



C-570-057
Administrative Review
POR: 9/15/2017-12/31/2018
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October 3, 2019

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

FROM: Scot T. Fullerton
Director, Office VI
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the
Administrative Review of the Countervailing Duty Order on
Certain Tool Chests and Cabinets from the People's Republic of
China; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on certain tool chests and cabinets (tool chests) from the People's Republic of China (China).¹ The period of review (POR) is September 15, 2017 through December 31, 2018. Zhongshan Geelong Manufacturing Co. Ltd. (Geelong) is the sole producer for which a review was requested.²

II. BACKGROUND

On January 24, 2018, Commerce published the CVD order on tool chests from China.³ On February 8, 2019, we published a notice of opportunity to request an administrative review of the

¹ See *Certain Tool Chests and Cabinets from the People's Republic of China: Countervailing Duty Order*, 83 FR 3299 (January 24, 2018) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 12200, 12206 (April 1, 2019) (*Initiation Notice*). The parties requested reviews of Geelong, Geelong Sales (MCO) Ltd. (MCO), and Geelong Sales Co. International (HK) Ltd. (GSCI). However, neither of the latter two companies produce subject merchandise and we preliminarily determine that neither of these two companies received any subsidies. See "Attribution of Subsidies," below. MCO, an affiliate of Geelong located in Macau, exports the subject merchandise Geelong produces to the United States. See Geelong's Letter, "Administrative Review of the Countervailing Duty Order on Certain Tool Chests and Cabinets from the People's Republic of China: First Supplemental Questionnaire Response," dated May 10, 2019, at Exhibit SQI-1.

³ See *Order*, 83 FR 3299.

Order for the POR.⁴ On February 28, 2019, Commerce received timely requests from Geelong⁵ and Home Depot⁶ to conduct an administrative review of the *Order* with regard to Geelong. On April 1, 2019, we published a notice of initiation for this administrative review.⁷ On April 10, 2019, we released U.S. Customs and Border Protection entry data.⁸ Consistent with section 777A(e) of the Act, we are individually examining Geelong, the only producer for which an administrative review was requested.

We issued the initial CVD questionnaire on April 10, 2019.⁹ Geelong submitted a timely response to the CVD questionnaire – responding to the Identifying Affiliated Companies portion of Section III of the questionnaire on April 24, 2019.¹⁰ Geelong submitted the remainder of Section III of the initial CVD questionnaire on May 28, 2019.¹¹ The Government of China (GOC) submitted a timely response to Section II of the CVD questionnaire on May 28, 2019.¹² We issued supplemental questionnaires to the GOC and Geelong in May and June 2019, and received timely responses to these supplemental questionnaires.¹³ On September 3, 2019, Geelong submitted benchmark information.¹⁴

III. SCOPE OF THE ORDER

The scope of the *Order* covers certain metal tool chests and tool cabinets, with drawers, (tool chests and cabinets), from China. The scope covers all metal tool chests and cabinets, including

⁴ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 2816, 2817 (February 8, 2019).

⁵ See Geelong’s Letter, “Administrative Review of the Countervailing Duty Order on Certain Tool Chests and Cabinets from the People’s Republic of China: Request for Review,” dated February 28, 2019.

⁶ See Home Depot’s Letter, “Administrative Review of the Countervailing Duty Order on Certain Tool Chests and Cabinets from the People’s Republic of China: Request for Review,” dated February 28, 2019.

⁷ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 12200, 12206 (April 1, 2019) (*Initiation Notice*).

⁸ See Memorandum, “Release of U.S. Customs and Border Protection Data,” dated April 10, 2019.

⁹ See Geelong’s Letter, “Administrative Review of Certain Tool Chests and Cabinets from the People’s Republic of China for the Period September 15, 2017, through December 31, 2018: Countervailing Duty Questionnaire,” dated April 10, 2019 (Initial Questionnaire).

¹⁰ See Geelong’s Letter, “Administrative Review of the Countervailing Duty Order on Certain Tool Chests and Cabinets from the People’s Republic of China: Affiliated Companies Questionnaire Response,” dated April 24, 2019 (Geelong AQR).

¹¹ See Geelong’s Letter, “Administrative Review of the Countervailing Duty Order on Certain Tool Chests and Cabinets from the People’s Republic of China: Section III Questionnaire Response,” dated May 28, 2019 (Geelong IQR).

¹² See GOC’s Letter, “Certain Tool Chests and Cabinets from the People’s Republic of China, Case No. C-570-057: Initial Questionnaire Response,” dated May 28, 2019 (GOC IQR).

¹³ See GOC’s Letter, “Certain Tool Chests and Cabinets from the People’s Republic of China, Case No. C-570-057: First Supplemental Questionnaire Response,” dated July 3, 2019 (GOC SQR), see Geelong’s Letters, “Administrative Review of the Countervailing Duty Order on Certain Tool Chests and Cabinets from the People’s Republic of China: First Supplemental Questionnaire Response,” dated May 10, 2019 (Geelong SQR1), “Administrative Review of the Countervailing Duty Order on Certain Tool Chests and Cabinets from the People’s Republic of China: First Supplemental Questionnaire Response,” dated July 5, 2019 (Geelong SQR2), and “Administrative Review of the Countervailing Duty Order on Certain Tool Chests and Cabinets from the People’s Republic of China: Third Supplemental Questionnaire Response,” dated July 25, 2019 (Geelong SQR3).

¹⁴ See Geelong’s Letter, “Administrative Review of the Countervailing Duty Order on Certain Tool Chests and Cabinets from the People’s Republic of China: Benchmark Submission,” dated September 3, 2019 (Benchmark Submission).

top chests, intermediate chests, tool cabinets and side cabinets, storage units, mobile work benches, and work stations and that have the following physical characteristics:

- (1) a body made of carbon, alloy, or stainless steel and/or other metals;
- (2) two or more drawers for storage in each individual unit;
- (3) a width (side to side) exceeding 15 inches for side cabinets and exceeding 21 inches for all other individual units but not exceeding 60 inches;
- (4) a body depth (front to back) exceeding 10 inches but not exceeding 24 inches; and
- (5) prepackaged for retail sale.

For purposes of this scope, the width parameter applies to each individual unit, *i.e.*, each individual top chest, intermediate top chest, tool cabinet, side cabinet, storage unit, mobile work bench, and work station.

Prepackaged for retail sale means the units may, for example, be packaged in a cardboard box, other type of container or packaging, and may bear a Universal Product Code, along with photographs, pictures, images, features, artwork, and/or product specifications. Subject tool chests and cabinets are covered whether imported in assembled or unassembled form. Subject merchandise includes tool chests and cabinets produced in China but assembled, prepackaged for retail sale, or subject to other minor processing in a third country prior to importation into the United States. Similarly, it would include tool chests and cabinets produced in China that are assembled, prepackaged for retail sale, or subject to other minor processing after importation into the United States.

