ See Petitioner’s Letter, “Ceramic Tile from the People’s Republic of China: Petitioners’ Allegation of Critical Circumstances,” dated August 16, 2019.

²⁴ *Id.* at Attachment 1.

²⁵ See 19 CFR 351.102(b)(40) (providing that a proceeding begins on the date of the publication of a notice of initiation in a self-initiated investigation).

²⁶ See 19 CFR 351.206(h)(2).

provided in the U.S. Census Bureau is unreliable. After considering these factors, we preliminarily find that information provided in the critical circumstances allegation does not support an affirmative critical circumstances finding.

VII. APPLICATION OF THE CVD LAW TO IMPORTS FROM CHINA

On March 13, 2012, Public Law 112-99 was enacted which made clear that Commerce has the authority to apply the CVD law to countries designated as non-market economies (NMEs) under section 771(18) of the Act, such as China.²⁷ The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.²⁸

VIII. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.²⁹ Commerce finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(1) and the U.S. Internal Revenue Service Publication 946 (2016), “Appendix B - Table of Class Lives and Recovery Periods” (IRS Pub. 946).³⁰ The 15-year period corresponds to IRS Pub. 946 asset class, under “32.3 Manufacture of Other Stone and Clay Products.” Commerce notified the respondents of the 15-year AUL in the Initial Questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

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

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide additional rules for the attribution of subsidies received by 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.

²⁷ Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

²⁸ See Public Law 112-99, 126 Stat. 265 §1(b).

²⁹ See 19 CFR 351.524(b).

³⁰ See U.S. Internal Revenue Service Publication 946 (2016), “How to Depreciate Property” at Table B-2: Table of Class Lives and Recovery Periods.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of Commerce’s regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to Commerce’s regulations further clarifies the Commerce’s cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.³¹

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.³²

Sanfi

As discussed above, we selected Sanfi as a mandatory respondent. Sanfi responded to Commerce’s questionnaire on behalf of itself and Guangdong Sanfi Ceramics Group Co., Ltd. (Sanfi Group).³³ Due to the proprietary nature of Sanfi/Sanfi Group’s corporate structure and affiliations, we have included this analysis in the preliminary calculation memorandum.³⁴

Pursuant to 19 CFR 351.525(b)(6)(ii), we attributed subsidies received by Sanfi to the sales of Sanfi Group and Sanfi, net of intercompany sales. Because Sanfi Group is a parent company, we attributed subsidies it received to its sales, consolidated with the sales of its cross-owned subsidiary, pursuant to 19 CFR 351.525(b)(6)(iii). Furthermore, because information regarding a company that was a cross-owned producer of the subject merchandise during the AUL is absent from the record, we have applied AFA to all non-recurring subsidy programs reported by

³¹ See *Countervailing Duties; Final Rule*, 63 FR 65438, 65401 (November 25, 1998) (*CVD Preamble*).

³² See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

³³ See Sanfi Revised IQR at S1-2.

³⁴ See Memorandum, “Preliminary Determination Calculation Memorandum for Sanfi Imp and Exp Co., Ltd. and Guangdong Sanfi Ceramics Group Co., Ltd.,” dated concurrently with this memorandum (Preliminary Calculation Memorandum) at 2-3.

Sanfi/Sanfi Group and in finding that these subsidies are attributable to Sanfi/Sanfi Group.³⁵ For further discussion, *see* the “Application of Partial AFA: Sanfi” section, below.

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 discussed in further detail below in the “Programs Preliminarily Determined to be Countervailable” section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient’s total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, *see* the Preliminary Calculation Memorandum.³⁶

IX. BENCHMARKS AND INTEREST RATES

Commerce is investigating loans received by Sanfi and Sanfi Group from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies received by the mandatory respondents.³⁷ The derivation of the 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, Commerce uses comparable commercial loans reported by the company as a benchmark.³⁸ 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.”³⁹

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 Paper 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.⁴⁰ In an analysis memorandum dated July 23, 2019, Commerce has conducted a re-assessment of the lending system in China.⁴¹

³⁵ *See* Memorandum, “Countervailing Duty Investigation of Ceramic Tile from the People’s Republic of China: Meeting with Counsel for Foshan Sanfi Imp & Exp Co., Ltd.,” dated August 15, 2019 (*Ex Parte* Meeting Memo).

³⁶ *See* Preliminary Calculation Memorandum.

³⁷ *See* 19 CFR 351.524(b)(1).

³⁸ *See* 19 CFR 351.505(a)(3)(i).

³⁹ *See* 19 CFR 351.505(a)(3)(ii).

⁴⁰ *See Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS Paper from China*), and accompanying Issues and Decision Memorandum (IDM) at Comment 10.

⁴¹ *See* Memorandum Placing “Review of China’s Financial System Memorandum” on the record, dated July 23, 2019.

Based on this re-assessment, Commerce has concluded that, despite reforms to date, the GOC's role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, Commerce is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with Commerce's practice. For example, in *Lumber from Canada*, Commerce used U.S. timber prices to measure the benefit for government-provided timber in Canada.⁴²

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS Paper from China* and later updated in *Thermal Paper from China*.⁴³ 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 Paper 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.⁴⁴ Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2017.⁴⁵ 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.⁴⁶

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

⁴² See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Lumber from Canada*), and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

⁴³ See *CFS Paper from China* IDM at Comment 10; see also *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*), and accompanying IDM at 8-10.

⁴⁴ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups> (World Bank Country Classification); see also Memorandum, "Loan Interest Rate Benchmarks," dated July 23, 2019.

⁴⁵ See World Bank Country Classification.

⁴⁶ See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying Preliminary Decision Memorandum (PDM) at "Benchmarks and Discount Rates," unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*).

In each of the years from 2003-2009 and 2011-2017, the results of the regression analysis reflected the expected result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.⁴⁷ For 2010, however, the regression does not yield that outcome for China's income group.⁴⁸ This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS Paper 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 2001-2009.⁴⁹ First, we did not include those economies that Commerce considered to be NMEs 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 removed 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 that 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.⁵⁰ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.⁵¹

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.⁵²

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.⁵³ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁵⁴

⁴⁷ See Interest Rate Benchmark Memoranda.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See, e.g., *Thermal Paper from China* IDM at 10.

⁵³ 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.

⁵⁴ See Interest Rate Benchmark Memoranda.

The resulting inflation-adjusted benchmark lending rates are provided in the Sanfi Group Co.’s (*i.e.*, the collective reference to Sanfi, Sanfi Group, *etc.*). See Preliminary Calculation Memorandum.

B. 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.⁵⁵ The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Preliminary Calculation Memorandum.

C. Input Benchmarks

Sanfi reported purchases of water, clay, feldspar, and sand during the POI for the production of the subject merchandise.

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 less than adequate remuneration (LTAR). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As discussed in the “Use of Facts Otherwise Available and Adverse Inferences” section, we are relying on “tier one” prices for the water benchmark and “tier two” (world market) prices for the clay, feldspar, and sand benchmarks for these programs.

Regarding water, we are using data provided by the GOC as a “tier one” benchmark. Specifically, in its First SQR, the GOC provided two water rates for Foshan City (*i.e.*, the location of Sanfi Group’s Manufacturing facilities), which were averaged to create the water benchmark.⁵⁶ We are preliminarily finding, on the basis of AFA, that Sanfi Group’s water suppliers are authorities consistent with section 771(5)(B) of the Act. For further discussion, see the “Application of AFA: Provision of Water for LTAR” section, below.

We received data submissions from certain parties to consider using as “tier two” benchmarks for clay, feldspar, and sand.⁵⁷ Sanfi submitted benchmarks for clay, feldspar, sand, and ocean freight and United Nations Comtrade (UN Comtrade) data for several HTS subheadings.⁵⁸ Specifically, Sanfi submitted pricing data for HTS subheadings 2508.30 (“other clays (not including expanded clays of heading 6806, andalusite, kyanite and sillimanite, whether or not calcined; mullite; chamotte or dinas earths: fire clay).”) and 2529.10 (“Feldspar; leucite,

⁵⁵ See Preliminary Calculation Memorandum; see also Interest Rate Benchmark Memoranda.

⁵⁶ See GOC First SQR at Exhibit S-16.

⁵⁷ See Sanfi’s Letter, “Ceramic Tiles from the People’s Republic of China: Benchmark Submission,” dated August 7, 2019 at 1-2 (Sanfi’s Benchmark Submission).

⁵⁸ See Sanfi’s Benchmark Submission at Exhibits 1-3, and 5.

nepheline and nepheline syenite; fluorspar: Feldspar.”) as potential benchmarks for clay and feldspar, pricing data from the Global Silica Sand Market Research Report (“Table Global Silica Sand Sale Price by Company (2018-2019) (USD/MT)”) as a potential benchmark for sand, and monthly ocean freight rates from a variety of Asian ports to Shanghai between January 2018 and December 2018, as reported by Xeneta.⁵⁹ We note that although the petitioners submitted benchmark data, because this data was not received by the deadline to file benchmark submissions, pursuant to 19 CFR 351.301(c)(3)(iv), we are not able to consider such data as potential benchmarks; instead, we will only consider it for rebuttal purposes.⁶⁰

With respect to the clay and feldspar inputs for Sanfi Group, we are relying on the raw UN Comtrade pricing data from Sanfi related to HTS subheadings 2508.30 and 2529.10, which reflect the clay and feldspar input purchased by Sanfi Group to use in the production of subject merchandise. With respect to sand, we are relying on the pricing data from Sanfi in the Global Silica Sand Market Research Report, which reflects the sand input purchased by Sanfi Group to use in the production of subject merchandise.

With respect to ocean freight expenses, Sanfi submitted ocean freight data sourced from Xeneta for 2018. For our preliminary calculations, we are relying on the ocean freight data submitted by Sanfi because it is contemporaneous with our POI. This approach is consistent with *Solar Cells from China Final 2016 AR*.⁶¹

Regarding inland freight, Sanfi reported freight expenses by dividing the freight cost (*i.e.*, transportation fees) for delivering goods to the exportation port by the total quantity of exports to derive the average unit inland freight to the port.⁶² We used this freight expense in the benchmark calculations for Sanfi Group.

X. 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.⁶³ 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.

⁵⁹ See Sanfi’s Benchmark Submission at Exhibit 5.

⁶⁰ See Petitioner’s Letter, “Ceramic Tile from the People’s Republic of China: Petitioner’s Rebuttal Factual Information to Sanfi IE’s Submission of Factual Information to Measure the Adequacy of Remuneration,” dated August 19, 2019.

⁶¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2016*, 84 FR 45125 (August 28, 2019) (*Solar Cells from China Final 2016 AR*), and accompanying IDM at Comment 7.

⁶² See Sanfi IQR at Exhibits P.D.4.2 and P.D.4.3.

⁶³ See Memorandum, “Countervailing Duty Investigation of Ceramic Tile from the People’s Republic of China: China Statistical Yearbook Memorandum,” dated concurrently with this memorandum.

XI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

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

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) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide {Commerce} with complete and accurate information in a timely manner.”⁶⁴ 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.”⁶⁵ 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.”⁶⁶ It is Commerce’s practice to consider information to be corroborated if it has probative value.⁶⁷ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and

⁶⁴ 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).

⁶⁵ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

⁶⁶ See, e.g., SAA at 870.

⁶⁷ See SAA at 870.

relevance of the information to be used.⁶⁸ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.⁶⁹

In a CVD investigation, Commerce requires information from both the foreign producers and exporters of the merchandise under investigation and the government of the country where those producers and exporters are located. When the government fails to provide requested and necessary information concerning alleged subsidy programs, Commerce, in selecting from among the facts otherwise available with an adverse inference, may find that a financial contribution exists under the alleged program and that the program is specific. However, where possible, Commerce will rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit conferred, to the extent that those records are useable and verifiable.

Otherwise, under the new section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.⁷⁰

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

B. Application of Total AFA: Temgoo

As noted in the "Initiation and Case History" section above, Commerce selected Temgoo as a mandatory respondent.⁷¹ On July 10, 2019, Temgoo notified Commerce that it would not respond to section III of Commerce's Initial Questionnaire.⁷² Accordingly, we preliminarily determine that Temgoo withheld necessary information that was requested of it, failed to provide information within the deadlines established, and significantly impeded this proceeding. Thus, Commerce is relying on facts otherwise available in making our preliminary determination with respect to Temgoo, 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)(1) of the Act, because, by not responding to Commerce's Initial Questionnaire, Temgoo did not cooperate to the best of its ability to comply with the request for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that Temgoo does not obtain a more favorable result by failing to cooperate than if it had fully complied with our request for information. Therefore, we are inferring from Temgoo's decision

⁶⁸ See, e.g., SAA at 869.

⁶⁹ See SAA at 869-870.

⁷⁰ See section 776(d)(3) of the Act.

⁷¹ See Respondent Selection Memorandum.

⁷² See Temgoo Non-Participation Letter.

not to participate in this investigation that it used all the programs on which we initiated an investigation, and we are applying an AFA rate for each program.

C. Application of Partial AFA: Sanfi

On July 2, 2019, we received Sanfi's response to "Section III Identifying Affiliated Companies" of Commerce's July 17, 2019 Initial Questionnaire.⁷³ Between July 5, 2019 and August 2, 2019, we issued four supplemental questionnaires – three of which addressed questions exclusively pertaining to Sanfi's reporting of the affiliated companies section of the initial questionnaire.