Subject tool chests and cabinets may also have doors and shelves in addition to drawers, may have handles (typically mounted on the sides), and may have a work surface on the top. Subject tool chests and cabinets may be uncoated (*e.g.*, stainless steel), painted, powder coated, galvanized, or otherwise coated for corrosion protection or aesthetic appearance.

Subject tool chests and cabinets may be packaged as individual units or in sets. When packaged in sets, they typically include a cabinet with one or more chests that stack on top of the cabinet. Tool cabinets act as a base tool storage unit and typically have rollers, casters, or wheels to permit them to be moved more easily when loaded with tools. Work stations and mobile work benches are tool cabinets with a work surface on the top that may be made of rubber, plastic, metal, wood, or other materials.

Top chests are designed to be used with a tool cabinet to form a tool storage unit. The top chests may be mounted on top of the base tool cabinet or onto an intermediate chest. They are often packaged as a set with tool cabinets or intermediate chests, but may also be packaged separately. They may be packaged with mounting hardware (*e.g.*, bolts) and instructions for assembling them onto the base tool cabinet or onto an intermediate tool chest which rests on the base tool cabinet. Smaller top chests typically have handles on the sides, while the larger top chests typically lack handles. Intermediate tool chests are designed to fit on top of the floor standing tool cabinet and to be used underneath the top tool chest. Although they may be packaged or used separately from the tool cabinet, intermediate chests are designed to be used in conjunction with tool cabinets. The intermediate chests typically do not have handles. The intermediate and top chests may have the capability of being bolted together.

Side cabinets are designed to be bolted or otherwise attached to the side of the base storage cabinet to expand the storage capacity of the base tool cabinet.

Subject tool chests and cabinets also may be packaged with a tool set included. Packaging a subject tool chest and cabinet with a tool set does not remove an otherwise covered subject tool chest and cabinet from the scope. When this occurs, the tools are not part of the subject merchandise.

All tool chests and cabinets that meet the above definition are included in the scope unless otherwise specifically excluded.

Excluded from the scope of the *Order* are tool boxes, chests, and cabinets with bodies made of plastic, carbon fiber, wood, or other non-metallic substances.

Also excluded from the scope of the *Order* are industrial grade steel tool chests and cabinets. The excluded industrial grade steel tool chests and cabinets are those:

- (1) having a body that is over 60 inches in width; or
- (2) having each of the following physical characteristics:
 - (a) a body made of steel that is 0.047 inches or more in thickness;
 - (b) a body depth (front to back) exceeding 21 inches; and
 - (c) a unit weight that exceeds the maximum unit weight shown below for each width range:

Inches	Weight to Width Ratio Tool Chests	Maximum Pounds
Greater than 21 and less than or equal to 25		90
Greater than 25 and less than or equal to 28		115
Greater than 28 and less than or equal to 30		120
Greater than 30 and less than or equal to 32		130
Greater than 32 and less than or equal to 34		140
Greater than 34 and less than or equal to 36		150
Greater than 36 and less than or equal to 38		160
Greater than 38 and less than or equal to 40		170
Greater than 40 and less than or equal to 42		180
Greater than 42 and less than or equal to 44		190
Greater than 44 and less than or equal to 46		200
Greater than 46 and less than or equal to 48		210
Greater than 48 and less than or equal to 50		220
Greater than 50 and less than or equal to 52		230
Greater than 52 and less than or equal to 54		240
Greater than 54 and less than or equal to 56		250
Greater than 56 and less than or equal to 58		260
Greater than 58 and less than or equal to 60		270

Weight to Width Ratio
Tool Cabinets

Inches	Maximum Pounds
Greater than 21 and less than or equal to 25	155
Greater than 25 and less than or equal to 28	170
Greater than 28 and less than or equal to 30	185
Greater than 30 and less than or equal to 32	200
Greater than 32 and less than or equal to 34	215
Greater than 34 and less than or equal to 36	230
Greater than 36 and less than or equal to 38	245
Greater than 38 and less than or equal to 40	260
Greater than 40 and less than or equal to 42	280
Greater than 42 and less than or equal to 44	290
Greater than 44 and less than or equal to 46	300
Greater than 46 and less than or equal to 48	310
Greater than 48 and less than or equal to 50	320
Greater than 50 and less than or equal to 52	330
Greater than 52 and less than or equal to 54	340
Greater than 54 and less than or equal to 56	350
Greater than 56 and less than or equal to 58	360
Greater than 58 and less than or equal to 60	370

Also excluded from the scope of the *Order* are service carts. The excluded service carts have all of the following characteristics:

- (1) casters, wheels, or other similar devices which allow the service cart to be rolled from place to place;
- (2) an open top for storage, a flat top, or a flat lid on top of the unit that opens;
- (3) a space or gap between the casters, wheels, or other similar devices, and the bottom of the enclosed storage space (e.g., drawers) of at least 10 inches; and
- (4) a total unit height, including casters, of less than 48 inches.

Also excluded from the scope of the *Order* are non-mobile work benches. The excluded non-mobile work benches have all of the following characteristics:

- (1) a solid top working surface;
- (2) no drawers, one drawer, or two drawers in a side-by-side configuration; and
- (3) the unit is supported by legs and has no solid front, side, or back panels enclosing the body of the unit.

Also excluded from the scope of the *Order* are metal filing cabinets that are configured to hold hanging file folders and are classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 9403.10.0020.

Merchandise subject to the *Order* is classified under HTSUS categories 9403.20.0021, 9403.20.0026, 9403.20.0030, 9403.20.0080, 9403.20.0090, and 7326.90.8688, but may also be classified under HTSUS category 7326.90.3500. While HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of the *Order* is dispositive.

IV. DIVERSIFICATION OF CHINA'S ECONOMY¹⁵

Concurrently with this decision memorandum, Commerce is placing the following excerpts from the *China Statistical Yearbook* from the National Bureau of Statistics of China on the record of this review.¹⁶ Index Page; Table 14-7: Main Indicators on Economic Benefit of State-owned and State-holding Industrial Enterprise by Industrial Sector; Table 14-11: Main Indicators on Economic Benefit of Private Industrial Enterprise by Industrial Sector. This information reflects a wide diversification of economic activities in China. The industrial sector in China alone is comprised of 37 listed industries and economic activities, indicating the diversification of the economy.

V. SUBSIDIES VALUATION

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the Average Useful Life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the IRS Tables, as updated by the U.S. Department of the Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of ten years. No interested party has challenged the use of a ten-year AUL.

Further, for non-recurring subsidies, we have applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

Attribution of Subsidies

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

¹⁵ In accordance with Section 701(f) of the Act, Commerce continues to apply CVD law to China.

¹⁶ See Memorandum, "Additional Documents Memorandum," dated concurrently with this memorandum (Additional Documents Memorandum).

respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

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

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.¹⁷

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.¹⁸ Based on information on the record, we preliminarily determine that cross-ownership exists, in accordance with 19 CFR 351.525(b)(6)(vi), among the companies identified by the respondent.

Geelong identified itself as a privately-owned Chinese producer and exporter of the subject merchandise.¹⁹ In its AQR, Geelong identified two affiliated companies, MCO, and GSCI, that are involved in the export or sale of subject merchandise in China, and with which Geelong shares common parents.²⁰ Based on the record information, we preliminarily determine that Geelong and both of these firms are cross-owned with each other within the meaning of 19 CFR 351.525(b)(6)(vi).²¹ On the basis of Geelong's responses and the case record, we preliminarily find no evidence on the record that MCO, GSCI, or any parent companies received subsidies

¹⁷ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

¹⁸ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

¹⁹ See Geelong AQR at 3.

²⁰ *Id.*

²¹ See Geelong AQR at 5.

from the GOC and, thus, no subsidy benefits are attributable to Geelong under 19 CFR 351.525(b)(6)(ii)-(v) or 19 CFR 351.525(c).

Export Value Adjustment

Commerce has, in the past, adjusted the calculation of the subsidy rate when the sales value used to calculate that subsidy rate does not match the entered value of the merchandise, *e.g.*, where subject merchandise is exported to the United States with a mark-up from an affiliated company, and where the respondent can demonstrate that six conditions are met. These conditions are: (1) the price on which the alleged subsidy is based differs from the U.S. invoiced price; (2) the exporters and the party that invoices the customer are affiliated; (3) the U.S. invoice establishes the customs value to which the CVD duties are applied; (4) there is a one-to-one correlation, except for the difference in price, between the invoice for which subsidies are received and the invoice that accompanies the shipment; (5) the merchandise is shipped directly to the United States; and 6) the invoices can be tracked as back-to-back invoices that are identical except for price.²²

Geelong is the producer of the subject merchandise, which it ships to the United States via its affiliated exporter, MCO.²³ Geelong reported that MCO issued invoices with a mark-up for all of Geelong's sales of subject merchandise to the United States.²⁴ Therefore, Geelong requested that Commerce make an adjustment to the calculation of the subsidy rate to account for the mark-up between the export value from China and the entered value of subject merchandise produced by Geelong into the United States.²⁵ Geelong contends that its shipments met the requisite six conditions for an export value adjustment.²⁶ Geelong provided sales documentation to demonstrate that it met these criteria.²⁷

Because the information submitted by Geelong supports its claim and the information also permits an accurate calculation of the adjustment, we have preliminarily made an adjustment to the export value. Specifically, and with respect to the total POR sales and POR export sales of Geelong, we subtracted the total sales value of all merchandise produced by Geelong and sold to MCO. We then added the total sales value of all merchandise produced by Geelong and sold by MCO. Consequently, we accounted for mark-ups from the invoices issued from Geelong to MCO. For additional information, *see* the Preliminary Calculation Memorandum.²⁸

²² See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010), and accompanying IDM at Comment 32.

²³ See Geelong AQR at 3.

²⁴ See Geelong IQR at 12 and Geelong SQR2 at SQ2-2.

²⁵ *Id.*

²⁶ See Geelong IQR at 12; *see also Multilayered Wood Flooring from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 64313 (October 18, 2011), and accompanying IDM at 7 – 8.

²⁷ See Geelong IQR at Exhibit 16.1 and Geelong SQR2 at Exhibit SQ2-2.

²⁸ See Memorandum, “Zhongshan Geelong Manufacturing Co., Ltd.; Calculations for the Preliminary Results of Administrative Review; 2017-18,” dated concurrently with this memorandum (Preliminary Calculation Memorandum).

Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. 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 Geelong's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). Where the program has been found to be contingent upon export activities, we used Geelong's total export sales as the denominator.

VI. BENCHMARKS AND DISCOUNT RATES

We are examining non-recurring, allocable subsidies.²⁹ The derivation of the benchmark interest rates and discount rates used to measure the benefit from these subsidies are discussed below.

Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, Commerce uses comparable commercial loans reported by the company as a benchmark.³⁰ 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."³¹

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from China*, loans provided by China banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.³² In an analysis memorandum dated July 21, 2017, Commerce has conducted a re-assessment of the lending system in China.³³ 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 respondent from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, Commerce is

²⁹ See 19 CFR 351.524(b)(1).

³⁰ See 19 CFR 351.505(a)(3)(i).

³¹ See 19 CFR 351.505(a)(3)(ii).

³² See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*), and accompanying Issues and Decision Memorandum (IDM) at Comment 10.

³³ See Memorandum, "Review of China's Financial System Memorandum," dated concurrently with this memorandum.

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.³⁴

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China* and later updated in *Thermal Paper from China*.³⁵ Under that methodology, we first determine which countries are similar to China in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from China*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, China fell in the lower-middle income category.³⁶ Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2014.³⁷ 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 2010-2014. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.³⁸

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

In each of the years from 2003-2009 and 2011-2014, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.³⁹ For 2010, however, the regression does not yield that outcome for China's income group.⁴⁰ This contrary result for a single year does not lead us to reject the strength of governance as a determinant of

³⁴ 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."

³⁵ See *CFS from China* IDM at Comment 10; see also *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*), and accompanying IDM at 8-10.

³⁶ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups> (World Bank Country Classification); see also Memorandum, "Interest Rate Benchmark Memorandum," dated concurrently with this memorandum (Interest Rate Benchmark Memorandum).

³⁷ See World Bank Country Classification.

³⁸ See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying Preliminary Decision Memorandum at "Benchmarks and Discount Rates" (unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp China Final*)).

³⁹ See Interest Rate Benchmark Memorandum.

⁴⁰ *Id.*

interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmarks for the years from 2001-2009 and 2011-2014. 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 2010-2014 and "lower middle income" for 2001-2009.⁴¹ 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 remove any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year Commerce calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.⁴² Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.⁴³

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.⁴⁴

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.⁴⁵ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁴⁶

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

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See, e.g., *Thermal Paper from China* IDM at 10.

⁴⁵ 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.

⁴⁶ See Interest Rate Benchmark Memorandum.

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.⁴⁷ The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Preliminary Calculation Memorandum.

Benchmarks to Determine the Adequacy of Remuneration

The adequacy of remuneration for government-provided goods or services is determined pursuant to 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2), Commerce measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services 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 provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation (*i.e.*, tier one). This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Input Benchmarks

We selected the benchmarks for measuring the adequacy of remuneration for cold-rolled coiled steel in accordance with 19 CFR 351.511(a). Below we analyze the information provided and the selection of a benchmark for each input.

As discussed below in the section, “Analysis of Programs,” we preliminarily determine that most of the input producers that supplied to Geelong are “authorities” within the meaning of section 771(5)(B) of the Act. Therefore, prices from Geelong’s suppliers are not usable as Tier 1 benchmarks, as they are prices charged by the very providers of the good at issue. Moreover, we preliminarily find that the Chinese market for the input is distorted, as discussed below.