Following the issuance of these supplemental questionnaires, on August 8, 2019, the petitioner filed comments regarding Sanfi's affiliated company supplemental responses.⁷⁴ In this submission, the petitioner claimed that Sanfi had not yet disclosed all of its affiliations. Subsequently, on August 13, 2019, Sanfi submitted rebuttal comments, where it disclosed that, prior to the POI, Sanfi was affiliated with a certain ceramic tile company identified in the petitioner's August 8, 2019 submission.⁷⁵ The following day, counsel for Sanfi requested to hold an *ex parte* meeting with Commerce officials regarding Sanfi's August 13, 2019 submission.⁷⁶ During this meeting, Sanfi's counsel disclosed that this certain ceramic tile company met Commerce's cross-ownership criteria during the AUL period, and was a producer of the subject merchandise.⁷⁷

In CVD proceedings, disclosure of the universe of corporate affiliates is required in the very first questionnaire response because it is essential to determine whether any affiliate meets the requirements for cross-ownership outlined in 19 CFR 351.525 to ensure that the subsequent questionnaire responses are complete and allow us to calculate accurate subsidy rates.⁷⁸ By not providing a response to the "Former Owner's / Changes in Ownership" section of the Initial questionnaire for this entity, Sanfi has precluded Commerce from issuing questions regarding this affiliation, understanding its corporate structure and business ties, and requesting an initial questionnaire response from this company. As such, we find that Sanfi did not cooperate to the best of its ability to comply with the request for information in this investigation and has significantly delayed this proceeding. Because Sanfi has provided information indicating that it and the ceramic tile company in question were cross-owned during the AUL period,⁷⁹ we intend to apply partial AFA to all non-recurring programs where benefits may have been received during the AUL period. As such, we are adversely inferring that the cross-owned ceramic tile producer during this period benefitted from all non-recurring programs that have been initiated on in this investigation and/or reported by Sanfi/Sanfi Group.

⁷³ See Sanfi AFFR.

⁷⁴ See Petitioner's Letter, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: Petitioner's Comments on Foshan Sanfi's Second and Third Supplemental Section III Affiliated Companies Questionnaire Response," dated August 8, 2019.

⁷⁵ See Sanfi's Letter, "Ceramic Tile from the People's Republic of China – Response to Petitioner's Comment on August 8, 2019," dated August 13, 2019.

⁷⁶ See *Ex Parte* Meeting Memo.

⁷⁷ *Id.*

⁷⁸ See *Large Diameter Welded Pipe from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 84 FR 6369 (February 27, 2019), and accompanying IDM at Comment 1.

⁷⁹ See, e.g., *Ex Parte* Meeting Memo.

As indicated above, Sanfi, should have provided a response to the “Former Owner’s / Changes in Ownership” section of the Initial Questionnaire for the entity in question. As a result, by failing to provide this information, Commerce was precluded from asking any questions about the programs received by the company in question. Accordingly, we preliminarily find that use of partial AFA is warranted. Therefore, because key information for the determination concerning the entity in question is missing from the record, we are adversely inferring that this company benefitted from all non-recurring programs initiated on/and or reported by Sanfi/Sanfi Group, and we are applying an AFA rate for each program to the entity in question.

D. Selection of an AFA Rate

In CVD proceedings, Commerce computes 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.⁸⁰ 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.⁸¹ 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 above zero for the identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate above *de minimis* for the identical program.⁸² 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-

⁸⁰ See, e.g., *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008), unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM 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 Final*), and accompanying IDM at “Application of Adverse Inferences: Non-Cooperative Companies.”

⁸¹ See, e.g., *Shrimp from China* IDM at 13; see also *Essar Steel Ltd. v. United States*, 753 F. 3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding “hierarchical methodology for selecting an AFA rate”).

⁸² 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.”

company specific program in a CVD case involving the same country that the company's industry could use.⁸³

Commerce's methodology is consistent with section 776(d)(1)(A) of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, Commerce may (i) use a subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce's existing practice of using an AFA 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 AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."⁸⁴ No legislative history accompanied this provision. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

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 AFA, Commerce determines that the situation warrants a rate different from the rate derived from the hierarchy to be applied.⁸⁵

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁸⁶

⁸³ See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying PDM at "Benchmarks and Discount Rates," unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013), and accompanying IDM at 13-14.

⁸⁴ See section 776(d)(2) of the Act.

⁸⁵ This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B). Under that provision, "any dumping margin from any segment of the proceeding under the applicable antidumping order" may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

⁸⁶ See SAA at 870; see also *Essar Steel Ltd. v. United States*, 678 F. 3d 1268, 1276 (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (CAFC 2000) (finding that "{t}he purpose of the adverse facts statute is 'to provide respondents with an incentive to cooperate' with Commerce's investigation, not to impose punitive damages.")) (*De Cecco*).

Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”⁸⁷ It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.⁸⁸

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

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

Under the first step of Commerce’s investigation hierarchy, Commerce applies the highest non-zero rate calculated for a cooperating company for the identical program in the investigation. Under this step, we will even use a *de minimis* rate as 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 Commerce will shift to the second step of its hierarchy, and either apply the highest non-*de minimis* rate calculated for a cooperating company in another countervailing duty proceeding involving the same country for the identical program, or if the identical program is not available,

⁸⁷ See *De Cecco*, 216 F. 3d at 1032.

⁸⁸ Commerce has adopted a practice of applying its hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at 28-31 (applying the AFA 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 AFA hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

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 hierarchy, Commerce applies the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.⁸⁹

In all three steps of Commerce's AFA investigation hierarchy, if Commerce 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 AFA hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevance, and program relevancy.⁹⁰

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

There are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy, in accordance with section 776(d)(1) of the Act, should be applied as AFA. As explained above, we are preliminarily applying AFA, because Temgoo and Sanfi/Sanfi Group either failed to submit a response to the questionnaire or chose not to cooperate by not providing all the necessary information needed for our cross-ownership analysis and failing to inform Commerce of critical information regarding affiliations early in the proceeding. Therefore, we preliminarily find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

In applying AFA to determine the net subsidy rate for non-cooperating companies, we are guided by the methodology detailed above. We began by selecting, as AFA, the highest calculated program-specific above-zero rates determined for the cooperating respondent in the instant investigation. Accordingly, we are applying the highest applicable subsidy rate calculated for Sanfi for the following programs:

⁸⁹ 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.

⁹⁰ 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 Paper from China* IDM at 2.

- Provision of Electricity for LTAR
- Provision of Land for LTAR to Encouraged Industries
- Provision of Water for LTAR
- Provision of Clay for LTAR
- Provision of Feldspar for LTAR
- Provision of Sand for LTAR

In determining an AFA rate for the following income tax reduction programs on which we initiated an investigation, we are finding, as AFA, that the non-cooperating companies paid no Chinese income tax during the POI:

- Preferential Income Tax Reductions for High or New Technology Enterprises (HNTEs)
- Preferential Deduction of Research and Development (R&D) Expenses for HNTEs
- Reduced Tax Rates for Foreign Invested Enterprises (FIEs) Recognized as HNTEs
- Income Tax Benefits for Domestically-Owned Enterprises Engaging in R&D
- Reduced Income Tax Rates for FIEs Based on Location
- Tax Offsets for R&D by FIEs
- Corporate Income Tax Law Article 33: Reduction of Taxable Income for Revenue Derived from the Manufacture of Products That Are in Line with State Industrial Policy and Involve Synergistic Utilization of Resources

The standard income tax rate for corporations in China in effect during the POI was 25 percent.⁹¹ 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.*, that the seven programs, combined, provide a 25 percent benefit). Consistent with Commerce’s practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and value-added tax (VAT) exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.⁹²

Additionally, in determining an AFA rate for the following provincial income tax reduction programs on which we initiated an investigation, we are finding, as AFA, that the non-cooperating companies paid no Chinese provincial income tax during the POI:

- Tax Offset for R&D – Guangdong Province Tax Program
- Income Tax Reduction for High-Tech Industries in Guangdong Province
- Income Tax Programs for FIEs in Dongguan City in Guangdong Province
- Reduced Income Tax Rate for Entities in the Foshan High-Tech Industrial Development Zone

⁹¹ See *Ceramic Tile from the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 84 FR 20101 (October 25, 2017), and accompanying Initiation Checklist (CVD Initiation Checklist) at 13.

⁹² See, *e.g.*, *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from China Final*), and accompanying IDM at “VI. Use of Facts Otherwise Available and Adverse Inferences: Application of Adverse Inferences: Non-Cooperative Companies.”

- Local Income Tax Exemption and Reduction Programs for “Productive” FIEs – Shandong Province

The known standard provincial income tax rate in China is three percent.⁹³ Thus, the highest possible benefit for these provincial income tax programs is three percent. Accordingly, we are applying the three percent AFA rate on a combined basis (*i.e.*, that the five programs, combined, provide a three percent benefit). Consistent with Commerce’s 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.⁹⁴

Additionally, in determining an AFA rate for the following policy lending programs on which we initiated an investigation, we are finding, as AFA that the non-cooperating respondent received policy loans.

- Policy Loans to the Ceramic Tile Industry
- Regional Policy Loans – Guangdong Province

For the purposes of application of AFA for the two programs above, we are combining these two programs and applying one rate based on the same or similar programs from other CVD proceedings involving China.

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

- Policy Loans and Regional Policy Loans to the Ceramic Tile Industry⁹⁵
- Preferential Loans Provided by the Export-Import Bank “Going-Out” for Outbound Investment
- Export Seller’s Credit and Guarantees
- Export Buyer’s Credit
- Export Credit Insurance Subsidies from SINOSURE
- City Tax and Surcharge for FIEs – Guangdong Province
- VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program
- VAT and Tariff Exemption for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

⁹³ See *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 2.

⁹⁴ See, *e.g.*, *Aluminum Extrusions from China* Final IDM at “Application of Adverse Inferences: Non-Cooperative Companies.”

⁹⁵ Note that these two programs were listed separately in the Initiation Checklist as “Policy Loans to the Ceramic Tile Industry” and “Regional Policy Loans – Guangdong Province.” Here we have combined the programs.

- VAT Refunds for FIEs on Purchases of Chinese-Made Equipment
- Duty Exemption – Foshan High-Tech Industrial Development Zone
- City Maintenance Fee Exemptions – Foshan High-Tech Industrial Development Zone
- Provision of Land for LTAR to Enterprises in Certain Industrial/Development Zones – Guangdong Qingyuan High-Tech Industrial Development Zone and Foshan High-Tech Industrial Development Zone
- Provision of Electricity for LTAR in Certain Industrial/Development Zones – Nanchang Economic Development Zone, Zhejiang Economic Development Zone, and Yangpu Economic Development Zone
- Subsidies for Development of “Brands”
- Small and Medium Sized Enterprises (SME) International Market Exploration/Development Fund
- Grants for Listing Shares
- Foreign Trade Development Fund
- Grants for Antidumping Investigations/Fund for Promoting Fair Trade of Imports and Exports
- Clean Production Technology Fund
- Environmental Protection Special Fund
- Guangdong Supporting Fund
- Guangdong Province HNTE Incubation Program
- Export Interest Subsidies
- Guangdong Provincial Fund for Fiscal and Technological Innovation
- Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
- Funds for Outward Expansion of Industries in Guangdong Province

For this preliminary determination, we were similarly able to match all of Sanfi’s self-reported subsidies for which we did not calculate a rate in the instant investigation to the same or similar programs from other China CVD proceedings. Because of the business proprietary nature of the self-reported subsidies, a full list of such self-reported subsidies is contained in the AFA memorandum.⁹⁶

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for the non-cooperating companies to be 222.24 percent *ad valorem*. The AFA Memorandum contains a chart summarizing our calculation of this rate.

E. Corroboration of AFA Rate

Section 776(c)(1) of the Act provides that, in general, 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

⁹⁶ See Memorandum, “Adverse Facts Available Calculation Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Ceramic Tile from the People’s Republic of China,” dated concurrently with this memorandum (AFA Memorandum).

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 751 concerning the subject merchandise.”⁹⁷ The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.⁹⁸

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 FA are the best alternative information.⁹⁹ 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.¹⁰⁰

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.¹⁰¹

In the absence of reliable record evidence concerning Temgoo’s usage of the subsidy programs at issue due to its decision not to participate or provide complete information in the investigation, we have reviewed the information concerning Chinese subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this investigation. These rates are actual calculated subsidy rates for Chinese programs, from which Temgoo could receive a benefit. Due to the lack of participation by the company and the resulting lack of record information concerning these programs, we have corroborated the rates we selected to use as AFA to the extent practicable pursuant to section 776(c)(1) for this preliminary determination. For purpose of this preliminary determination, we are relying on AFA in the circumstances outlined below.

F. Application of AFA: Various Programs

As discussed below under section “Programs Preliminarily Found to be Countervailable,” Commerce is investigating the following programs: Preferential Loans Provided by the Export-Import Bank “Going-Out” for Outbound Investment; Export Seller’s Credit and Guarantees; Export Credit Insurance Subsidies from SINOSURE; Preferential Income Tax Reduction for HNTes; Preferential Deduction of R&D Expenses for HNTes; Reduced Tax Rates for FIEs Recognized as HNTes; Income Tax Benefits for Domestically-Owned Enterprises Engaging in

⁹⁷ See SAA at 870.

⁹⁸ *Id.*

⁹⁹ *Id.* at 869-870.

¹⁰⁰ See section 776(d) of the Act.