As facts available, we are preliminarily relying on the data provided by the GOC regarding cold-rolled thin and wide steel strip as the only available proxy for data regarding cold-rolled coiled steel.

The GOC reported that it maintained an ownership or management interest in a significant proportion of the cold strip producers in operation during 2017 and 2018.⁴⁸ According to data provided by the GOC, the cold strip producers in which the GOC maintained an ownership or management interest accounted for a good majority of domestic cold strip production during

⁴⁷ See Preliminary Calculation Memorandum; *see also* Interest Rate Benchmark Memorandum.

⁴⁸ See GOC IQR at 23.

2017 and 2018.⁴⁹ The data provided by the GOC also show that the volume of imports as a percentage of domestic production and consumption in 2017 and 2018 was insignificant.⁵⁰

Based on these facts, we preliminarily determine that domestic prices in China for cold-rolled coiled steel are distorted such that they cannot be used as a Tier 1 benchmark. For the same reasons, we preliminarily determine that import prices into China cannot serve as a Tier 1 benchmark.⁵¹ Thus, to measure the adequacy of remuneration for the provision of cold-rolled coiled steel, we are relying on world market prices as the Tier 2 benchmark provided for in 19 CFR 351.511(a)(2)(ii). Accordingly, we used the American Metal Market (AMM) and Steel Orbis data submitted by Geelong as benchmark prices for cold-rolled coiled steel for these preliminary results of review.⁵² Where possible, we have removed China-related pricing data (*i.e.*, imports into China, which are Tier 1 prices) from all of the input benchmarks, consistent with our preliminary decision to rely on a Tier 2 benchmark.

Pursuant to 19 CFR 351.511(a)(2)(iv), benchmarks should reflect “delivered prices” and should include import and delivery charges. As such, where appropriate, we added freight charges, value-added tax (VAT), and import duties applicable on purchases in order to calculate a price that a respondent company would have paid on the world market for these inputs. With respect to ocean freight, we used the benchmark prices submitted by Geelong.⁵³ With respect to VAT and import duties, we used the percentages reported by the GOC.⁵⁴ With respect to inland freight between the port and the factory, we relied on the freight expenses reported by Geelong.⁵⁵

The Tier 2 benchmarks for cold-rolled coiled steel, which were used in our preliminary calculations are provided in the Preliminary Calculation Memorandum.

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

In a CVD proceeding, Commerce requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, Commerce may rely on adverse facts available (AFA) to preliminarily find that a financial contribution exists under the alleged program or that the program is specific.⁵⁶ However, where possible, Commerce will rely on the responsive producer’s or exporter’s records to determine the existence and amount of the benefit, to the extent that those records are useable and verifiable.

⁴⁹ *Id.* at 24.

⁵⁰ *Id.* at 25.

⁵¹ *See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010) and accompanying IDM at 22 and Comment 14.

⁵² *See* Benchmark Submission at Exhibit 1.

⁵³ *Id.* at Exhibit 2.

⁵⁴ *See* GOC IQR at 29-30; *see also* 19 CFR 351.511(a)(2)(iv).

⁵⁵ *See* Geelong IQR at Exhibit 18.

⁵⁶ *See, e.g., Hardwood and Decorative Plywood from the People’s Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013), and accompanying IDM at Comment 3.

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) 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 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.”⁵⁷ 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.”⁵⁸

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁵⁹ Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁶⁰ It is Commerce’s practice to consider information to be corroborated if it has probative value.⁶¹ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.⁶² The SAA further emphasizes that Commerce need not prove that the selected facts available are the best alternative information.⁶³ However, Commerce is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.⁶⁴ See “Corroboration of Secondary Information” section for further discussion.

⁵⁷ 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).

⁵⁸ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

⁵⁹ See 19 CFR 351.308(d).

⁶⁰ See SAA at 870.

⁶¹ *Id.*

⁶² *Id.* at 869.

⁶³ *Id.* at 869-870.

⁶⁴ See section 776(c)(2) of the Act.

Finally, under section 776(d) of the Act, when applying AFA, Commerce may use a CVD rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates.⁶⁵ Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the CVD rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the CVD rate reflects an “alleged commercial reality” of the interested party.⁶⁶

Application of Facts Available: The Cold-Rolled Markets are Distorted

The GOC reported that it does not have specific data regarding cold-rolled coiled steel as it is not an industry category of statistics.⁶⁷ Instead, the GOC reported data regarding cold-rolled thin and wide steel strip, which the GOC asserts is the category closest to the requested cold-rolled coiled steel industry.⁶⁸ Because we do not have on the record specific data regarding cold-rolled coiled steel, the use of facts available is warranted pursuant to Section 776(a)(1) of the Act. Given the GOC’s statement that it does not collect such data, we preliminarily determine that the GOC has acted to the best of its ability in responding to our request for information. As facts available, we are preliminarily accepting the data regarding cold-rolled thin and wide steel strip as the only available proxy for data regarding cold-rolled coiled steel.

Application of AFA: Provision of Electricity for LTAR

The GOC did not provide complete responses to Commerce’s questions regarding the alleged provision of electricity for LTAR. These questions solicited information needed to determine whether the provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provides a benefit within the meaning of section 771(5)(E) of the Act, and whether such a provision is specific within the meaning of section 771(5A) of the Act.

In order for Commerce to analyze the financial contribution and specificity of this program, we requested that the GOC provide information regarding the roles of provinces and the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in electricity price adjustments. Specifically, we requested, *inter alia*: Provincial Price Proposals for each province in which the respondent or any company “cross-owned” with the respondent is located for applicable tariff schedules that were in effect during the POR; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POR; the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process; the price adjustment conferences that took place between the NDRC and the provinces, grids and power companies with respect to the creation of all tariff schedules that were applicable to the POR; the cost elements and adjustments that were

⁶⁵ See section 776(d)(1) of the Act.

⁶⁶ See section 776(d)(3) of the Act.

⁶⁷ See GOC IQR at 23.

⁶⁸ *Id.*

discussed between the provinces and the NDRC in the price adjustment conferences; and how the NDRC determines that the provincial level price bureaus have accurately reported all relevant cost elements in their price proposals with respect to generation, transmission and distribution.⁶⁹ 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 POR.

In its initial questionnaire response, the GOC stated that the responsibility for setting electricity sale prices within each Province has moved from the NDRC to the Provincial Pricing Departments and Governments” and that “a competitive system has been established to create prices that are tied to market fluctuations in the coal market and other market influences.”⁷⁰ According to the GOC, “the relevant provincial pricing authorities are required to take into account the overall demand and supply present in their respective electricity markets, as well as the costs of electricity generation and transmission” and that “{t}he differences in these costs as well as other costs like coal prices, among others, are analyzed mainly on a provincial basis.”⁷¹

In response to our request that it provide “all original NDRC Electricity Price Adjustment Notice(s), with English translation, that were in effect during the POR,” the GOC submitted several notices, including 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) {2015 No. 748}” and the “Notice of National Development and Reform Commission on Lowering Coal-fired Electricity On-grid Price and General Industrial and Commercial Electricity Price {2015 No. 3105}.”⁷²

Notice 748 is based upon consultations between the NDRC and the National Energy Administration.⁷³ Article 1 contained therein stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.⁷⁴ Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts. Article 2 indicates that the “{t}he reduction of coal-fired power generation price” would be “mainly used for reducing the price of industrial and commercial electricity.”⁷⁵ Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.⁷⁶ Articles 6 and 7, respectively, indicate that provincial pricing authorities shall “develop and issue specific adjustment plan of electricity price and sales price in accordance with {the} average price

⁶⁹ See Initial Questionnaire at Section II: Electricity Appendix.

⁷⁰ See GOC IQR at 34.

⁷¹ *Id.*

⁷² *Id.*, at Exhibits ELEC-2, ELEC-6, and ELEC-7. Aside from these, the GOC submitted notices that, for example, eliminated electricity surcharges that resulted in the lowering of electricity prices, cancelled special funds for industrial enterprises; and another which reduced construction funds for water conservancy projects. See Exhibits ELEC-2 and ELEC-8 through ELEC-14.

⁷³ *Id.* at Exhibit ELEC-7.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

adjustment standards of Annex 1, and reported to {the NDRC} for the record,” and that the “above price adjustment should be implemented since April 20, 2015.”⁷⁷ Finally, Article 10 directs that, “{l}ocal price departments shall organize and arrange carefully to put in place the electricity price adjustment measures.”⁷⁸

Similarly, NDRC Notice 3105, is also based upon consultations between the NDRC and the National Energy Administration, directs additional price reductions, and stipulations at Articles II and X, that local price authorities shall implement in time the price reductions included in its Annex and report resulting prices to NDRC.⁷⁹ Consequently, both Notice 748 and Notice 3105 explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Neither Notice 748 nor Notice 3105 explicitly stipulates that relevant provisional pricing authorities determine and issue electricity prices within their own jurisdictions, as the GOC states to be the case.⁸⁰ Instead, both notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices.⁸¹

With respect to price derivation at the provincial level, Commerce requested information regarding the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process. Specifically, Commerce asked how increases in cost elements led to retail price increases, the derivations of those cost increases, how cost increases were calculated, and how cost increases impacted final prices. The GOC stated that the “NDRC establishes the specific formulas, including the variable factors that need to be considered by the provincial pricing authority in the calculation of the change of electricity on-grid price.”⁸² Furthermore, “it is for the provincial authorities to make specific calculations of price changes using the specific data of their own provinces based on the variable factors provided in the formula {established by the NDRC}.”⁸³ In reference to a specific electricity price adjustment that took place since mid-2016, the GOC stated that “provincial agencies (e.g., provincial price bureaus or reform and development commissions) are delegated authority to prepare and publish the price adjustment packages/schedules for their own jurisdictions respectively, and there are no provincial price proposals created and there is no NDRC review” and that the “relevant provincial agencies are only required to provide their final adjusted electricity prices schedules to the NDRC for its records”⁸⁴ However, the GOC failed to explain, in detail, how the pricing values indicated in the adjustments were derived, including the specific factors or information relied upon by the NDRC.

Commerce additionally requested that the GOC explain, for each province in which a respondent or cross-owned company is located, how increases in labor costs, capital expenses, and transmission and distribution costs are factored into Price Proposals, and how cost element

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at Exhibit ELEC-6.

⁸⁰ *Id.* at Exhibits ELEC-6 and ELEC-7.

⁸¹ *Id.*

⁸² *Id.* at Exhibit ELEC-2.

⁸³ *Id.*

⁸⁴ *Id.*

increases, and final price increases were allocated across the province and across tariff end-user categories. The GOC failed to provide a complete response to this request. The GOC stated that “these questions relating to Price Proposals are no longer applicable.”⁸⁵ In a supplemental questionnaire, we requested that the GOC explain how the NDRC monitors compliance with the price changes directed in Notice 748 and what action the NDRC would take were any province not to comply with the directed price changes.⁸⁶ The GOC’s response failed to explain what actions the NDRC would take in the event of non-compliance with a directed price change.⁸⁷ The GOC did note that “the electricity prices are determined by the provincial governments within their jurisdictions. The NDRC’s role is to review the electricity pricing schedules submitted by the provincial governments.”⁸⁸

As explained above, the GOC did not fully explain the roles and nature of the cooperation between the NDRC and provinces in deriving electricity price adjustments. The information provided by the GOC indicates that despite its claim that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, the NDRC continues to play a major role in setting and adjusting prices. Furthermore, the GOC failed to explain both the derivation of price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves.

Consequently, we preliminarily determine, in accordance with sections 776(a)(1), (a)(2)(A) and (a)(2)(C) of the Act, that information necessary to our analysis of financial contribution and specificity is not available on the record; that the GOC withheld information requested by Commerce; and, that the GOC significantly impeded this proceeding. Thus, we must rely on “facts available” in making our preliminary determination.⁸⁹ 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.⁹⁰ In applying AFA, we find that the GOC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We are also relying on AFA in selecting the benchmark for determining the existence and amount of the benefit.⁹¹ The benchmark rates we selected are derived from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* “Provision of Electricity for LTAR,” below.

Application of AFA: Export Buyer’s Credits

Commerce has determined that the use of AFA is warranted in determining the countervailability of the Export Buyer’s Credit program because the GOC did not provide the requested information needed to allow Commerce to analyze this program fully. In its questionnaire

⁸⁵ *Id.*

⁸⁶ *See* GOC SQR at 2-3.

⁸⁷ *See* GOC SQR at 6-7.

⁸⁸ *See* GOC IQR at Electricity Appendix.

⁸⁹ *See* section 776(a)(2)(A) of the Act.

⁹⁰ *See* section 776(b) of the Act.

⁹¹ *See* section 776(b)(4) of the Act.

responses, the GOC claimed that none of the U.S. customers of Geelong used export buyer's credits from the China Export-Import Bank (China Ex-Im Bank) during the POR.⁹² Information on the record indicates that the GOC revised this program in 2013.⁹³ In response to our request that it provide the documents pertaining to the 2013 program revision, the GOC refused to provide them, stating that the China Ex-Im Bank "has confirmed to the GOC that its 2013 guidelines are internal to the bank, non-public, and not available for release. Although the GOC has used its best efforts in attempting to obtain a copy of the document requested by Commerce, the GOC has no authority or right to force the Ex-Im Bank to provide a copy of the 2013 guidelines, and therefore is unable to provide a copy to Commerce."⁹⁴ Through its response to Commerce's supplemental questionnaire, the GOC 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 program revision because information on the record of this proceeding indicated that the 2013 program revision implemented important program changes. For example, the 2013 Revisions may have eliminated a USD 2 million contract minimum associated with this lending program.⁹⁵ By refusing to provide the requested information, the GOC impeded Commerce's understanding of how this program operates.