¹⁰¹ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

R&D; Reduced Income Tax Rates for FIEs Based on Location; Tax Offsets for R&D by FIEs; Corporate Income Tax Law Article 33: Reduction of Taxable Income for Revenue Derived from the Manufacture of Products that Are in Line with State Industrial Policy and Involve Synergistic Utilization of Resources; Tax Offset for R&D – Guangdong Province Tax Program; City Tax and Surcharge for FIEs – Guangdong Province; Income Tax Reduction for High-Tech Industries in Guangdong Province; Income Tax Programs for FIEs in Dongguan City in Guangdong Province; Reduced Income tax Rate for Entities in the Foshan High-Tech Industrial Development Zone; Local Income Tax Exemption and Reduction Programs for “Productive” FIEs – Shandong Province; VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program; Duty Exemption – Foshan High-Tech Industrial Development Zone; City Maintenance Fee Exemptions – Foshan High-Tech Industrial Development Zone; Provision of Land for LTAR to Enterprises in Certain Industrial/Development Zones – Guangdong Qingyuan High-Tech Industrial Development Zone and Foshan High-Tech Industrial Development Zone; Provision of Electricity for LTAR in Certain Industrial/Development Zones – Nanchang Economic Development Zone, Zhejiang Economic Development Zone, and Yangpu Economic Development Zone; Subsidies for Development of “Brands”; Grants for Listing Shares; Foreign Trade Development Fund; Clean Production Technology Fund; Environmental Protection Special Fund; Guangdong Supporting Fund; Guangdong Province HNTI Incubation Program; Export Interest Subsidies; Guangdong Provincial Fund for Fiscal and Technological Innovation; Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises; Funds for Outward Expansion of Industries in Guangdong Province. Commerce preliminarily determines that use of AFA is warranted in determining the countervailability of these aforementioned programs because the GOC did not provide the requested information needed that would allow Commerce to fully analyze the programs.

In our Initial Questionnaire, we requested that the GOC provide the information requested in the Standard Questions Appendix.¹⁰² The Standard Questions Appendix requested various information that Commerce requires in order to analyze the specificity and financial contribution of these programs, 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.¹⁰³ Rather than responding to the questions in the standard questions appendix, the GOC stated that “{t}o the best of the GOC’s knowledge, neither Foshan Sanfi nor Sanfi Group applied for, used, or benefited from this alleged program during the POI” and that “{a}ccordingly, the GOC understands that questions under the {s}tandard {q}uestions {a}ppendix are not applicable.”¹⁰⁴

Because the GOC did not provide complete information, including its response to the standard questions appendix, regarding these programs in its initial questionnaire responses,¹⁰⁵ we issued

¹⁰² See Initial Questionnaire at 14-15.

¹⁰³ See Initial Questionnaire at “Standard Questions Appendix.”

¹⁰⁴ See, e.g., GOC IQR at 9.

¹⁰⁴ See GOC IQR at 9.

¹⁰⁵ *Id.* at 9-10.

a supplemental questionnaire requesting that the GOC “provide complete questionnaire responses for all programs under investigation, including the Standard Questions Appendix for each program, and for all mandatory respondents to this investigation.”¹⁰⁶ However, in its responses, the GOC did not provide the requested information concerning the programs at issue. Instead, the GOC stated that “{c}onsistent with previous CVD investigations involving respondents who have withdrawn their participation, and given that Temgoo formally withdrew its participation as a mandatory respondent in this investigation, the GOC believes that it is no longer obligated to provide a response concerning Temgoo.”¹⁰⁷

Thus, we preliminarily determine that necessary information is not available on the record, the GOC has withheld information that was requested of it, and, as a result, we must rely on “facts available” in making our preliminary determination, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b)(1) of the Act. In applying AFA, we find that the aforementioned programs constitute a financial contribution, pursuant to section 771(5)(D) of the Act, and are specific, within the meaning of section 771(5A) of the Act.

Based on the AFA rate selection hierarchy described above, for the aforementioned programs, we are using the highest rates determined for the same or comparable programs in other CVD proceeding involving China. For the listed income tax reduction programs in section “D. Selection of an AFA Rate,” we are applying either the 25 percent AFA rate on a combined basis or the three percent AFA rate on a combined basis. *See* “Selection of an AFA Rate.”

G. Application of AFA: Provision of Other Subsidies

Sanfi and Sanfi Group reported in their initial questionnaire response that they received certain “Other Subsidies” during the POI.¹⁰⁸ The GOC did not provide information regarding these other subsidies in its initial questionnaire responses.¹⁰⁹ Therefore, we issued a supplemental questionnaire requesting that the GOC provide the program information concerning the additional assistance provided by the GOC during the AUL period.¹¹⁰ However, in its response, the GOC did not provide the requested information concerning the programs at issue. Instead, the GOC stated that it “refers {Commerce} to the corresponding mandatory respondents for further information” and that “the practices and polices employed by {Commerce} ... are contrary to U.S. law and disciplines under the WTO {on Subsidies and Countervailing Measures} Agreement.”¹¹¹

Thus, we preliminarily determine that necessary information is not available on the record, the GOC has withheld information that was requested of it, and, as a result, we must rely on “facts

¹⁰⁶ *See* GOC First Supplemental Questionnaire at 1.

¹⁰⁷ *See* GOC First SQR at 1.

¹⁰⁸ *See* Sanfi Revised IQR at 55-56; and Sanfi IQR at Exhibit P.F.1.

¹⁰⁹ *See* GOC IQR at 145.

¹¹⁰ *See* GOC First Supplemental Questionnaire at 20.

¹¹¹ *See* GOC First SQR at 60.

available” in making our preliminary determination, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b)(1) of the Act. In applying AFA, we find that the “Other Subsidies” reported by Sanfi and Sanfi Group constitute a financial contribution, pursuant to section 771(5)(D) of the Act, and are specific, within the meaning of section 771(5A) of the Act. Because we are applying partial AFA to Sanfi/Sanfi Group’s reporting of all non-recurring programs where benefits may have been received during the AUL period, we are applying the highest calculated rate from a similar program, following our CVD AFA hierarchy detailed above. *See* “Other Subsidies.”

H. Application of AFA: Export Buyer’s Credits

GOC

As discussed under the section “Programs Preliminarily Determined to be Countervailable,” Commerce is investigating the Export Buyer’s Credit program. Commerce preliminarily determines that the use of AFA is warranted in determining the countervailability of the Export Buyer’s Credit program because the GOC did not provide the requested information needed to allow 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.”¹¹² 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, identification 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 responding to the questions in the Appendix, the GOC stated that it had confirmed “{n}one of the U.S. customers of Foshan Sanfi and Sanfi Group used the alleged program during the POI” and that “{t}herefore, the relevant appendix is not applicable.”¹¹³

In its initial 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.¹¹⁴ 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*.¹¹⁵ Information in that document indicates that the GOC revised this program

¹¹² *See* Initial Questionnaire at Section II, part II, at 15-16.

¹¹³ *See* GOC IQR at 12.

¹¹⁴ *Id.* at Exhibit II.A.14.

¹¹⁵ *Id.* at Exhibit II.A.15 (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).

in 2013 to eliminate this minimum requirement.¹¹⁶ Thus, we requested in our Initial 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.¹¹⁷ We, therefore, again requested that the GOC provide the 2013 Revisions.¹¹⁸ In response, the GOC stated that the "Ex-Im Bank adopted in 2013 certain internal guidelines" and that "those internal guidelines do not formally repeal or replace the provisions of the 2000 Rules governing Export Buyer's Credit ... which remain in effect."¹¹⁹ The GOC further states that its "2013 guidelines are internal to the bank, non-public and not available for release."¹²⁰ 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 USD 2 million contract minimum associated with this lending program.¹²¹ By refusing to provide the requested information, 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.¹²² Specifically, this record information indicates that customers can open loan accounts for disbursements through this program with other banks.¹²³ 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.¹²⁴ 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 most current 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 "based on the list of U.S

¹¹⁶ *Id.*; see also Memorandum, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: Placing Information on the Record," dated concurrently with the memorandum at Attachment 1 (Citric Acid Verification Report) at 2.

¹¹⁷ See GOC IQR at 14.

¹¹⁸ See GOC Third Supplemental Questionnaire at 1.

¹¹⁹ See GOC Third SQR at 3.

¹²⁰ *Id.*

¹²¹ See Citric Acid Verification Report.

¹²² See GOC IQR at Exhibit II.A.15.

¹²³ *Id.*

¹²⁴ *Id.*

customers provided by the mandatory respondent, it has checked with the {EX-IM Bank} a second time, confirming again that none of the U.S. customers of Foshan Sanfi or Sanfi Group used the Export Buyer's Credits program during the POI."¹²⁵ To support its claim, the GOC referred to its submission which it provided screen shots of the search results of the EX-IM Bank's database.¹²⁶ The GOC asserted that "based on the information provided on the record by the GOC and the mandatory respondent for this program, the Department should be able to conclude that Chinese exporters/producers and their U.S. importers are involved in application and disbursement processes, if they have used this program, and therefore, the Department can verify the mandatory respondent for the usage of this program and relevant documentation at its will."¹²⁷ Commerce cannot verify claims of non-usage, whether originating with the respondents or their U.S. customers, 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.*, loan) or the cash disbursement made pursuant to the credit. 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.

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, by virtue of its withholding of information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted. Specifically, the GOC has not provided complete information concerning the administration and operation of the program, including how loans are disbursed (*e.g.*, the 2013 Revisions), 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 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 operation and the accuracy of the GOC's claims, including with respect to the respondent's 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."¹²⁸

The GOC's August 23, 2019 Third SQR indicated the GOC's refusal to provide information about the internal administration of the program.¹²⁹ The GOC is the only party that can answer questions about the internal administration of this program, and, thus, its failure to provide the

¹²⁵ See GOC Second SQR at 1.

¹²⁶ *Id.* at 1 and 2; see also GOC IQR at Exhibit II.A.17.

¹²⁷ See GOC Second SQR at 1 and 2.

¹²⁸ See *Nippon Steel Corp v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003).

¹²⁹ See GOC Third SQR at 3.

requested information further undermines Commerce's ability to verify the GOC's and respondent company's claims of non-use of this program. Commerce cannot verify non-use at the EX-IM Bank 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. In that regard, in the context of this program, the EX-IM Bank database screen shots are insufficient for Commerce to find this program to be not used. As explained above, without 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 (for example, the partner/correspondent banks that worked with the U.S. customers rather than the U.S. customers themselves). Nor do we know whether there are different electronic systems for different types of credits and, as a result, we cannot ascertain that the screen shots are for searches of the proper system. 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 courses of its operations). Essentially, Commerce is unable to verify the little information on the record indicating non-usage (*e.g.*, the claims and screen shots of the GOC), 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.

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 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.¹³⁰ In addition, the program was alleged by the petitioner as a possible export subsidy.¹³¹ Finally, Commerce has found this program to be an export subsidy in the past.¹³² 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.

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

¹³⁰ See GOC IQR at Exhibits II.A.14 and II.A.16.

¹³¹ See CVD Initiation Checklist at 11 and 12.

¹³² 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.

companies.¹³³ Additionally, based on the methodology also described above for corroborating secondary information, we have corroborated the selected rate to the extent possible and find that the rate is reliable and relevant for use as an AFA rate for the Export Buyer's Credits program.

I. Application of AFA for the Provision of Clay, Feldspar, and Sand for LTAR

GOC – Whether Certain Clay, Feldspar, and Sand Producers Are “Authorities”

As discussed below under “Programs Found to Be Countervailable,” Commerce examined whether the GOC provided clay, feldspar, and sand for LTAR to the respondents. We asked the GOC to provide information regarding the specific companies that produced clay, feldspar, and sand which the respondents purchased during the POI. Specifically, we sought information from the GOC which would allow us to analyze whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.¹³⁴ 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.¹³⁵

In addition to the Initial Questionnaire, Commerce issued supplemental questionnaires to the GOC regarding its response to the alleged subsidy programs.¹³⁶ In Commerce's Initial Questionnaire, we asked the GOC to respond to the specific questions regarding the producers of clay, feldspar, and sand and to respond to the *Input Producer Appendix* for each producer which produced the clay, feldspar, and sand purchased by the respondents.¹³⁷ We instructed the GOC to coordinate with the respondents to obtain a complete list of the clay, feldspar, and sand producers, including the producers of inputs purchased through a supplier.¹³⁸ In response to the Initial Questionnaire, Sanfi identified certain companies that produced and supplied the clay, feldspar, and sand purchases during the POI.¹³⁹

With respect to Sanfi's purchases of clay, feldspar, and sand, while the GOC ultimately provided the identities of certain of the producers of inputs, it did not provide all of the information

¹³³ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from China Investigation Amended Final*) (revised rate for “Preferential Lending to the Coated Paper Industry” program).

¹³⁴ See Memorandum, “Public Bodies Analysis Memo,” dated July 23, 2019 (Public Body Memorandum).

¹³⁵ 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.”

¹³⁶ See Initial Questionnaire at Section II, “Input Producer Appendix”; see also GOC First SQR at 36-59.

¹³⁷ See Initial Questionnaire at Section II.

¹³⁸ *Id.* at Section II, “Provision of Goods or Services for LTAR.”

¹³⁹ See Sanfi Revised IQR at Exhibits P.D.4.1, P.D.4.4. and P.D.4.5.

requested of it in the Initial Questionnaire.¹⁴⁰ In our initial and supplemental questionnaire to the GOC,¹⁴¹ Commerce requested certain information be provided with respect to both the majority government-owned and non-majority government-owned enterprises. The GOC did not provide sufficient information to demonstrate which enterprises were majority government-owned.¹⁴² Further, we note that Commerce made multiple requests for the GOC to provide the articles of incorporation and capital verification reports of the clay, feldspar, and sand-producing enterprises.¹⁴³ The GOC provided partial information (*i.e.*, basic registration) with respect to these entities, however, despite Commerce’s requests, the GOC did not provide the articles of incorporation and capital verification reports for any of the enterprises.¹⁴⁴

As explained in the Public Body Memorandum,¹⁴⁵ record evidence demonstrates that producers in China that are majority-owned by the government possess, exercise, or are vested with, governmental authority.¹⁴⁶ Record evidence demonstrates that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.¹⁴⁷ Therefore, in light of our prior findings and the GOC’s failure to provide rebuttal information to the contrary, we determine that these enterprises are “authorities” within the meaning of section 771(5)(B) of the Act.