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 China Ex-Im Bank.⁹⁶ Specifically, the record information indicates that customers can open loan accounts for disbursements through this program with other banks.⁹⁷ The funds are first sent from the China Ex-Im Bank to the importer's account, which could be at the China Ex-Im Bank or other banks, and that these funds are then sent to the exporter's bank account.⁹⁸ 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 program revision, which provide internal guidelines for how this program is administered by the China Ex-Im Bank, impeded Commerce's ability to conduct its investigation of this program.

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 program revision. 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. The GOC has not provided sufficient

⁹² See GOC IQR at 35.

⁹³ See GOC IQR at Exhibit EBC-1.

⁹⁴ See GOC SQR at 1.

⁹⁵ See Memorandum, "Certain Tool Chests and Cabinets from the People's Republic of China: Placing Information on the Record," dated concurrently with this memorandum at Attachment 5.

⁹⁶ See GOC IQR at Exhibit EBC-1.

⁹⁷ *Id.*

⁹⁸ *Id.*

information to determine whether the China Ex-Im Bank limits the provision of Export Buyer's Credits to business contracts exceeding USD 2 million. Such information is critical to understanding how the Export Buyer's Credits program operates and is critical to Commerce's program use determination.

The GOC SQR indicated the GOC's refusal to provide information about the internal administration of the program.⁹⁹ The GOC is the only party that can answer questions about the internal administration of this program, and, thus, absent the requested information, the GOC's and respondent company's claims of non-use of this program are not verifiable. Therefore, we determine that the GOC has not cooperated to the best of its ability and, as AFA, find that the respondent used and benefited from this program.

Consistent with section 776(d) of the Act and our established practice, we selected the highest calculated rate for the same or similar program as AFA.¹⁰⁰ When selecting rates in an administrative review, we first determine if there is an identical program from any segment of the proceeding and use the highest calculated rate for the identical program (excluding *de minimis* rates). If no such identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) within the same proceeding and apply the highest calculated rate for the similar/comparable program, excluding *de minimis* rates. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program in any CVD case involving the same country, but we do not use a rate from a program if the industry in the proceeding cannot use that program.¹⁰¹ On this basis, we are applying an AFA rate of 0.58 percent *ad valorem*, the rate determined for Jiangsu Tongrun Equipment Technology Co., Ltd., for preferential loans in the investigation of this proceeding.¹⁰² In accordance with section 776(c)(2) of the Act, we do not need to corroborate this rate, because this countervailing duty rate was applied in a separate segment of this proceeding.

Application of AFA: Grants

Geelong reported receiving grants under the Technology Improvement program, the Engineering Center program, the Unemployment Insurance to Support Business Stability program, the Export Subsidies (VAT loss) program, and the Enterprise Salary Survey Subsidy program.¹⁰³ In its responses to our question regarding this government assistance reported by Geelong, the GOC did not provide responses to the Standard Questions Appendix as requested in the Initial Questionnaire.¹⁰⁴ In response to the reiteration of our request that the GOC respond to these

⁹⁹ See GOC SQR at 1.

¹⁰⁰ See, e.g., *Shrimp China Final* 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").

¹⁰¹ See *Shrimp China Final* IDM at 13-14.

¹⁰² See *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.

¹⁰³ See Geelong IQR at 16 and 28-29.

¹⁰⁴ See GOC IQR at 7 and 40.

questions with respect to the subsidies reported by Geelong, the GOC again failed to provide responses to the Standard Questions Appendix.¹⁰⁵

Given the GOC's incomplete responses, we preliminarily determine that the use of facts available pursuant to sections 776(a)(1) and 776(a)(2)(A) of the Act is warranted in determining the countervailability of these apparent subsidies reported by Geelong. First, necessary information regarding whether these programs provide a financial contribution within the meaning of section 771(5)(D) of the Act, and whether these programs are specific within the meaning of section 771(5A) of the Act, is not on the record of this review.¹⁰⁶ Further, the GOC withheld information that was requested of it by not providing information regarding these subsidies in response to our requests for information noted above.¹⁰⁷ Because the GOC expressly declined to provide the requested information, we find that the GOC failed to respond to the best of its ability regarding our questions on other, reported subsidies provided by the GOC, and we determine that an adverse inference is warranted with respect to these subsidies pursuant to section 776(b) of the Act. As a result, we are finding that, using AFA, these other subsidies reported by Geelong provide a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. To preliminarily determine whether benefits were provided as a result of these subsidies within the meaning of section 771(5)(E) of the Act, Commerce relied on the usage information provided by Geelong.

Application of AFA: Other Subsidies

Geelong reported receiving assistance with respect to our question, “{d}id your government (or entities owned directly, in whole or in part, by your government or any provincial or local government) provide, directly or indirectly, any other forms of assistance to your company between September 15, 2008, and the end of the POR?”¹⁰⁸ In its responses to our question regarding this government assistance reported by Geelong, the GOC stated that “an answer to this question is premature absent a more direct inquiry supported by credible evidence and the initiation of a discrete investigation by Commerce.”¹⁰⁹ In response to the reiteration of our request that the GOC respond to these questions with respect to the subsidies reported by Geelong, the GOC did not provide responses to the Standard Questions Appendix with respect to these programs.¹¹⁰

Given the GOC's responses, we preliminarily determine that the use of facts available pursuant to sections 776(a)(1) and 776(a)(2)(A) of the Act is warranted in determining the countervailability of these apparent subsidies reported by Geelong. First, necessary information regarding whether these programs provide a financial contribution within the meaning of section 771(5)(D) of the Act, and whether these programs are specific within the meaning of section 771(5A) of the Act, is not on the record of this review.¹¹¹ Further, the GOC withheld

¹⁰⁵ See GOC SQR at 7.

¹⁰⁶ See section 776(a)(1) of the Act.

¹⁰⁷ See section 776(a)(2)(A) of the Act.

¹⁰⁸ See Geelong IQR at 34.

¹⁰⁹ See GOC IQR at 52-53.

¹¹⁰ See GOC SQR at 8.

¹¹¹ See section 776(a)(1) of the Act.

information that was requested of it by not providing information regarding these subsidies in response to our requests for information noted above.¹¹² Because the GOC expressly declined to provide the requested information, we find that the GOC failed to respond to the best of its ability regarding our questions on other, reported subsidies provided by the GOC, and we determine that an adverse inference is warranted with respect to these subsidies pursuant to section 776(b) of the Act. As a result, we are finding that, using AFA, these other subsidies reported by Geelong provide a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. To preliminarily determine whether benefits were provided as a result of these other subsidies within the meaning of section 771(5)(E) of the Act, Commerce relied on the usage information provided by Geelong.

VIII. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined To Be Countervailable

1. Export Buyer's Credits

Commerce determined this program to be countervailable in the original investigation based on AFA.¹¹³ Through this program, the Ex-Im Bank provides loans at preferential rates for the purchase of exported goods from China. As explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, relying again upon AFA, we determine that this program provides a countervailable subsidy and that Geelong used this program during the POR. On this basis, we determine a net countervailable subsidy rate of 0.58 percent *ad valorem*, the rate determined for Jiangsu Tongrun Equipment Technology Co., Ltd., for preferential loans in the investigation of this proceeding.¹¹⁴

2. Provision of Inputs for LTAR

a. Provision of Cold-Rolled Coiled Steel for LTAR

In the investigation, we determined that cold-rolled coiled steel was provided for LTAR and that a benefit existed for each respondent in the amount of the difference between the benchmark prices and the prices each respondent paid.¹¹⁵ Our analysis of the information provided by the GOC indicates that most of the producers of cold-rolled coiled steel purchased by Geelong are state-owned enterprises (SOEs). Commerce has previously explained that majority state-owned enterprises in China possess, exercise, or are vested with government authority.¹¹⁶ The GOC exercises meaningful control over these entities and used them to effectuate its goals of

¹¹² See section 776(a)(2)(A) of the Act.

¹¹³ See *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017) (*Tool Chests China*), and accompanying IDM at 9.

¹¹⁴ *Id.* at 8-9.

¹¹⁵ See 19 CFR 351.511(a).

¹¹⁶ See Additional Documents Memorandum (including the Public Bodies Memorandum detailing Commerce's analysis of SOEs in the Chinese economy).

upholding the socialist market economy, allocating resources and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that most producers of the input under examination supplied to the respondent are “authorities” within the meaning of section 771(5)(B) of the Act and that the respondent 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. Further, no new information has been presented on the record of this review to call into question our findings of specificity from the investigation. Therefore, we continue to find that this program is countervailable. As discussed in the Preliminary Calculation Memorandum, we preliminarily determine that not all producers of the cold-rolled coiled steel purchased by Geelong are SOEs. As a result, we did not countervail purchases from producers that are not SOEs.

To determine the benefit from this program, we took the monthly benchmark for cold-rolled coiled steel, added import duties, VAT, and other delivery charges, and subtracted the reported amount paid. We then multiplied the per-unit difference by the reported volume to obtain the total benefit for each transaction. If the benchmark adjusted for import duties, VAT, and other delivery charges was less than the reported price paid, we calculated a benefit for that transaction of zero. We then summed the total benefit for each transaction to obtain a total benefit for Geelong for the POR. To determine the subsidy rate for inputs provided for LTAR, we divided the total benefit for Geelong by Geelong’s total sales.

On this basis, we preliminarily determine a net countervailable *ad valorem* subsidy rate of 0.16 percent for Geelong in 2017 and a net countervailable *ad valorem* subsidy rate of 0.01 percent for Geelong in 2018.¹¹⁷

b. Provision of Electricity for LTAR

In the original investigation, Commerce determined this program to be countervailable based, in part, on the application of AFA.¹¹⁸ For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the GOC’s provision of electricity in part on AFA. For these preliminary results, we determine that Geelong received a countervailable subsidy from electricity provided for LTAR.

As described above in detail, the GOC did not provide certain information requested regarding its provision of electricity to the company respondent and, as a result, we determine, as AFA, that the GOC is providing a financial contribution that is specific within the meaning of sections 771(5)(D)(iii) and 771(5A)(D) of the Act, respectively. To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on Geelong’s reported consumption volumes and rates paid. We compared the rates paid by Geelong to the benchmark rates, which, as discussed above, are the highest rates charged in China during the POR. We made separate comparisons by price category (*e.g.*, great industry peak, basic electricity, *etc.*). We multiplied the difference between the benchmark and the price paid by the consumption amount reported for that month and price category. We then calculated the total benefit during the POR for Geelong by summing the difference between the benchmark prices and the prices paid by Geelong.

¹¹⁷ See Preliminary Calculation Memorandum.

¹¹⁸ See *Tool Chests China* IDM at 10.

To calculate the electricity benchmark, in accordance with 19 CFR 351.511(a)(2), we selected the highest rates in China for the user category of the respondent (*e.g.*, large industrial users) for the non-seasonal general, peak, normal, and valley ranges, as provided in the electricity tariff schedules submitted by the GOC.¹¹⁹ This benchmark reflects an adverse inference, which we drew as a result of the GOC's failure to cooperate by not acting to the best of its ability to provide requested information about its provision of electricity in this review.¹²⁰

To calculate the subsidy rate, we divided the benefit amount by Geelong's total sales. On this basis, we preliminarily determine a net countervailable *ad valorem* subsidy rate of 0.16 percent for Geelong in 2017 and a net countervailable *ad valorem* subsidy rate of 0.11 percent for Geelong in 2018.¹²¹

3. Income Tax Deductions for High- and New-Technology Enterprises

Pursuant to Article 28.2 of the Enterprise Income Tax Law (EITL) of China, the government provides for the reduction of the corporate income tax rate from 25 percent to 15 percent for enterprises that are recognized as a High or New Technology Enterprise (HNTE).¹²² The conditions for an enterprise to be recognized as an HNTE are set forth in Article 93 of the Regulation on the Implementation of the Enterprise Income Tax Law.¹²³ Article 28.2 of the EITL authorizes a reduced income tax rate of 15 percent for HNTEs.¹²⁴ Although we did not countervail this program in the original investigation of this proceeding, we have previously countervailed this program in other proceedings.¹²⁵

We preliminarily determine that this program provides a countervailable subsidy. This income tax deduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, HNTEs, and, thus, is *de jure* specific under section 771(5A)(D)(i) of the Act.

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

¹¹⁹ See the GOC May 4, 2017 IQR at Exhibit E.29.

¹²⁰ See "Application of AFA: Provision of Electricity for LTAR" section, above.

¹²¹ See Preliminary Calculation Memorandum.

¹²² See GOC IQR at Exhibit TAX-1.

¹²³ See GOC IQR at Exhibit TAX-2.

¹²⁴ See GOC IQR at Exhibit TAX-1.

¹²⁵ See, *e.g.*, *Aluminum Extrusions from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent To Rescind, in Part; 2014*, 81 FR 38137 (June 13, 2016), and accompanying Preliminary Decision Memorandum at 43-45 (unchanged in final; 81 FR 92778, December 20, 2016).

On this basis, we preliminarily determine a net countervailable *ad valorem* subsidy rate of 0.19 percent for Geelong in 2017 and a net countervailable *ad valorem* subsidy rate of 0.24 percent for Geelong in 2018.¹²⁶

4. Grants

Geelong reported receiving certain grants which we countervailed in the investigation.¹²⁷ These grant programs are a) Technology Improvement, b) Engineering Center, and c) Unemployment Insurance to Support Business Stability. The GOC did not indicate that there were any changes to any of these programs.¹²⁸ Accordingly, consistent with the investigation, we preliminarily determine that these grants confer countervailable subsidies. To calculate the *ad valorem* subsidy rate for these grants, Commerce divided the benefit conferred under each of these programs during the POR by Geelong's total sales.