Additionally, while Commerce made attempts to obtain ownership and management information for the respondent’s clay, feldspar, and sand producers, the GOC did not provide the requested information. For instance, in the GOC July 30, 2019 IQR, the GOC responded to Commerce’s request for CCP information of the clay, feldspar, and sand producers by stating that it could not obtain the requested information.¹⁴⁸ In response to Commerce’s supplemental questionnaire, in which Commerce reiterated the same requests for information, the GOC again refused to provide a complete response with regard to all requested documentation.¹⁴⁹

As discussed above, the GOC did not provide complete responses to our numerous requests for information with respect to clay, feldspar, and sand producers, 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 Sanfi.¹⁵⁰ 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

¹⁴⁰ *Id.*

¹⁴¹ See Initial Questionnaire at Section II, “Input Producer Appendix”; see also GOC First SQR at 36-59.

¹⁴² See GOC IQR at Exhibit II.D.4.(2), Exhibit II.D.5.(2), and Exhibit II.D.6.(2).

¹⁴³ See Initial Questionnaire at Section II, “Input Producer Appendix”; see also GOC First SQR at 36-59.

¹⁴⁴ See GOC IQR at 61-62, 89-90, and 109-110; and GOC First SQR at 36-59.

¹⁴⁵ See Public Body Memorandum.

¹⁴⁶ *Id.* at 35-36 and sources cited therein.

¹⁴⁷ *Id.*

¹⁴⁸ See GOC IQR at 66, 92, and 112.

¹⁴⁹ See GOC First SQR at 36-59.

¹⁵⁰ See sections 776(a)(1) and (a)(2)(A) of the Act.

not acting to the best of its ability to comply with requests for information regarding the producers of the clay, feldspar, and sand from which Sanfi purchased during the POI because the GOC did not provide the requested information.¹⁵¹ Consequently, we find that an adverse inference is warranted in the application of facts available.¹⁵²

In sum, as AFA, we determine that the Chinese producers that produced the clay, feldspar, and sand purchased by Sanfi during the POI are “authorities” within the meaning of section 771(5)(B) of the Act.

GOC – Whether the Provisions of Sand is Specific

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

Provide a list of industries in the PRC that purchase clay, feldspar, and sand directly, using a consistent level of industrial classification. Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use whatever resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.¹⁵³

Commerce requests such information for purposes of its *de facto* specificity analysis. The GOC did not provide the requested information. In response to Commerce’s request for such documentation relating to the sand market industries, the GOC stated that it did not collect the requested data but noted that sand is primarily used in downstream industries relating to construction, concrete, mortar, and cement products.¹⁵⁴ We asked again for this information in supplemental questionnaires, and the GOC again failed to provide the value of the inputs purchased by industry, the relevant classification guidelines, and the identity of the industry in which the companies under investigation are classified.¹⁵⁵

Therefore, consistent with past proceedings,¹⁵⁶ we preliminarily determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that Commerce must rely on “facts available” in making its preliminary determination, in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse

¹⁵¹ See sections 776(a) and (b) of the Act.

¹⁵² See section 776(b) of the Act.

¹⁵³ See Initial Questionnaire at Section II.

¹⁵⁴ See GOC IQR at 123.

¹⁵⁵ See GOC First SQR at 56-57.

¹⁵⁶ See *Utility Scale Wind Towers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012), and accompanying IDM (*Wind Towers from China*), and accompanying IDM at Comment 13.

inference, we find that the GOC's provision of sand is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

GOC – Whether the Clay, Feldspar, and Sand Markets are Distorted

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 interest that is less than a majority. The GOC stated that it does not keep the requested data.¹⁵⁷ The GOC did provide data regarding the percentage of imports consumed during 2017 of the clay, feldspar, and sand inputs. According to this data, imports accounted for five percent, one percent, and less than one percent of domestic consumption of clay, feldspar, and sand during 2017.¹⁵⁸

Because the GOC refused to provide the requested information regarding the clay, feldspar, and sand 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 clay, feldspar, and sand 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 failure to cooperate to the best of its ability 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.¹⁵⁹ 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.¹⁶⁰ 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.¹⁶¹ Therefore, we believe that information related to the operation and ownership of companies within these industries and, thus,

¹⁵⁷ See GOC IQR at 80, 100, and 120.

¹⁵⁸ *Id.* at 79, 99, and 119.

¹⁵⁹ 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.

¹⁶⁰ 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.

¹⁶¹ *Id.*

information regarding the domestic production and consumption levels of clay, feldspar, and sand, are in fact available to the GOC.

Consequently, we find that an adverse inference is warranted in the application of facts available.¹⁶² Accordingly, as AFA, we preliminarily determine that the GOC's involvement in the clay, feldspar, and sand markets in China results in the significant distortion of prices in the clay, feldspar, and sand 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 clay, feldspar, and sand for LTAR.

J. Application of AFA: Provision of Electricity for LTAR

GOC

As discussed below in 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 requested information needed to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether it provided a benefit within the meaning of section 771(5)(E) of the Act, and whether it the provision was 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, the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC with respect to electricity price adjustments. Specifically, Commerce requested, *inter alia*: Provincial Price Proposals for applicable tariff schedules that were in effect during the POI for each province in which mandatory respondents (or any company “cross-owned” with those respondents) are located; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POI; information related to the procedure for adjusting retail electricity tariffs (and the role of the NDRC and the provincial governments in this process); information related to the price adjustment conferences between the NDRC and the provinces, grids, and power companies that were applicable to the POI; the cost elements and adjustments during the price adjustment conferences; and an explanation as to how the NDRC determines that the provincial level price bureaus have accurately reported all relevant cost elements in their price proposals.¹⁶³ 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 dynamics and reflects the equilibrium between supply and demand, and as a

¹⁶² See section 776(b) of the Act.

¹⁶³ See Initial Questionnaire at Section II: Electricity Appendix.

consequence, {Commerce} should not continue relying on an outdated view of the Chinese electricity market and the electricity pricing system.”¹⁶⁴ Specifically, 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 (District or City),”¹⁶⁵ and “Notice of National Development and Reform Commission on Lowering Coal-fired Electricity On-grid Price and General Industrial and Commercial Electricity Price,”¹⁶⁶ the NDRC no longer reviews, *i.e.* determines, electricity pricing schedules submitted to it by the provinces.¹⁶⁷ Therefore, according to the GOC, Provincial Price Proposals no longer exist and did not exist during the POI.¹⁶⁸ Further, the GOC stated that, as a result of Notice 748, provincial price departments develop and establish grid and electricity sales prices.¹⁶⁹ Consequently, according to the GOC, the NDRC no longer has any impact on prices, which are set autonomously at the provincial level. The GOC added that interprovincial and interregional electricity prices/price adjustments are based on market principles and negotiations between parties.¹⁷⁰

However, both Notice 748 and Notice 3105 explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Specifically, Article 1 of Notice 748 stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.¹⁷¹ Article 6 of Notice 748 stipulates that the province price departments develop and issue specific adjustment plans for electricity and sales prices in accordance with the average price adjustment standards of Annex 1, and reported to the NDRC.¹⁷² Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts.¹⁷³ Article 10 directs that “{l}ocal price departments shall organize and arrange carefully to put in place the electricity price adjustment measures.”¹⁷⁴ Additionally, Notice 3105 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 Appendix and report resulting prices to the NDRC.¹⁷⁵ Both Notices 748 and 3105 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.¹⁷⁶

Furthermore, other notices from the NDRC direct provinces to reduce prices by implementing certain measures deployed by the NDRC. For example, the “Notice of National Development and Reform Commission on Reducing General Industrial and Commercial Electricity Prices” (Notice 500) states that its goal is to “implement the requirements of the Central Economic Work

¹⁶⁴ See GOC IQR at 44.

¹⁶⁵ *Id.* at Exhibit II.D.1.(1) (Notice 748).

¹⁶⁶ *Id.* at 44, 46-47 and Exhibit II.D.1.(2) (Notice 3105).

¹⁶⁷ See GOC IQR at 44.

¹⁶⁸ *Id.* at 46-47 and 49.

¹⁶⁹ *Id.* at 44

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at Exhibit II.D.1.(1).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at Exhibit II.D.1.(2).

¹⁷⁶ See, *e.g.*, Notice 748 Article 10 and Notice 3105 Articles II and X.

Conference on reducing the energy cost of enterprises and the government work report on reducing the general industrial and commercial electricity prices {to} implement the target requirement of an average industrial and commercial electricity price drop of 10 {percent} on average.”¹⁷⁷ Notice 500 describes the methods the NDRC will use to further standardize and reduce grid charges, and to temporarily reduce transmission and distribution prices.¹⁷⁸ Moreover, the “Notice of the National Development and Reform Commission on {M}atters {R}elated to {R}educing the {E}lectricity {P}rice of {G}eneral {I}ndustrial and {C}ommercial {C}atalogues” (Notice 1191) outlines additional measures that provinces and municipalities can take to reduce industrial and commercial electricity prices.¹⁷⁹

In a supplemental questionnaire, Commerce requested that the GOC identify the legislation which may have eliminated the Provincial Price Proposals. The GOC referred Commerce to Notice 748 and Notice 3105.¹⁸⁰ As discussed above, these two documents direct provinces to reduce prices by amounts specific to provinces. They do not explicitly eliminate Provincial Price Proposals. As stated above, these notices indicate that provincial pricing authorities merely develop and release prices pursuant to the set standards by the NDRC. Additionally, we requested that the GOC explain how the NDRC monitors the pricing behavior of local authorities; what actions the NDRC takes when a local price authority’s behavior is not in accord with NDRC directives; whether local authorities have discretion not to implement a price adjustment directed by the NDRC; and what actions the NDRC takes to monitor and enforce such a price adjustment. In response, the GOC merely stated that (1) the NDRC only verifies whether the pricing values are calculated in accordance with the principles established in the notice (and that it does not establish, implement or approve the specific price); and (2) it is unaware of any instance where local pricing authorities established electricity rate schedules inconsistent with the NDRC policies. The GOC did not explain (1) what actions the NDRC takes in the event of non-compliance with directed price changes and (2) whether local authorities have discretion not to implement a price adjustment.¹⁸¹ We also requested that the GOC explain (1) whether the provincial pricing authority can choose not to implement the guidelines set by the pricing department of the State Council and (2) the consequences of not implementing/complying with such guidelines. Again, the GOC merely stated that it “is {not} aware {of} any circumstances that the provincial pricing authority chose not to implement the guidelines set by the pricing department of the State Council,” and did not respond to Commerce’s question, as noted above.¹⁸² Similarly, we requested that the GOC explain what occurs if a provincial authority does not follow the established principles set by the NDRC and what actions the NDRC can take with regard to a provincial authority under such circumstances. Again, the GOC repeated that it “is unaware of any circumstances in which the provincial pricing authority chose not to follow the NDRC’s established principles.”¹⁸³

Lastly, for companies from which Sanfi purchased electricity directly or indirectly, in order to determine the extent of control by the GOC, we requested that the GOC provide the following:

¹⁷⁷ *Id.* at Exhibit II.D.1.(6).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *See* GOC First SQR at 15.

¹⁸¹ *Id.* at 12.

¹⁸² *Id.* at 15.

¹⁸³ *Id.* at 16.

full corporate name/address of the company, including the address of each facility; Articles of Incorporation; Capital Verification Reports; Articles of Groupings; Company by-laws; Annual Report(s) pertaining to the POI, and the two preceding years; Articles of Association; Business group registration; Business license(s); Tax Registration documents; Translated copies of source documents that clearly identify the plant’ owners during the POI; A chart detailing the name and respective ownership level (in percent) of each owner of the plant (which should trace such ownership to the ultimate individual or state owners during the POI); description of the nature of all outstanding shares of the companies for each plant, and any company owners of each plant, along with a breakdown of these different types of shares by owner; the nature and level of the government entity for each of the owners identified as government entities; the corporate governance structure of the entity, including the ownership structure and lines of authority within the entity; and the role of minority shares.¹⁸⁴ However, the GOC provided only some of the information requested in our supplemental questionnaire, specifically the ownership structure and the basic registration information.¹⁸⁵ The GOC further stated that “the information obtained from {the Enterprise Credit Information Publicity System (ECIPS)} is authoritative evidence of the ownership structure of enterprises in China” and “the information provided in Exhibit S-13 and Exhibit S-14 is sufficient to demonstrate the ownership status and changes (if any) of all the related input producers during the POI.”¹⁸⁶

We requested again that the GOC provide the requested information for Sanfi’s electricity suppliers. However, the GOC again failed to provide this information in its supplemental questionnaire response. Rather, the GOC repeated that information obtained from ECIPS is authoritative evidence of the ownership structure of enterprises in China and that the information previously provided in the GOC First SQR (*i.e.*, the ownership structure and the basic registration information) is sufficient to demonstrate the ownership status and changes (if any) of all the related input producers during the POI.¹⁸⁷ Consequently, due to the GOC’s failure to provide the requested information, the record is incomplete with respect to the full extent to which the GOC may (1) exercise meaningful control over these entities and (2) use them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.

As explained above, the GOC failed on multiple occasions to explain the nature of the NDRC’s enforcement and monitoring mechanism over provincial pricing authorities and to explain whether local authorities have discretion not to implement a price adjustment directed by the NDRC. Further, the GOC failed to provide the requested information regarding Sanfi’s electricity suppliers, such that it would allow Commerce to understand, and subsequently determine, the extent of the GOC control over these companies. Instead, the GOC made its own determination that the partially and selectively provided information is “sufficient.” Consequently, and consistent with past proceedings,¹⁸⁸ we preliminarily determine, in

¹⁸⁴ See GOC First Supplemental Questionnaire at 4-5.

¹⁸⁵ See GOC First SQR at 10 and Exhibits S-13 and S-14.

¹⁸⁶ *Id.* at 10.

¹⁸⁷ See GOC Second SQR at 18-19.

¹⁸⁸ 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*

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 us, and that the GOC significantly impeded this proceeding. Thus, we must rely on “facts available” in making our preliminary determination.¹⁸⁹ 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.¹⁹⁰ In applying AFA, we find that the GOC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. The GOC failed to provide certain requested information regarding the nature and extent of the GOC’s control over Sanfi’s electricity suppliers, as well as the requested information regarding the nature of the NDRC’s monitoring and enforcement mechanism over the price setting practices of the provincial governments. Therefore, we are also drawing an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.¹⁹¹ 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* the “Provision of Electricity for LTAR” section.

K. Application of AFA: Provision of Water for LTAR

As discussed below in section “Programs Preliminarily Found to Be Countervailable,” Commerce is investigating whether the GOC provided water to producers and exporters of ceramic tile for LTAR. Sanfi Group reported purchasing water during the POI.¹⁹² As part of its analysis, Commerce sought information that would allow it to analyze the financial contribution and specificity of this program. We therefore requested that the GOC provide the information requested in the Standard Questions Appendix.¹⁹³ 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, identification of the agencies that administer the program and types of records maintained by these agencies, a description of the program and the program application process, program eligibility criteria, and program use data. Rather than responding to the questions in the Appendix, the GOC stated that “no such alleged subsidy program existed in Guangdong Province during the POI, and therefore Sanfi Group did not receive any benefits from this alleged program.”¹⁹⁴ Citing to *Multilayered Wood Flooring from China Prelim*, the GOC further stated that Commerce determined that this program in Guangdong Province did not

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*).

¹⁸⁹ *See* section 776(a) of the Act.

¹⁹⁰ *See* section 776(b) of the Act.

¹⁹¹ *See* section 776(b)(4) of the Act.

¹⁹² *See* Sanfi Revised IQR at 43-44; and Sanfi IQR at Exhibit P.D.3.1; *see also* GOC IQR at 57.

¹⁹³ *See* Initial Questionnaire at 21.

¹⁹⁴ *See* GOC IQR at 57.

confer a benefit to a mandatory respondent.¹⁹⁵ The GOC stated that “{a}ccordingly, the questions under the {Standard Questions Appendix} are not applicable.”¹⁹⁶

In the GOC First Supplemental Questionnaire, we asked again that the GOC provide its responses to the Standard Questions Appendix.¹⁹⁷ However, the GOC provided deficient responses. For example, it did not identify all instances in which assistance under the program was provided to any mandatory respondent (including all responding cross-owned companies and any trading company) during the POI. Instead, it directed Commerce to “...refer to the initial questionnaire issued to the mandatory respondent for the detailed purchase records.”¹⁹⁸ In response to our question requesting that the GOC provide a description of the program, including the purpose of the program; and to explain whether the assistance under the program was provided to the mandatory respondent(s) pursuant to a statute, regulation, decree, other legal measure/instrument that establishes the conditions and guidelines governing the operation of the program, such as eligibility criteria, amounts, *etc.*, the GOC repeated its answer, stating that “no such alleged subsidy program existed in Guangdong Province during the POI, and therefore, Sanfi Group did not receive any benefits from the alleged program.”¹⁹⁹ We 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 the company respondents, and the names of 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 response, the GOC failed to provide the requested information and instead merely indicated “{n}ot applicable.”²⁰⁰ Thus, the GOC provided no information that would allow us to conduct a *de facto* specificity analysis regarding this program.

In its initial response, the GOC identified Sanfi Group’s water suppliers.²⁰¹ In order to determine the extent of the GOC control, we requested that the GOC provide the following: full corporate name/address of the company, including the address of each facility; articles of incorporation; capital verification reports; articles of groupings; company by-laws; annual report(s) pertaining to the POI and the two preceding years; articles of association; business group registration documentation; business license(s); tax registration documents; translated copies of source documents that clearly identify the plant’s owners during the POI; a chart detailing the name and respective ownership level (in percent) of each owner of the plant, which should trace such ownership to the ultimate individual or state owners during the POI; description of the nature of all outstanding shares of the companies for each plant, and any company owners of each plant,

¹⁹⁵ *Id.* at 58 (citing *Multilayered Wood Flooring from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent to Rescind Review, in Part*; 2016, 83 FR 67229 (December 28, 2018) (*Multilayered Wood Flooring from China Prelim*), and accompanying PDM at 37).

¹⁹⁶ *Id.*

¹⁹⁷ See GOC First Supplemental Questionnaire at 9.

¹⁹⁸ See GOC First SQR at 27.

¹⁹⁹ *Id.* at 25 and 27.

²⁰⁰ *Id.* at 31.

²⁰¹ See GOC IQR at 57.

along with a breakdown of these different types of shares by owner; the nature and level of the government entity for each of the owners identified as government entities; and the corporate governance structure of the entity, including the ownership structure and lines of authority within the entity; and the role of minority shares.²⁰² However, the GOC provided only some of the information requested in our supplemental questionnaire: the ownership structure and the basic registration information.²⁰³ The GOC further stated that “the information obtained from {the Enterprise Credit Information Publicity System (ECIPS)} is authoritative evidence of the ownership structure of enterprises in China” and “the information provided in Exhibit S-17 and Exhibit S-18 is sufficient to demonstrate the ownership status and changes (if any) of all the related input producers during the POI.”²⁰⁴ We requested again that GOC provide the requested information for Sanfi’s electricity suppliers, as indicated above. However, the GOC again failed to provide this information in its supplemental questionnaire response and repeated that information obtained from ECIPS is authoritative evidence of the ownership structure of enterprises in China and that the information previously provided in the GOC First SQR (*i.e.*, the ownership structure and the basic registration information) is sufficient to demonstrate the ownership status and changes (if any) to the related input producers during the POI.²⁰⁵ Due to the GOC’s failure to provide the requested information, the record is incomplete with respect to the full extent to which the GOC may exercise meaningful control over these entities.

Consequently, and consistent with past proceedings,²⁰⁶ we preliminarily determine that necessary information is not available on the record, the GOC withheld information that was requested of it, and 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.²⁰⁷ 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.²⁰⁸ In applying AFA, we find that the GOC’s provision of water constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. 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.

XII. ANALYSIS OF PROGRAMS

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

²⁰² See GOC First Supplemental Questionnaire at 9-10.

²⁰³ See GOC First SQR at 33, and Exhibits S-17 and S-18.

²⁰⁴ *Id.* at 34.

²⁰⁵ See GOC Second SQR at 20-21.

²⁰⁶ See, e.g., *CDMT from China Prelim* PDM at 22-24, unchanged in *CDMT from China*.

²⁰⁷ See section 776(a) of the Act.

²⁰⁸ See section 776(b) of the Act.

A. Programs Preliminarily Determined to Be Countervailable

1. Policy Loans to the Ceramic Tile Industry

Commerce is examining whether the GOC has encouraged the development of the ceramic tile industry through financial support from SOCBs and government policy banks, such as the China Development Bank. Commerce has countervailed policy lending programs in previous investigations.²⁰⁹

When examining a policy lending program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support such objectives or goals. Where such plans or policy directives exist, then it is our practice to find that a policy lending program exists that is *de jure* specific to the targeted industry (or producers that fall under that industry) within the meaning of section 771(5A)(D)(i) of the Act. Once that finding is made, we rely upon the analysis undertaken in *CFS Paper from China*²¹⁰ to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.

Sanfi reported having loans from China SOCBs that were outstanding during the POI.²¹¹ Commerce preliminarily finds that these loans provide countervailable subsidies under a policy lending program directed at the ceramic tile industry. The GOC stated that the ceramic tile industry falls under the building materials industry.²¹² Record information indicates the GOC placed great emphasis on targeting the building materials industry for development throughout recent years. As explained in the *Building Materials Industry Development Plan (2016-2020)*, “The building materials industry is an important basic industry of the national economy,...”²¹³ and, the plan identifies a focus on the development of industrial ceramics.²¹⁴ The *Building Materials Industry Development Plan (2016-2020)* indicates that the building materials industry will receive support with strengthened industrial policy and the convergence of relevant policies such as fiscal, taxation, finance, price, energy, and environmental protection.²¹⁵

Sanfi Group was granted HNTE designation.²¹⁶ The *Order of the State Development Planning Commission and the State Economic and Trade Commission on Distributing the List of Industries, Products and Technologies Currently Encouraged by the State for Development (Revised in 2000)* identifies “technology development of high-end ceramic technology” on the “*List of Industries, Products and Technologies Currently Encouraged by the State for Development (Revised in 2000)*.”²¹⁷ This document also identifies “production of new wall

²⁰⁹ 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 at 24-25.

²¹⁰ See *CFS Paper from China* IDM at Comment 8.

²¹¹ See Sanfi IQR at Exhibits P.A.1.1 – P.A.1.2.

²¹² See GOC First SQR at 2.

²¹³ *Id.* at Exhibit S-2.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ See Sanfi Revised IQR at 16 41; see also GOC IQR at 18.

²¹⁷ See GOC First SQR at Exhibit S-11.

materials” as encouraged. The *Directory Catalogue on Readjustment of Industrial Structure (Version 2005)* lists both “Development of high-tech ceramics (including industrial ceramics) and equipment technology” and “Development and application of ceramics clean production technology” as encouraged industries.²¹⁸ The *Catalogue for Guiding Industry Restructuring (2011 Version)* identifies “Development and production of materials such as new walling and roofing materials, insulation and deadening materials, and waterproof and airproof materials” as an encouraged industry.²¹⁹

Additional record evidence indicates that financial support is directed specifically toward certain encouraged industries, including the ceramic industry. For example, the “*Decision of the State Council on Promulgating the Interim Provisions Promoting Industrial Structure Adjustment for Implementation* (Guo Fa {2005} No. 40)” (Decision 40) indicates that the “Catalogue for the Guidance of Industrial Structure Adjustment” (Guidance Catalogue) is the important basis for investment directions and to the governments to administer investment projects to formulate and enforce policies on public finance, taxations, credit, land, import and export, *etc.*”²²⁰ Decision 40 further indicates that projects in “encouraged” industries shall be provided credit support in compliance with credit principles.”²²¹

Thus, given the evidence demonstrating the GOC’s objective of developing the building materials sector, and more specifically the ceramic and wall materials industries, through preferential loans, we preliminarily determine there is a program of preferential policy lending specific to producers of ceramic tile within the meaning of section 771(5A)(D)(i) of the Act. We also preliminarily find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are “authorities.” For Sanfi/Sanfi Group, the loans provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.²²² To calculate the benefit for this program, we used the benchmarks discussed above under the “Subsidies Valuation” section. To calculate a net countervailable subsidy rate under this program, we divided the benefit by the appropriate sales denominator, as described in the “Subsidies Valuation” section. On this basis, we preliminarily determine a subsidy rate of 0.66 percent *ad valorem* for Sanfi/Sanfi Group under this program.

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. Thus, we determine that the GOC’s provision of Export Buyer’s Credit confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. Further, we determine on the basis of AFA that Sanfi benefited from this program during the POI within the meaning of section 771(5)(E) of the Act. On this

²¹⁸ See GOC IQR at Exhibit II.A.8.

²¹⁹ *Id.*

²²⁰ See GOC IQR at Exhibit II.A.9 at Chapter III Article 12.

²²¹ *Id.* at Chapter III Articles 13, 14, and 17.

²²² See section 771(5)(E)(ii) of the Act; and 19 CFR 351.505(a).

basis, consistent with Commerce's AFA rate selection methodology, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for Sanfi, a rate calculated for a similar program in another CVD proceeding involving imports from China.²²³

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

Enacted in 1997, *the Circular of the State Council on Adjusting Tax Policies on Imported Equipment (GUOFA No. 37)* (Circular No. 37) exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production, so long as the equipment does not fall into prescribed lists of non-eligible items, in order to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.²²⁴ The NDRC and the General Administration of Customs are the government agencies responsible for administering this program.²²⁵ Qualified enterprises receive a certificate either from the NDRC or its provincial branches.²²⁶ The GOC further states that as of January 1, 2009, the VAT exemption part of this program was abolished and the VAT exemption is no longer granted on imported goods under this program.²²⁷ In a supplemental questionnaire, the GOC provided the Announcement of Ministry of Finance, General Administration of Customs and State Administration of Taxation on Resumption of VAT on Imported Equipment and Related Goods, which demonstrates its claim.²²⁸ However, companies can still receive import duty exemptions.²²⁹ The GOC stated that Sanfi Group received assistance under this program during the AUL period and POI.²³⁰ Commerce has previously found VAT and tariff exemptions under this program to confer countervailable subsidies.²³¹

Consistent with these earlier cases, we preliminarily determine that this program provides a countervailable subsidy. The exemptions provide a financial contribution in the form of revenue forgone by the GOC within the meaning of section 771(5)(D)(ii) of the Act, and it provides a benefit to the recipients in the amount of the VAT and tariffs saved in accordance with 19 CFR 351.510(a)(1). Further, we preliminarily determine that this program is specific under

²²³ See *Coated Paper from China Investigation Amended Final*, and accompanying Ministerial Error Memorandum at "Revised Net Subsidy Rate for the Gold Companies" (discussing revised subsidy rate for "Preferential Lending to the Coated Paper Industry"). This document is proprietary in nature. However, the public version, which has been placed on the record of this investigation, identifies the revised subsidy rate on which we are relying.

²²⁴ See GOC IQR at 23-24 and Exhibits II.C.1, II.C.2, and II.C.3.

²²⁵ *Id.* at 24

²²⁶ See GOC IQR at 29 and Exhibit II.C.5.

²²⁷ See GOC IQR at 24 and Exhibit II.C.2; and GOC First SQR at 6 and Exhibit S-10.

²²⁸ See GOC First SQR at 6 and Exhibit S-10 at Article I.

²²⁹ See GOC IQR at 23-33.

²³⁰ See GOC IQR at 23 and 25; and GOC Second SQR at 2.

²³¹ See, e.g., *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying IDM at VII.D; *Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32902 (June 10, 2010) and accompanying IDM at 25-27; and *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 37-38, 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) and accompanying IDM at 8.

771(5A)(D)(i) of the Act, because this program is limited to certain enterprises, *i.e.*, FIEs and domestic enterprises involved in “encouraged” projects.

On this basis, consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 9.71 percent *ad valorem* for Sanfi, a rate calculated for a similar program in another CVD proceeding involving imports from China.²³²

4. VAT Refunds for FIEs on Purchases of Chinese-Made Equipment

Pursuant to the “Proposed Management Methods for Tax Refund to Foreign-funded Enterprises for Their Domestic Equipment Purchases (1999 No. 171),” the GOC refunds the VAT on purchases of domestically-produced equipment by FIEs if the equipment does not fall into the non-duty exemptible catalog and if the value of the equipment does not exceed the total investment limit of an FIE.²³³ Sanfi Group used this program during the AUL period, and according to the GOC, is an FIE.²³⁴ Commerce has previously found VAT refunds under this program to confer countervailable subsidies.²³⁵ Commerce preliminarily determines that the refunds under this program are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings.²³⁶ Further, we preliminarily determine that the VAT refunds are contingent upon the use of domestic over imported equipment and, hence, specific under section 771(5A)(A) and (C) of the Act as the provision of VAT refunds is determined based on the purchase of domestic equipment manufactured by the enterprises within China.²³⁷

We are examining VAT refunds only to the extent they were provided prior to 2009. Effective 2009, China’s VAT regime transformed from a “production-based” system into a “consumption-based” system, which is expected for countries that have a VAT system.²³⁸ Under the production-based system, China did not allow VAT paid on purchases of capital goods and fixed assets to be credited when remitting VAT to the tax authorities.²³⁹ Therefore, firms receiving rebates of VAT on capital goods before 2009 were relieved from a tax otherwise payable.

²³² See *New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268, 64275 (October 19, 2010), unchanged in *New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011).

²³³ See GOC IQR at Exhibit II.C.9.

²³⁴ See Sanfi Revised IQR at 31; see also GOC IQR at 35.

²³⁵ See *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014), and accompanying IDM at 18-19.

²³⁶ See section 771(5)(D)(ii) of the Act; and 19 CFR 351.510(a)(1).

²³⁷ See GOC IQR at Exhibit II.C.9.

²³⁸ See *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying PDM at “Benchmarks and Discount Rates,” unchanged in *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 23, footnote 104.

²³⁹ See *Forged Steel Fittings from the People’s Republic of China: Initiation of Countervailing Duty Investigation*, (October 25, 2017), and accompanying Initiation Checklist at 17, footnote 37.

However, Commerce has found that under a consumption-based VAT system, “the company merely conveys the VAT to the government, ultimately paying nothing because it is the final consumer who actually shoulders the tax burden.”²⁴⁰

We have on the record information showing that Sanfi received VAT refunds under this program in the year of 2009.²⁴¹ The GOC stated that this program was terminated on January 1, 2009, and submitted the law demonstrating its claim.²⁴² Sanfi stated that “{n}otwithstanding the fact that the program was terminated on {January 1, 2009}, the relevant authority allowed eligible companies to apply for VAT refunds for domestic equipment purchased and invoiced on or before June 30, 2009.”²⁴³ Since this indirect tax incentive is provided for, or tied to, the capital structure or capital assets of a firm, as reported by Sanfi, Commerce treated it as a non-recurring benefit and allocated the benefit to Sanfi over the AUL.²⁴⁴ On this basis, consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 0.51 percent *ad valorem* for Sanfi, a rate calculated for the same program in another CVD proceeding involving imports from China.²⁴⁵

5. Government Provision of Electricity for LTAR

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

For determining the existence and amount of any benefit under this program, we selected the highest non-seasonal provincial rate in China for the electricity category and “base charge” (either maximum demand or transformer capacity) used by the respondent.

Consistent with our approach in *Wind Towers from China*, we first calculated the respondents’ variable electricity costs by multiplying the monthly kilowatt hours (kWh) consumed at the price category by the corresponding electricity rate paid by the respondent during each month of the POI, where applicable.²⁴⁶ Next, we calculated the benchmark electricity cost by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at the price category. To calculate the benefit for each month, we subtracted the variable electricity cost paid by the respondent during the POI from the monthly benchmark electricity cost, where applicable.

²⁴⁰ See *Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012).

²⁴¹ See Sanfi Revised IQR at 35.

²⁴² See GOC IQR at 34 and Exhibit II.C.7.

²⁴³ See Sanfi Revised IQR at 35.

²⁴⁴ See 19 CFR 351.524(c)(2)(iii); and 19 CFR 351.524(d)(2).

²⁴⁵ See *Certain Magnesia Carbon Bricks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying IDM at 10.

²⁴⁶ See *Wind Towers from China* IDM at 21-22.

To measure whether Sanfi/Sanfi Group received a benefit with regard to its electricity rate, we first multiplied the monthly rate charged to Sanfi Group by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying Sanfi Group's consumption quantities by the highest maximum demand. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by the companies 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 Sanfi Group's variable electricity payments and base rate payments.²⁴⁷

To calculate the net subsidy rates attributable to Sanfi, we divided the benefit by the appropriate sales denominators, as described in the "Subsidies Valuation" section above. On this basis, we preliminarily determine that Sanfi received a countervailable subsidy rate of 3.17 percent *ad valorem*, respectively.

6. Provision of Land for LTAR to Encouraged Industries

Commerce is examining whether the GOC has encouraged the development of the ceramic tile industry through the provision of land at LTAR. Sanfi Group reported that it was granted HNTE designation²⁴⁸ and that it purchased land-use rights during the period covering December 11, 2001, through the end of POI.²⁴⁹ The GOC also confirmed that Sanfi and Sanfi Group are located in the "pearl river delta."²⁵⁰

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 13th FYP states that, "{a}pproval procedures related to projects and initiatives included in this plan will be streamlined and priority will be given to them in site selection, land availability, and financing arrangements."²⁵¹ The 13th FYP identifies development goals for the region in which Sanfi and Sanfi Group are located as including, "step to efforts to promote industrial upgrading, guide the development of emerging industries . . .," "support the Pearl River Delta as it leads opening up, innovation, transformation, and upgrading, and accelerate the development of science and technology centers and industrial innovation centers in Shenzhen," and "deepen cooperation in the greater Pearl River Delta region and promote accelerated development of the Pearl River-Xi River economic belt."²⁵² The 13th FYP also states that the GOC will "support the growth of small and medium high-tech enterprises."²⁵³

The 12th FYP similarly identifies land management policies as development tools, referencing the importance of the Guidance Catalogue's encouraged industries alongside implementing

²⁴⁷ See Preliminary Calculation Memorandum.

²⁴⁸ See Sanfi Revised IQR at 16; see also GOC IQR at 18.

²⁴⁹ See Sanfi Revised IQR at 41-42.

²⁵⁰ See GOC First SQR at 3.

²⁵¹ See GOC IQR at Exhibit A.6at 13th FYP, Part XX Implementation, Chapter 80, Section 2.

²⁵² *Id.* at Chapter 37, Section 4.

²⁵³ *Id.* at Chapter 6, Section 2.

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.”²⁵⁴

The 11th 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.”²⁵⁵ It further calls for giving development priority to the high technology industry and intensive processing by enhancing the efficiency of land resources.²⁵⁶

The *Directory Catalogue on Readjustment of Industrial Structure (Version 2005)* lists the non-ferrous metal industry, which includes the production of ceramic material as an encouraged industry.²⁵⁷ In addition, the *Directory Catalogue on Readjustment of Industrial Structure (Version 2005)* lists both “Development of high-tech ceramics (including industrial ceramics) and equipment technology” and “Development and application of ceramics clean production technology” as encouraged industries.²⁵⁸ The *Catalogue for Guiding Industry Restructuring (2011 Version)* identifies “Development and production of materials such as new walling and roofing materials, insulation and deadening materials, and waterproof and airproof materials” as an encouraged industry.²⁵⁹

The *Order of the State Development Planning Commission and the State Economic and Trade Commission on Distributing the List of Industries, Products and Technologies Currently Encouraged by the State for Development (Revised in 2000)* identifies “technology development of high-end ceramic technology” on the “*List of Industries, Products and Technologies Currently Encouraged by the State for Development (Revised in 2000)*.”²⁶⁰ This document also identifies “production of new wall materials” as encouraged.

The “*Decision of the State Council on Promulgating the Interim Provisions Promoting Industrial Structure Adjustment for Implementation (Guo Fa {2005} No. 40)*” (Decision 40) identifies that the “*Catalogue for the Guidance of Industrial Structure Adjustment*” (Guidance Catalogue) is the important basis for investment directions and to the governments to administer investment projects to formulate and enforce policies on public finance, taxations, credit, land, import and export, etc.”²⁶¹ Decision 40 also directs all local, provincial, and municipal governments under

²⁵⁴ See GOC IQR at Exhibit A.6 at 12th FYP, Chapter 19, Section 2.

²⁵⁵ *Id.* at Exhibit A.6 at 11th FYP, Chapter 47.

²⁵⁶ *Id.* at Exhibit A.6 at 11th FYP, Chapter 19.

²⁵⁷ See GOC IQR at Exhibit II.A.8.

²⁵⁸ *Id.* at Exhibit II.A.8

²⁵⁹ *Id.*

²⁶⁰ See GOC First SQR at Exhibit S-11.

²⁶¹ See GOC IQR at Exhibit II.A.9 at Chapter III Article 12.

the Central Government's control to cooperate closely and intensify the effectiveness of implementing industrial policies, and instructs that the relevant provisions of the state will apply to other preferential policies on encouraged industry projects.²⁶²

We asked the GOC to elaborate on its intention, as expressed in Decision 40, to intensify the effectiveness of implementing industrial policies through its land resources.²⁶³ The GOC explained that Decision 40 is “an interim measure issued by the State Council to mainly achieve the promotion of industrial structure adjustment and optimization {,} and upgrading the industrial structure” and “a guideline which provide macro-level guidance focusing on the industrial structure adjustment.”²⁶⁴ The GOC further stated that “Decision 40 is not a law or regulation that governing the land-use right in China” and that “Decision 40 does not serve any regulatory guidance governing any land-use and land-use rights in China.”²⁶⁵ The GOC also submitted the “Notice of the Ministry of Land and Resources on Adjusting the Implementation Policy of the Minimum Price for Industrial Land Transfer” GuoTuZiFa No.56 (2009) (Minimum Price for Land Transfer Notice), which allows for reduced reserve prices of land sales for industrial priority projects.²⁶⁶ The Minimum Price for Land Transfer Notice clarifies that priority development of industries refers to industries that have been prioritized for development in local industry plans formulated in accordance with the Guidance Catalogue.²⁶⁷

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 ceramics industry and high-technology industries as targets for economic development. As noted, the mandatory respondents are located in the Pearl River delta and Sanfi Group was designated as an HNTE. Thus, given the evidence demonstrating the GOC's use of preferential pricing policies to develop the ceramics and high-technology sectors, we preliminarily determine there is a program to provide land for LTAR to producers of ceramic tile within the meaning of section 771(5A)(D)(i) of the Act. Because land in China is publicly owned and the State Council is responsible for the administration and supervision of the land in the whole country,²⁶⁸ and industry users of land do not own the land on which they operate but rather were entitled with the land-use rights for a specific period,²⁶⁹ 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 public ownership of the land market, and the government administration and supervision of land, we preliminarily determine that the domestic market for land was distorted through the GOC's ownership.

²⁶² *Id.* at Exhibit II.A.9.

²⁶³ *See* GOC First Supplemental Questionnaire at 8-9.

²⁶⁴ *See* GOC First SQR at 23.

²⁶⁵ *Id.*

²⁶⁶ *Id.* at Exhibit S-15.

²⁶⁷ *Id.*

²⁶⁸ *See* GOC IQR at Exhibit II.D.(2) at Articles 2 and 5.

²⁶⁹ *Id.* at 55.

Further, we determine on the basis of AFA that Sanfi benefited from this program during the POI within the meaning of section 771(5)(E) of the Act. On this basis, consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 5.24 percent *ad valorem* for Sanfi, a rate calculated for a similar program in another CVD proceeding involving imports from China.²⁷⁰

7. Provision of Water for LTAR

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

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 under the water category used by Sanfi Group for Chancheng District, Foshan City, Guangdong Province, and Nanhai District, Foshan City, Guangdong 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 0.04 percent, *ad valorem* for Sanfi/Sanfi Group.²⁷¹

8. Government Provision of Clay for LTAR

Commerce is examining whether the GOC or other “authorities” within China provided Sanfi with clay for LTAR. Sanfi reported that it purchased clay during the POI.

Financial Contribution

As explained in the Public Body Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.²⁷² As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of

²⁷⁰ See *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 53473 (November 16, 2017), and accompanying IDM at 11.

²⁷¹ See Preliminary Analysis Memorandum.

²⁷² See Public Body Memorandum.

upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “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.²⁷³

As discussed above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we find that the GOC’s refusal to provide certain information regarding the government ownership share in clay producers from whom Sanfi sourced its input purchases warrants the use of AFA.²⁷⁴ As AFA, we find that these producers are “authorities” within the meaning of section 771(5)(B)(i) of the Act and that Sanfi received a financial contribution.

Sanfi also reported purchases of clay from “unknown” producers.²⁷⁵ For purchases of clay where Sanfi reported “unknown” for the producer information, we are determining that, as adverse facts available, the “unknown” producers are also “authorities.” Because all of the known domestic producers are “authorities,” we find that all of the unknown clay producers are also “authorities” within the meaning of section 771(5)(B) of the Act.

Specificity

The GOC reported consumption data for kaolin clay, which it stated is a major type of clay among clays used as the raw material of ceramic tile.²⁷⁶ This data identified downstream industry usage of “ceramics,” “papermaking,” “coating material,” and “others.” According to this data, the ceramics industry is the predominant user of kaolin clay, as it is responsible for 45 percent of domestic kaolin clay consumption. Given that the ceramics industry is the predominant user of clay, we find that this program is specific pursuant to section 771(5A)(D)(iii) of the Act.

Market Distortion

As discussed above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we find that the GOC’s refusal to provide certain information regarding the Chinese clay industry purchases warrants the use of AFA. As AFA, we preliminarily determine that the GOC’s involvement in the clay market in China results in the significant distortion of prices in the clay industry, 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 clay for LTAR.

²⁷³ See *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009), and accompanying IDM at 6.

²⁷⁴ For the remaining input producers, we are applying this finding only with regard to domestic Chinese producers to the extent the record information allows.

²⁷⁵ See Sanfi First SQR at S1-19 and Exhibit S1-17a.

²⁷⁶ See GOC IQR at 82-83.

Benefit

In order to determine the existence and amount of any benefit conferred by the producers to Sanfi pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for clay. 19 CFR 351.511(a)(2) sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. The potential benchmarks listed in the regulation, in order of preference, are: (1) market prices from actual transactions within the country under investigation for the government-provided good (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) prices consistent with market principles based on an assessment by Commerce of the government-set price (tier three).²⁷⁷

As discussed above, because Commerce is finding that Chinese markets for clay were distorted by government involvement, we are selecting external benchmark prices, *i.e.*, “tier two” world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the *CVD Preamble*. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under “tier two,” Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices, we included ocean freight and inland freight that would be incurred to deliver inputs to the respondents’ production facilities. We then added to the benchmark prices the appropriate import duties applicable to imports of clay into China, as provided by the GOC.²⁷⁸ Additionally, we added the appropriate VAT of 17 percent to the benchmark prices.

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

For the reasons discussed above, we have calculated a subsidy rate of 5.13 percent *ad valorem* for Sanfi for the provision of clay for LTAR.²⁷⁹

9. Government Provision of Feldspar for LTAR

Commerce is examining whether the GOC or other “authorities” within China provided Sanfi with feldspar for LTAR. Sanfi reported that it purchased feldspar during the POI.

²⁷⁷ See 19 CFR 351.511(a)(2).

²⁷⁸ We have utilized the Most Favored Nation import duty rate because it reflects the general tariff rate applicable to world trade. See *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.

²⁷⁹ See Attachment 2 for the underlying calculation.

Financial Contribution

As explained in the Public Body Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.²⁸⁰ As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “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.²⁸¹

As discussed above in section “Use of Facts Otherwise Available and Adverse Inferences,” we find that the GOC’s refusal to provide certain information regarding the government ownership share in feldspar producers from Sanfi sourced its input purchases warrants the use of AFA.²⁸² As AFA, we find that these producers are “authorities” within the meaning of section 771(5)(B)(i) of the Act and that Sanfi received a financial contribution.

Sanfi also reported purchases of feldspar from “unknown” producers.²⁸³ For purchases of feldspar where Sanfi reported “unknown” for the producer information, we are determining that, as adverse facts available, the “unknown” producers are also “authorities.” Because all of the known domestic producers are “authorities,” we find that all of the unknown feldspar producers are also “authorities” within the meaning of section 771(5)(B) of the Act.

Specificity

The GOC reported 2015 consumption data for feldspar.²⁸⁴ This data identified downstream industry usage of “glass,” “ceramic,” and “potassic fertilizer.” According to this data, the ceramics industry is a predominant user of feldspar, as it is responsible for 27 percent of domestic feldspar consumption. Given that the ceramics industry is the predominant user of feldspar, we find that this program is specific pursuant to section 771(5A)(D)(iii) of the Act.

Market Distortion

As discussed above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we find that the GOC’s refusal to provide certain information regarding the Chinese feldspar industry purchases warrants the use of AFA. As AFA, we preliminarily determine that the GOC’s involvement in the feldspar market in China results in the significant distortion of prices in the feldspar industry, such that they cannot be used as a tier one benchmark, and hence, the

²⁸⁰ See Public Body Memorandum.

²⁸¹ See *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009), and accompanying IDM at 6.

²⁸² For the remaining input producers, we are applying this finding only with regard to domestic Chinese producers to the extent the record information allows.

²⁸³ See Sanfi First SQR at S1-19 and Exhibit S1-17a.

²⁸⁴ See GOC IQR at 102-103.

use of external benchmarks, as described under 19 CFR 351.511(a)(2)(ii), is warranted to calculate the benefit for the provision of feldspar for LTAR.

Benefit

In order to determine the existence and amount of any benefit conferred by the producers to Sanfi, pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for feldspar. 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. The potential benchmarks listed in the regulation, in order of preference, are: (1) market prices from actual transactions within the country under investigation for the government-provided good (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) prices consistent with market principles based on an assessment by Commerce of the government-set price (tier three).²⁸⁵

As discussed above, because Commerce is finding that Chinese markets for feldspar were distorted by government involvement, we are selecting external benchmark prices, *i.e.*, “tier two” world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the *CVD Preamble*. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under “tier two,” Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices, we included ocean freight and inland freight that would be incurred to deliver inputs to the respondents’ production facilities. We then added to the benchmark prices the appropriate import duties applicable to imports of feldspar into China, as provided by the GOC.²⁸⁶ Additionally, we added the appropriate VAT of 17 percent to the benchmark prices.

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

For the reasons discussed above, we have calculated a subsidy rate of 0.14 percent *ad valorem* for Sanfi for the provision of feldspar for LTAR.²⁸⁷

10. Government Provision of Sand for LTAR

Commerce is examining whether the GOC or other “authorities” within China provided Sanfi with sand for LTAR. Sanfi reported that it purchased sand during the POI.

²⁸⁵ See 19 CFR 351.511(a)(2).

²⁸⁶ We have utilized the Most Favored Nation import duty rate because it reflects the general tariff rate applicable to world trade. See *Citric Acid from China; 2011 Review* IDM at 90.

²⁸⁷ See Attachment 2 for the underlying calculation.

Financial Contribution

As explained in the Public Body Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.²⁸⁸ As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that these entities constitute “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.²⁸⁹

As discussed above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we find that the GOC’s refusal to provide certain information regarding the government ownership share in sand producers from whom Sanfi sourced its input purchases warrants the use of AFA.²⁹⁰ As AFA, we find that these producers are “authorities” within the meaning of section 771(5)(B)(i) of the Act and that Sanfi received a financial contribution.

Sanfi also reported purchases of sand from “unknown” producers.²⁹¹ For purchases of sand where Sanfi reported “unknown” for the producer information, we are determining that, as adverse facts available, the “unknown” producers are also “authorities.” Because all of the known domestic producers are “authorities,” we find that all of the unknown sand producers are also “authorities” within the meaning of section 771(5)(B) of the Act.

Specificity

As discussed above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we find that the GOC’s refusal to provide certain information regarding the sand market industry in China warrants the use of AFA. As AFA, we find that the GOC’s provision of sand is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Market Distortion

As discussed above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we find that the GOC’s refusal to provide certain information regarding the Chinese sand industry purchases warrants the use of AFA. As AFA, we preliminarily determine that the GOC’s involvement in the sand market in China results in the significant distortion of prices in the sand industry, 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 sand for LTAR.

²⁸⁸ See Public Body Memorandum.

²⁸⁹ See *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009), and accompanying IDM at 6.

²⁹⁰ For the remaining input producers, we are applying this finding only with regard to domestic Chinese producers to the extent the record information allows.

²⁹¹ See Sanfi First SQR at S1-19 and Exhibit S1-17a.

Benefit

In order to determine the existence and amount of any benefit conferred by the producers to Sanfi pursuant to section 771(5)(E)(iv) of the Act, we followed the methodology described in 19 CFR 351.511(a)(2) to identify a suitable benchmark for sand. 19 CFR 351.511(a)(2) sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. The potential benchmarks listed in the regulation, in order of preference, are: (1) market prices from actual transactions within the country under investigation for the government-provided good (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) prices consistent with market principles based on an assessment by Commerce of the government-set price (tier three).²⁹²

As discussed above, because Commerce is finding that Chinese markets for sand were distorted by government involvement, we are selecting external benchmark prices, *i.e.*, “tier two” world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the *CVD Preamble*. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under “tier two,” Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices, we included ocean freight and inland freight that would be incurred to deliver inputs to the respondents’ production facilities. We then added to the benchmark prices the appropriate import duties applicable to imports of sand into China, as provided by the GOC.²⁹³ Additionally, we added the appropriate VAT of 17 percent to the benchmark prices.

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

For the reasons discussed above, we have calculated a subsidy rate of 11.39 percent *ad valorem* for Sanfi for the provision of sand for LTAR.²⁹⁴

11. Small and Medium Sized Enterprises (SME) International Market Exploration/Development Fund

Commerce is investigating whether the GOC provided grants under this program to producers and exporters of ceramic tile during the AUL period. Sanfi Group reported that it received

²⁹² See 19 CFR 351.511(a)(2).

²⁹³ We have utilized the Most Favored Nation import duty rate because it reflects the general tariff rate applicable to world trade. See *Citric Acid from China; 2011 Review* IDM at 90.

²⁹⁴ See Attachment 2 for the underlying calculation.

assistance under this program during the AUL period.²⁹⁵ As Sanfi Group is located in Foshan City, Guangdong Province, the Commerce Bureau and Finance Bureau in Foshan City are the agencies that administer this program.²⁹⁶ According to the GOC, this program was established in 2012 to assist small and medium-size enterprises to explore international markets.²⁹⁷ To qualify for this program, a company needs to be an SME whose annual export value is less than 45,000,000 USD according to the *Report regarding Small and Medium Sized Enterprise International Market Exploration Funds in 2011 of Foshan City (Foshan City Report)*.²⁹⁸ Upon our request in the GOC First Supplemental Questionnaire, the GOC provided *Measures for Administration of International Market Developing Funds of Small- and Medium-Sized Enterprises (CQ No. {2010} 87)*, which *Foshan City Report* referenced therein.²⁹⁹ However, the GOC stated that this *CQ No. {2010} 87* has been terminated.³⁰⁰

We preliminarily determine that the grant provided under the SME Fund constitutes a financial contribution, as this grant is a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. We also preliminarily determine that the grant under this program constitutes a benefit under 771(5)(E) of the Act and 19 CFR 351.504(a), providing a benefit in the amount of the grant. Moreover, we preliminarily determine that the grant under this program is specific under section 771(5A)(A) and (B) of the Act because the GOC stated that this program is contingent upon export performance.³⁰¹ Information on the record indicates that the SME Fund provides one-time assistance and the recipient cannot expect to receive additional assistance under this the same program on an ongoing basis, from year to year.³⁰² Therefore, consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as “non-recurring.” Further, we determine on the basis of AFA that Sanfi benefited from this program during the POI, within the meaning of section 771(5)(E) of the Act. On this basis, consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 0.62 percent *ad valorem* for Sanfi, a rate calculated for a similar program in another CVD proceeding involving imports from China.³⁰³

12. Grants for Antidumping Investigations/Fund for Promoting Fair Trade of Imports and Exports

Commerce is investigating whether the GOC provided grants under this program to producers and exporters of ceramic tile during the AUL period. The GOC initially stated that neither Sanfi nor Sanfi Group applied for, used, or benefited from the Grants for Antidumping Investigations

²⁹⁵ See Sanfi Revised IQR at 50; *see also* GOC IQR at 130.

²⁹⁶ See GOC IQR at 131.

²⁹⁷ *Id.* at 130.

²⁹⁸ *Id.* at Exhibit II.E.1.

²⁹⁹ See GOC First SQR at Exhibit S-28.

³⁰⁰ *Id.* at 59.

³⁰¹ See GOC IQR at 134.

³⁰² *Id.* at 139.

³⁰³ 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) (*Isos from China-2014*), and accompanying IDM at 7.

(AD Grants) program during the POI and the AUL period.³⁰⁴ In response to the GOC Second Supplemental Questionnaire, the GOC stated that “there is no grant program entitled ‘Grants for Antidumping Investigations’” and that Sanfi “received assistance under the { Fund for Promoting Fair Trade of Imports and Exports program (FPFTIE)} during the AUL period.”³⁰⁵ The GOC further stated that it “believes this is a similar program to the {AD Grants program}.”³⁰⁶ According to the GOC, the FPFTIE program was established in 2015 to promote fair trade of imports and exports.³⁰⁷ The Commerce and Finance Departments of Guangdong Province are the agencies that administer this program.³⁰⁸ The GOC stated that Sanfi’s application met all the qualification criteria based on both of the administering authorities’ reviews, which resulted in the approval and disbursement of the assistance by these administering government agencies.³⁰⁹ However, *the Public Notice on the Detailed Allocation Plan for Promoting the Import and Export of Fair Trade Special Funds (the second phase in 2015)*, submitted as the regulation relating to this program, does not specify the eligibility criteria other than the publicity period for the FPFTIE program and the general reporting requirements (*e.g.*, the real name of an individual, contact information, proof materials of the matter, the name of the real entity with official seal, and contact person, *etc.*).³¹⁰ In addition, despite our request in the Standard Questions Appendix, the GOC did not provide a description of the criteria governing the eligibility for and receipt of any assistance under this program. However, the GOC explained that this program is contingent upon import and export activities.³¹¹

We preliminarily determine that the grant provided under this program constitutes a financial contribution as this grant is a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. We also preliminarily determine that the grant under this program constitutes a benefit under 771(5)(E) of the Act and 19 CFR 351.504(a), providing a benefit in the amount of the grant. Moreover, we preliminarily determine that the grant under this program is specific under section 771(5A)(A) and (B) of the Act because this program is contingent upon export performance. Information on the record indicates that the FPFTIE program provides one-time assistance.³¹² Therefore, consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as “non-recurring.” Further, we determine on the basis of AFA that Sanfi benefited from this program during the POI within the meaning of section 771(5)(E) of the Act. On this basis, consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 0.62 percent *ad valorem* for Sanfi, a rate calculated for a similar program in another CVD proceeding involving imports from China.³¹³

³⁰⁴ See GOC IQR at 141.

³⁰⁵ See GOC Second SQR at 5.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.* at 6.

³⁰⁹ *Id.* at 9-10.

³¹⁰ *Id.* at 7 and Exhibit S2-2.

³¹¹ *Id.* at 10.

³¹² *Id.* at 14-15.

³¹³ See *Isos from China-2014* IDM at 7.

13. “Other Subsidies”

Sanfi and its cross-owned affiliates reported receiving various non-recurring grants from the GOC during the POI and throughout the AUL period. As discussed in the “Use of Facts Available and Adverse Inferences” section above, Commerce preliminarily determines that these grants constitute a financial contribution under section 771(5)(D)(i) of the Act, and that they are specific under section 771(5A) of the Act. Commerce further preliminarily determines that these grants each confer a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a). Further, except for certain programs that we preliminarily treated as recurring pursuant to 19 CFR 351.524(c) based on their descriptions, for those grants that were received during the AUL period, we determine on the basis of AFA that Sanfi benefited from these programs during the POI within the meaning of section 771(5)(E) of the Act. On this basis, consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 0.62 percent *ad valorem* for Sanfi, a rate calculated for a similar program in another CVD proceeding involving imports from China.³¹⁴ For grants received by Sanfi during the POI, we followed the methodology described in 19 CFR 351.524. To calculate the *ad valorem* subsidy rate for these grants, Commerce divided the benefit conferred under each of these programs by the appropriate POI sales denominator. To calculate the *ad valorem* subsidy rate for these grants, we divided the benefit conferred under each of these programs by the appropriate POI sales denominator.

Based on the methodology outlined above, Commerce preliminarily determines a cumulative *ad valorem* subsidy rate of 0.13 percent for Sanfi.

B. Non-Recurring Programs Not Reported by Sanfi Preliminarily Determined to Be Countervailable as AFA to Sanfi

1. Subsidies for Development of “Brands”
2. Grants for Listing Shares
3. Foreign Trade Development Fund
4. Clean Production Technology Fund
5. Environmental Protection Special Fund
6. Guangdong Supporting Fund
7. Guangdong Province HNTE Incubation Program
8. Export Interest Subsidies
9. Guangdong Provincial Fund for Fiscal and Technological Innovation
10. Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises
11. Funds for Outward Expansion of Industries in Guangdong Province
12. VAT and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program
13. Provision of Land for LTAR to Enterprises in Certain Industrial/Development Zones – Guangdong Qingyuan High-Tech Industrial Development Zone and Foshan High-Tech Industrial Development Zone

³¹⁴ *Id.*

C. Programs Preliminarily Determined Not to Be Used by Sanfi during the POI

1. Regional Policy Loans – Guangdong Province

Commerce is examining whether government-controlled banks provide preferential financing to certain enterprises located within Guangdong Province pursuant to provincial government policies. Commerce has countervailed policy lending programs in previous investigations.³¹⁵

When examining a policy lending program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support such objectives or goals. Where such plans or policy directives exist, then it is our practice to find that a policy lending program exists that is *de jure* specific to the targeted industry (or producers that fall under that industry) within the meaning of section 771(5A)(D)(i) of the Act. Once that finding is made, we rely upon the analysis undertaken in *CFS Paper from China*³¹⁶ to further conclude that national and local government control over the SOCBs render the loans a government financial contribution.

Sanfi is located in Guangdong province and reported having loans from China SOCBs that were outstanding during the POI.³¹⁷ Commerce preliminarily finds that these loans provide countervailable subsidies under a regional policy lending program directed at the ceramic tile industry. The GOC stated that the ceramic tile industry falls under the building materials industry.³¹⁸ The *11th Five-Year Plan for Economic and Social Development of Guangdong Province* speaks of a “focus on the development of building materials with advantages and competitiveness, vigorously develop new building materials industry with high technical content,…”³¹⁹ The *12th Five-Year Plan for Economic and Social Development of Guangdong Province* seeks to, “improve the development level of non-ferrous metals and products, building materials industry, and accelerate the replacement of backward production capacity with advanced production capacity.”³²⁰ Similarly, the *13th Five-Year Plan for Economic and Social Development of Guangdong Province (13th FYP – Guangdong)* identifies building materials as a development focus.³²¹ The *13th FYP – Guangdong* additionally seeks to establish a “policy support system for finance, commerce, logistics, *etc.*, and broaden the financing channels for import and export enterprises.”

Thus, given the evidence demonstrating the GOC’s objective of developing the building materials sector in Guangdong Province, we preliminarily determine there is a program of preferential policy lending specific to producers of ceramic tile within the meaning of section 771(5A)(D)(i) of the Act. We also preliminarily find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are “authorities.”

³¹⁵ See, e.g., *Certain Tool Chests and cabinets from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017), and accompanying IDM at 8-9.

³¹⁶ See *CFS Paper from China* IDM at Comment 8.

³¹⁷ See, e.g., Sanfi IQR at Exhibit P.A.1.1.

³¹⁸ See GOC First SQR at 2.

³¹⁹ *Id.* at Exhibit S-5.

³²⁰ *Id.* at Exhibit S-6.

³²¹ *Id.* at Exhibit S-7.

2. Preferential Loans Provided by the Export-Import Bank “Going-Out” for Outbound Investment
3. Export Seller’s Credit and Guarantees
4. Export Credit Insurance Subsidies from SINOSURE
5. Preferential Income Tax Reduction for HNTEs
6. Preferential Deduction of R&D Expenses for HNTEs
7. Reduced Tax Rates for FIEs Recognized as HNTEs
8. Income Tax Benefits for Domestically-Owned Enterprises Engaging in R&D
9. Reduced Income Tax Rates for FIEs Based on Location
10. Tax Offsets for R&D by FIEs
11. Corporate Income Tax Law Article 33: Reduction of Taxable Income for Revenue Derived from the Manufacture of Products that Are in Line with State Industrial Policy and Involve Synergistic Utilization of Resources
12. Tax Offset for R&D – Guangdong Province Tax Program
13. City Tax and Surcharge for FIEs – Guangdong Province
14. Income Tax Reduction for High-Tech Industries in Guangdong Province
15. Income Tax Programs for FIEs in Dongguan City in Guangdong Province
16. Reduced Income tax Rate for Entities in the Foshan High-Tech Industrial Development Zone
17. Local Income Tax Exemption and Reduction Programs for “Productive” FIEs – Shandong Province
18. Duty Exemption – Foshan High-Tech Industrial Development Zone
19. City Maintenance Fee Exemptions – Foshan High-Tech Industrial Development Zone
20. Provision of Electricity for LTAR in Certain Industrial/Development Zones – Nanchang Economic Development Zone, Zhejiang Economic Development Zone, and Yangpu Economic Development Zone

XIII. CALCULATION OF THE ALL-OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. In this investigation, the only rates that are not zero or *de minimis* or based entirely on the facts available are the rate calculated for Sanfi. Consequently, we are assigning the rate calculated for Sanfi as the “all-others” rate (*i.e.* 103.77 percent *ad valorem*).

XIV. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such

information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after Commerce makes its final determination.

XV. DISCLOSURE AND PUBLIC COMMENT

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.³²² Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.³²³

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.³²⁴ This summary should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.³²⁵ Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined. Prior to the date of the hearing, Commerce will contact all parties that submitted case or rebuttal briefs to determine if they wish to participate in the hearing. Commerce will then distribute a hearing schedule to the parties prior to the hearing and only those parties listed on the schedule may present issues raised in their briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.³²⁶ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,³²⁷ on the due dates established above.

³²² See 19 CFR 351.224(b).

³²³ See 19 CFR 351.309(c)(1)(i) and (d)(1).

³²⁴ See 19 CFR 351.309(c)(2) and (d)(2).

³²⁵ See 19 CFR 351.310(c).

³²⁶ See 19 CFR 351.303(b)(2)(i).

³²⁷ See 19 CFR 351.303(b)(1).

XVI. VERIFICATION

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

XVII. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

9/6/2019

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

APPENDIX

AFA Rate Calculation

	Program Name	Rate	Source
	Preferential Lending		
1	Policy Loans to the Ceramic Tile Industry	10.54%	Highest Rate for Similar Program based on Benefit Type
2	Regional Policy Loans - Guangdong Province		
3	Preferential Loans Provided by the Export-Import Bank “Going-Out” for Outbound Investment	10.54%	Highest Rate for Similar Program based on Benefit Type
	Export Credit Subsidies		
4	Export Seller’s Credit and Guarantees	4.25%	Highest Rate for Same Program based on Benefit Type
5	Export Buyer’s Credit	10.54%	Highest Rate for Similar Program based on Benefit Type
6	Export Credit Insurance Subsidies from SINOSURE	10.54%	Highest Rate for Similar Program based on Benefit Type
	Preferential Tax Programs		
7	Preferential Income Tax Reductions for High or New Technology Enterprises (HNTEs)	25.00%	Chinese Corporate Income Tax Rate
8	Preferential Deduction of Research and Development (R&D) Expenses for HNTEs		
9	Reduced Tax Rates for Foreign Invested Enterprises (FIEs) Recognized as HNTEs		

10	Income Tax Benefits for Domestically-Owned Enterprises Engaging in R&D		
11	Reduced Income Tax Rates for FIEs Based on Location		
12	Tax Offsets for R&D by FIEs		
13	Corporate Income Tax Law Article 33: Reduction of Taxable Income for Revenue Derived from the Manufacture of Products That Are in Line with State Industrial Policy and Involve Synergistic Utilization of Resources		
14	City Tax and Surcharge for FIEs – Guangdong Province	9.71%	Highest Rate for Same Program based on Benefit Type
15	Tax Offset for R&D – Guangdong Province Tax Program	3.00%	Provincial Income Tax Rate
16	Income Tax Reduction for High-Tech Industries in Guangdong Province		
17	Income Tax Programs for FIEs in Dongguan City in Guangdong Province		
18	Reduced Income Tax Rate for Entities in the Foshan High-Tech Industrial Development Zone		
19	Local Income Tax Exemption and Reduction Programs for “Productive” FIEs – Shandong Province		

	Preferential Indirect Tax Programs		
20	Value-Added Tax (VAT) and Tariff Exemptions for Purchases of Fixed Assets Under the Foreign Trade Development Fund Program	9.71%	Highest Rate for Similar Program based on Benefit Type
21	VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries	9.71%	Highest Rate for Similar Program based on Benefit Type
22	VAT Refunds for FIEs on Purchases of Chinese-Made Equipment	0.51%	Highest Rate for Same Program based on Benefit Type
23	Duty Exemption - Foshan High-Tech Industrial Development Zone	9.71%	Highest Rate for Similar Program based on Benefit Type
24	City Maintenance Fee Exemptions - Foshan High-Tech Industrial Development Zone	9.71%	Highest Rate for Similar Program based on Benefit Type
Provision of Goods and Services for Less Than Adequate Remuneration (LTAR)			
25	Provision of Electricity For LTAR	3.17%	Calculated
26	Provision of Land for LTAR to Encouraged Industries	5.24%	Highest Rate for Similar Program based on Benefit Type
27	Provision of Water For LTAR	0.04%	Calculated
28	Provision of Clay for LTAR	5.13%	Calculated
29	Provision of Feldspar for LTAR	0.14%	Calculated
30	Provision of Sand for LTAR	11.39%	Calculated

31	Provision of Land for LTAR to Enterprises in Certain Industrial/Development Zones – Guangdong Qingyuan High-Tech Industrial Development Zone and Foshan High-Tech Industrial Development Zone	5.24%	Highest Rate for Similar Program based on Benefit Type
32	Provision of Electricity for LTAR in Certain Industrial/Development Zones – Nanchang Economic Development Zone, Zhejiang Economic Development Zone, and Yangpu Economic Development Zone	20.06%	Highest Rate for Similar Program based on Benefit Type
Grants			
33	Subsidies for Development of “Brands”	0.62%	Highest Rate for Similar Program based on Benefit Type
34	Small and Medium Sized Enterprises (SME) International Market Exploration/Development Fund	0.62%	Highest Rate for Similar Program based on Benefit Type
35	Grants for Listing Shares	0.62%	Highest Rate for Similar Program based on Benefit Type
36	Foreign Trade Development Fund	0.62%	Highest Rate for Similar Program based on Benefit Type
37	Grants for Antidumping Investigations/Fund for Promoting Fair Trade of Imports and Exports	0.62%	Highest Rate for Similar Program based on Benefit Type
38	Clean Production Technology Fund	0.62%	Highest Rate for Similar Program based on Benefit Type
39	Environmental Protection Special Fund	0.62%	Highest Rate for Similar Program based on Benefit Type
40	Guangdong Supporting Fund	0.62%	Highest Rate for Similar Program based on Benefit Type

41	Guangdong Province HNTE Incubation Program	0.62%	Highest Rate for Similar Program based on Benefit Type
42	Export Interest Subsidies	0.62%	Highest Rate for Similar Program based on Benefit Type
43	Guangdong Provincial Fund for Fiscal and Technological Innovation	0.62%	Highest Rate for Similar Program based on Benefit Type
44	Funds of Guangdong Province to Support the Adoption of E-Commerce by Foreign Trade Enterprises	0.62%	Highest Rate for Similar Program based on Benefit Type
45	Funds for Outward Expansion of Industries in Guangdong Province	0.62%	Highest Rate for Similar Program based on Benefit Type
46	Self-Reported Subsidies	40.30% (Aggregated Rate)	Highest Rate for Similar Program based on Benefit Type

Total AFA Rate:

222.24%