For the Technology Improvement grant, we calculated net countervailable *ad valorem* subsidy rates for Geelong of 0.02 percent in 2017 and 0.11 percent in 2018.¹²⁹

For the Engineering Center grant, we calculated a net countervailable *ad valorem* subsidy rate of 0.02 percent for Geelong in 2018.¹³⁰

For the Unemployment Insurance to Support Business Stability grant, we calculated a net countervailable *ad valorem* subsidy rate of 0.01 percent for Geelong in 2018.¹³¹

Other Subsidy Programs

Geelong reported that it received various other grants from the GOC during the AUL.¹³² We preliminarily determine that the following grants confer a financial contribution as a direct transfer of funds under section 771(5)(D)(i) of the Act. For the reasons explained in the "Application of AFA: Other Subsidies" section above, we are basing our preliminary determination regarding these grants on AFA, in part. Therefore, we determine that the following grants confer a financial contribution as a direct transfer of funds under section 771(5)(D)(i) of the Act, and are specific either under section 771(5A)(B) or 771(5A)(D) of the Act (as appropriate, depending on whether the respondent reported the grant as export-related or as a domestic subsidy). We find that Geelong received the following non-recurring grants during the POR or AUL period:

- Hi-tech enterprise certification
- Guangdong fair trade subsidy for imports and exports in 2017
- Zhongshan fair trade subsidy for imports and exports in 2017

¹²⁶ See Preliminary Calculation Memorandum.

¹²⁷ See Geelong IQR at 16.

¹²⁸ See GOC IQR at 7.

¹²⁹ See Preliminary Calculation Memorandum.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² See Geelong IQR at 34 and Exhibit 23.

- ERP improvement for Year 2016
- 2017 provincial-level enterprise technological transformation (equipment renewal) project subsidy

To calculate the benefit received under these programs, Commerce followed the methodology described in 19 CFR 351.524. In accordance with 19 CFR 351.524(b)(2), we determine whether to allocate the non-recurring benefit from these grants over the AUL by dividing the approved grant amount by the company's total sales in the year of approval. If the approved amount is less than 0.5 percent of the company's total sales, we expensed the amounts received under the grants in the respective years received. To calculate the *ad valorem* subsidy rate for these grants, Commerce divided the benefit allocable to the POR by Geelong's POR total sales. Based on the methodology outlined above, we calculated net countervailable *ad valorem* subsidy rates for Geelong of 0.16 percent in 2017 and 0.07 percent in 2018 for these grants.¹³³

B. Programs Preliminarily Determined Not to Confer a Measurable Benefit

1. Income Tax Deductions for Research and Development (R&D) Expenses Under the Enterprise Income Tax Law

In the original investigation, Commerce determined that that this program constitutes a countervailable subsidy.¹³⁴ This income tax deduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).¹³⁵ We also found that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus, is specific under section 771(5A)(D)(i) of the Act.¹³⁶ In a CVD administrative review, we do not revisit past determinations of countervailability, absent new evidence, and none has been presented here.¹³⁷ Therefore, we continue to find that this program provides a countervailable subsidy.

To calculate the benefit from this program to Geelong in 2018, the year in which Geelong used this program, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax Geelong would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by Geelong's total 2018 sales.

¹³³ See Preliminary Calculation Memorandum.

¹³⁴ See *Tool Chests China* IDM at 9.

¹³⁵ See *Certain Tool Chests and Cabinets from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 43331 (September 15, 2017), and accompanying Preliminary Decision Memorandum at 35-36 (unchanged in *Tool Chests China*, 82 FR 56582, November 29, 2017).

¹³⁶ *Id.*

¹³⁷ See *Magnola Metallurgy, Inc. v. United States*, 508 F.3d 1349 (Fed. Cir. 2007); 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) (*Solar Cells from China*) and accompanying IDM at 27.

On this basis, we preliminarily determine a countervailable *ad valorem* subsidy rate of less than 0.005 percent for Geelong in 2018 and, thus, Geelong received no measurable benefit for this program.¹³⁸

2. Enterprise Salary Subsidy

Geelong reported receiving the Enterprise Salary Survey Subsidy, which we countervailed in the investigation.¹³⁹ The GOC did not indicate that there were any changes to this program.¹⁴⁰ Accordingly, consistent with the investigation, we preliminarily determine that this program confers a countervailable subsidy. To calculate the *ad valorem* subsidy rate for this grant, we divided the benefit conferred under this program during the POR by the Geelong's total sales.

We calculated a countervailable *ad valorem* subsidy rate of less than 0.005 percent for Geelong in 2018 and, thus, Geelong received no measurable benefit for this program.¹⁴¹

C. Programs Preliminarily Determined to Be Not Used

1. Policy Loans to the Tool Chests Industry
2. Provision of Hot-Rolled Coiled Steel for LTAR
3. GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands
4. Small- And Medium-Sized Enterprises (SME) International Market Exploration/Development Fund
5. Training Cost Reimbursement from Productivity Council
6. Rent Refund
7. Export Subsidies (Value-Added Tax (VAT) loss)
8. Refund of social insurance
9. IPO Income Tax Subsidy
10. 2013 Industrial Economy Transformation and Escalation Technology Innovation Subvention
11. Traffic Police Team 779 Elimination Subsidy
12. Municipal Industrial Economy Transformation and Development Subvention Energy Saving and Circular Economy Project
13. QFII Equity Distribution Income Tax Withhold and Collected
14. 2014 Patent
15. Export Loans from Chinese State-Owned Banks
16. Export Credit Guarantees
17. Provincial Government of Guangdong Tax Offset for R&D
18. Import Tariff and VAT Reductions for Foreign-Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
19. VAT Refunds for FIEs on Purchases of Domestically-Produced Equipment

¹³⁸ See Preliminary Calculation Memorandum.

¹³⁹ See Geelong IQR at 16.

¹⁴⁰ See GOC IQR at 7.

¹⁴¹ See Preliminary Calculation Memorandum.

- 20. Special Fund for Energy Saving Technology Reform
- 21. SME Technology Innovation Fund
- 22. Export Assistance Grants
- 23. Export Sellers Credits from China Ex-Im
- 24. Hi-tech products certification (ZS)
- 25. ZS Enterprise R&D center (Xiaolan)
- 26. Hi-tech products certification (Xiaolan)
- 27. Hi-tech enterprise certification (Xiaolan)
- 28. Hi-tech enterprise audit fee refund
- 29. Energy audit cost subsidy
- 30. Hi-tech products certification (ZS)
- 31. Guangdong Province Labor Cost Monitoring for Year 2018
- 32. 2018 subsidy for science and technology insurance

IX. CONCLUSION

Based on our analysis, we recommend adopting the above positions. If this recommendation is accepted, we will publish the preliminary results of this review in the *Federal Register*.

Agree

Disagree

10/3/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance