



C-570-017  
Administrative Review  
**Public Document**  
POR: 01/01/2017-12/31/2017  
E&C/VII: AH

October 10, 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 Results of the  
Administrative Review of the Countervailing Duty Order on  
Certain Passenger Vehicle and Light Truck Tires from the People's  
Republic of China; and Rescission, in Part, 2017

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China).<sup>1</sup> The period of review (POR) is January 1, 2017 through December 31, 2017. Commerce selected Cooper (Kunshan) Tire Co., Ltd. (Cooper) and Shandong Longyue Rubber Co., Ltd. (Longyue), as mandatory respondents.<sup>2</sup>

If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), we will issue the final results no later than 120 days after the publication of these preliminary results.

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<sup>1</sup> See *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 47902 (August 10, 2015) (CVD Order).

<sup>2</sup> See Memorandum, "Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Selection of Respondents for Individual Examination," dated February 8, 2019 (Respondent Selection Memorandum).



## II. BACKGROUND

On August 10, 2015, Commerce published the *CVD Order* on passenger tires from China.<sup>3</sup> On August 7, 2018, we published a notice of “Opportunity to Request Administrative Review” of the *CVD Order*.<sup>4</sup> Between August 15, 2018, and August 31, 2018, Commerce received timely requests to conduct an administrative review of the *CVD Order* of the interested parties listed in Appendix I.

On October 4, 2018, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published in the *Federal Register* a notice of initiation of an administrative review of the *CVD Order* for 46 producers/exporters for the POR.<sup>5</sup> For a list of these companies, please see Appendix I to this Decision Memorandum. In the *Initiation Notice*, we stated that, in the event we limited the number of respondents for individual examination in this administrative review, we intended to select respondents based on CBP data for U.S. imports during the POR.<sup>6</sup> On November 27, 2018, we released CBP import data under the Administrative Protective Order (APO) and invited interested parties to submit comments.<sup>7</sup> Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>8</sup> On February 8, 2018, Commerce issued its Respondent Selection Memorandum.<sup>9</sup> We selected the two Chinese producers/exporters accounting for the largest percentage of POR entries of subject merchandise, based on CBP data, as mandatory respondents: Cooper and Longyue.<sup>10</sup>

We sent a CVD questionnaire to the Government of China (GOC) on March 1, 2019, with instructions to forward a copy to the respondent companies identified in the cover letter.<sup>11</sup> Cooper and Longyue filed timely responses to the CVD questionnaire, responding to the portion of Section III of the questionnaire identifying affiliated companies on March 15, 2019, and March 25, 2019, respectively.<sup>12</sup> On June 10, 2019, Commerce extended the deadline for these

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<sup>3</sup> See *CVD Order*.

<sup>4</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 38682 (August 7, 2018).

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 50077 (October 4, 2018). (*Initiation Notice*).

<sup>6</sup> See *Initiation Notice* at the section, “Respondent Selection.”

<sup>7</sup> See Memorandum, “Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People’s Republic of China; Customs and Border Protection Entry Data,” dated November 27, 2018.

<sup>8</sup> See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

<sup>9</sup> See Respondent Selection Memorandum.

<sup>10</sup> *Id.* at 1.

<sup>11</sup> See Commerce Letter, “Countervailing Duty Questionnaire,” dated December 15, 2017 (Initial CVD Questionnaire).

<sup>12</sup> See Cooper’s March 15, 2019 Affiliation Response and Longyue’s March 25, 2019 Affiliation Response.

preliminary results by 120 days, to October 10, 2019.<sup>13</sup> Cooper submitted the remainder of Section III of the initial questionnaire on April 18, 2019, and Longyue submitted the remainder of Section III of the initial questionnaire on April 18, 2019.<sup>14</sup> The GOC filed its timely response to Section II of the CVD questionnaire on April 18, 2019.<sup>15</sup> On May 9, 2019, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union, AFL-CIO (the petitioner) submitted a new subsidy allegation and uncreditworthiness allegation for Longyue.<sup>16</sup> Commerce sent Cooper and Longyue supplemental questionnaires on June 19, 2019.<sup>17</sup> Longyue and Cooper filed a timely responses to the supplemental questionnaires on June 27, 2019,<sup>18</sup> and July 11, 2019,<sup>19</sup> respectively. On July 17, 2019, Commerce initiated a new subsidy allegation and uncreditworthiness investigation regarding Longyue.<sup>20</sup> On July 22, 2019, Commerce issued New Subsidy Allegation Questionnaires to the GOC and Cooper, and issued a new subsidy allegation and creditworthiness questionnaire to Longyue.<sup>21</sup> The GOC, Cooper and Longyue submitted responses to the questionnaires on August 8, 2019.<sup>22</sup> Commerce sent an additional supplemental questionnaire to Longyue on September 6, 2019.<sup>23</sup> Longyue filed a timely response on September 17, 2019.<sup>24</sup>

### III. PARTIAL RESCISSION OF REVIEW

For those companies for which we received timely withdrawals of the requests for review (*i.e.*, Guangrao Taihua International Trade Co., Ltd., Qingdao Keter International Co., Limited, Qingdao Odyking Tyre Co., Ltd., Qinzhou Detai International Trading Co., Ltd., Shengtai Group Co., Ltd., Shouguang Firemax Tyre Co., Ltd., Pirelli Tyre Co., Ltd., Shandong New Continent Tire Co., Ltd., Shandong Guofeng Rubber Plastics Co., Ltd., Qingdao Jinhaoyang International Co., Ltd., Maxon Int'l Co., Limited), we are rescinding this administrative review, pursuant to 19 CFR 351.213(d)(1), because no other party requested review of these companies. For these

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<sup>13</sup> See Memorandum, “Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Extension of Deadline for Preliminary Results,” dated June 10, 2019.

<sup>14</sup> See Cooper’s April 18, 2019 Initial Questionnaire Response (Cooper’s April 18, 2019 IQR) and Longyue’s April 18, 2019 Initial Questionnaire Response (Longyue’s April 18, 2019 IQR).

<sup>15</sup> See GOC’s April 18, 2019 Initial Questionnaire Response (GOC April 18, 2019 IQR).

<sup>16</sup> See Petitioner’s Letter, “Third Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from China (C-570-017)-Petitioner’s New Subsidy Allegation and Uncreditworthiness Allegation for Shandong Longyue Rubber Co., Ltd.” (Petitioners NSA and UCW) dated May 9, 2019.

<sup>17</sup> See Commerce Letters, “Supplemental Questionnaire for Cooper,” dated June 19, 2019, and “Supplemental Questionnaire for Longyue,” dated June 19, 2019.

<sup>18</sup> See Longyue’s June 27, 2019 Supplemental Questionnaire Response (Longyue’s June 27, 2019 SQR).

<sup>19</sup> See Cooper’s July 11, 2019 Supplemental Questionnaire Response (Cooper July 19, 2019 SQR).

<sup>20</sup> See Memorandum, “Decision Memorandum on New Subsidy Allegation and Evaluation of Uncreditworthiness Allegation,” dated July 17, 2019.

<sup>21</sup> See Commerce’s Letters, “Passenger Vehicle and Light Truck Tires from the People’s Republic of China: New Subsidy Allegation Questionnaire,” and “Passenger Vehicle and Light Truck Tires from the People’s Republic of China: New Subsidy Allegation and Creditworthiness Questionnaire,” dated July 22, 2019.

<sup>22</sup> See GOC’s August 8, 2019 New Subsidy Allegation Supplemental Questionnaire Response (GOC’s August 8, 2019 NSA SQR), Cooper’s August 8, 2019 New Subsidy Allegation Supplemental Questionnaire Response (Cooper’s August 8, 2019 NSA SQR) and Longyue’s August 8, 2019 New Subsidy Allegation and Creditworthiness Response (Longyue’s August 8, 2019 NSA UCW SQR).

<sup>23</sup> See Commerce Letter, “Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Third Supplemental for Shandong Longyue,” dated September 6, 2019.

<sup>24</sup> See Longyue’s September 17, 2019 Third Supplemental Response (Longyue’s September 17, 2019 Third SQR).

companies, countervailing duties shall be assessed at rates equal to the rates of cash deposits for estimated countervailing duties required at the time of entry, or withdrawn from warehouse, for consumption, during the period January 1, 2017 through December 31, 2017, in accordance with 19 CFR 351.212(c)(2).

#### **IV. NON-SELECTED COMPANIES UNDER REVIEW**

The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation.

Section 705(c)(5)(A)(i) of the Act instructs Commerce as a general rule to calculate an all-others rate using the weighted average of the subsidy rates established for the producers/exporters individually examined, excluding any zero, *de minimis*, or rates based entirely on facts available. In this review, the preliminary subsidy rates calculated for Cooper and Longyue are above *de minimis* and are not based entirely on facts available. Therefore, for the companies for which a review was requested that were not selected as mandatory company respondents, and for which we did not receive a timely request for withdrawal of review, and which we are not finding to be cross-owned with the mandatory company respondents, we are preliminarily basing the subsidy rates on the rates calculated for Cooper and Longyue. For a list of these companies, please see Appendix II to this Decision Memorandum.

#### **V. SCOPE OF THE ORDER**

The scope of this order is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by this order may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:

P - Identifies a tire intended primarily for service on passenger cars

LT- Identifies a tire intended primarily for service on light trucks

Suffix letter designations:

LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service.

All tires with a “P” or “LT” prefix, and all tires with an “LT” suffix in their sidewall markings are covered by this investigation regardless of their intended use.

In addition, all tires that lack a “P” or “LT” prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope.

Specifically excluded from the scope are the following types of tires:

(1) racing car tires; such tires do not bear the symbol “DOT” on the sidewall and may be marked with “ZR” in size designation;

(2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the Tire and Rim Association Year Book;

(3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;

(4) non-pneumatic tires, such as solid rubber tires;

(5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire’s sidewall are listed in Table PCT-1B (“T” Type Spare Tires for Temporary Use on Passenger Vehicles) of the Tire and Rim Association Year Book,

(b) the designation “T” is molded into the tire’s sidewall as part of the size designation, and,

(c) the tire’s speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed is 81 MPH or a “M” rating;

(6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following conditions:

- (a) the size designation molded on the tire's sidewall is listed in the ST sections of the Tire and Rim Association Year Book,
- (b) the designation "ST" is molded into the tire's sidewall as part of the size designation,
- (c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is "For Trailer Service Only" or "For Trailer Use Only",
- (d) the load index molded on the tire's sidewall meets or exceeds those load indexes listed in the Tire and Rim Association Year Book for the relevant ST tire size, and
- (e) either
  - (i) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed does not exceed 81 MPH or an "M" rating; or
  - (ii) the tire's speed rating molded on the sidewall is 87 MPH or an "N" rating, and in either case the tire's maximum pressure and maximum load limit are molded on the sidewall and either
    - (1) both exceed the maximum pressure and maximum load limit for any tire of the same size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book; or
    - (2) if the maximum cold inflation pressure molded on the tire is less than any cold inflation pressure listed for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book, the maximum load limit molded on the tire is higher than the maximum load limit listed at that cold inflation pressure for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book;
- (7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:
  - (a) the size designation and load index combination molded on the tire's sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the Tire and Rim Association Year Book,
  - (b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is "Not For Highway Service" or "Not for Highway Use",
  - (c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the Tire and Rim Association Year Book, and the rated speed does not exceed 55 MPH or a "G" rating, and
  - (d) the tire features a recognizable off-road tread design.

The products covered by the order are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

## **VI. DIVERSIFICATION OF CHINA'S ECONOMY<sup>25</sup>**

Commerce has placed the following excerpts from the *China Statistical Yearbook* from the National Bureau of Statistics of China on the record of this review.<sup>26</sup> 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 the PRC. The industrial sector in the PRC alone is comprised of 37 listed industries and economic activities, indicating the diversification of the economy.

## **VII. 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 fourteen years. No interested party has challenged the use of a fourteen-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 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

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<sup>25</sup> In accordance with Section 701(f) of the Act, Commerce continues to apply CVD law to China.

<sup>26</sup> See Memorandum, “Public Bodies Analysis Memorandum,” dated September 10, 2019 (Public Bodies Analysis Memorandum).

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.<sup>27</sup>

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.<sup>28</sup> 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 following companies.

### *Cooper*

Cooper is a wholly-owned subsidiary of Cooper Tire and Rubber Company (CTRC). Additionally, Cooper reported affiliations with Cooper Tire Asia-Pacific (Shanghai) Trading Co., Ltd. and Cooper Tire (China) Investment Co. Ltd. (CTIC), both wholly-owned subsidiaries of CTRC, and affiliation with Qingdao Ge Rui Da Rubber Co., Ltd. (GRT), which is sixty percent owned by CTIC.<sup>29</sup> These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of common ownership. Cooper reported purchases of carbon black and synthetic rubber from its affiliate GRT. We are attributing subsidies received by GRT to the input sales of GRT and Cooper's total sales pursuant to 19 CFR 351.525(b)(6)(iv).

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<sup>27</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

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

<sup>29</sup> See Cooper's March 15, 2019 Affiliation Response and Cooper's April 18 IQR at III-3.

## *Longyue*

In its March 25, 2019, questionnaire response, Longyue reported being affiliated with three companies during the AUL. Two companies are holding companies and one is a trading company.<sup>30</sup> Commerce preliminarily finds that the attribution rules under 19 CFR 351.525(b)(6) and 19 CFR 351.525(c) do not apply to Longyue's affiliates (*e.g.*, none of the affiliates produced subject merchandise or inputs used in the downstream product); thus, we have included only subsidies received by Longyue itself in determining its countervailable subsidy rate.

### 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. We have attributed subsidies received by Cooper to its total sales or export sales, depending on whether a subsidy has been determined to be export contingent. We have attributed subsidies received by Cooper's affiliate, GRT, to the input sales of GRT and Cooper's total sales. We have attributed subsidies received by Longyue to its total sales or export sales, depending on whether the subsidy has been determined to be export contingent.

## **VIII. INTEREST RATE BENCHMARKS, DISCOUNT RATES, INPUT, ELECTRICITY AND LAND BENCHMARKS**

We are examining loans received by Cooper and Longyue from Chinese policy banks and state-owned commercial banks (SOCBs). We are also examining non-recurring, allocable subsidies.<sup>31</sup> 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.<sup>32</sup> If the firm did not have any comparable commercial loans during the period, Commerce's regulations provide that we "may use a national average interest rate for comparable commercial loans."<sup>33</sup>

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from China*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not

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<sup>30</sup> See Longyue's March 25, 2019 Affiliation Response.

<sup>31</sup> See 19 CFR 351.524(b)(1).

<sup>32</sup> See 19 CFR 351.505(a)(3)(i).

<sup>33</sup> See 19 CFR 351.505(a)(3)(ii).

reflect rates that would be found in a functioning market.<sup>34</sup> In an analysis memorandum dated July 21, 2017, Commerce conducted a re-assessment of the lending system in China.<sup>35</sup> Based on this re-assessment, Commerce has concluded that, despite reforms to date, the Government of China's role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that any 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.<sup>36</sup>

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 China*.<sup>37</sup> Under that methodology, we first determine which countries are similar to China in terms of gross national income, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from China*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2003 through 2009, China fell in the lower-middle income category.<sup>38</sup> Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2014.<sup>39</sup> Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2014. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.<sup>40</sup>

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

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<sup>34</sup> See *CFS from China* and accompanying IDM at Comment 10.

<sup>35</sup> See Memorandum, "Review of China's Financial System Memorandum," concurrently dated with this memorandum.

<sup>36</sup> 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) and accompanying IDM at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

<sup>37</sup> See *CFS from China* and accompanying IDM at Comment 10; see also *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper China*), and accompanying IDM at 8-10.

<sup>38</sup> 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).

<sup>39</sup> See World Bank Country Classification.

<sup>40</sup> 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).

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 2011-2016, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.<sup>41</sup> For 2010, however, the regression does not yield that outcome for China's income group.<sup>42</sup> This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmarks for the years from 2001-2009 and 2011-2016. 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 2010-2016 and "lower middle income" for 2001-2009.<sup>43</sup> 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.<sup>44</sup> Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.<sup>45</sup>

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, Commerce developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.<sup>46</sup>

In *Citric Acid from China*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where "n" equals or

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<sup>41</sup> See Interest Rate Benchmark Memorandum.

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

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> See, e.g., *Thermal Paper China*, IDM at 10.

approximates the number of years of the term of the loan in question.<sup>47</sup> Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.<sup>48</sup>

The resulting inflation-adjusted benchmark lending rates are provided in the Cooper Preliminary Calculation Memorandum and the Longyue Preliminary Calculation Memorandum.<sup>49</sup>

### Foreign Currency-Denominated Loans

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

### 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 Government of China provided non-recurring subsidies.<sup>50</sup> The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the Cooper Preliminary Calculation Memorandum and Longyue Preliminary Calculation Memorandum.

### Creditworthiness

Pursuant to 19 CFR 351.505(a)(6)(i), Commerce will not consider the uncreditworthiness of a firm absent a specific allegation of uncreditworthiness by the petitioner, that is supported by information establishing a reasonable basis to believe or suspect that the firm is uncreditworthy. The petitioner alleged that Longyue was uncreditworthy from 2014-2017 based on information placed on the record by Longyue.<sup>51</sup> Accordingly, we must examine whether the evidence on the record provides a reasonable basis to believe or suspect that Longyue was uncreditworthy during the years in question.

Commerce preliminarily determines that Longyue was uncreditworthy during the years 2014 through 2017, within the meaning of 19 CFR 351.505(a)(4). In determining the creditworthiness

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<sup>47</sup> See *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836, (April 13, 2009) (*Citric Acid from China*) and accompanying IDM at Comment 14.

<sup>48</sup> See Interest Rate Benchmark Memorandum.

<sup>49</sup> See Memorandum, "Preliminary Results Analysis for Longyue" dated concurrently with this memorandum (Longyue Preliminary Calculation Memorandum) and Memorandum, "Preliminary Results Analysis for Cooper (Kunshan) Tire Co., Ltd. dated concurrently with this memorandum (Cooper Preliminary Calculation Memorandum).

<sup>50</sup> See Longyue Preliminary Calculation Memorandum and Cooper Preliminary Calculation Memorandum; see also Interest Rate Benchmark Memorandum.

<sup>51</sup> See Petitioner's Letter, "Third Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from China (C-570-017)-Petitioner's New Subsidy Allegation and Uncreditworthiness Allegation for Shandong Longyue Rubber Co., Ltd.," dated May 9, 2019, at 20 and 21.

of a company, Commerce examines the criteria outlined in 19 CFR 351.505(a)(4)(i)(A)-(D) including: (A) the receipt of comparable commercial long-term loans; (B) the present and past financial health of the firm, as reflected in various financial indicators calculated from the firm's financial statements and accounts; (C) the firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and (D) evidence of the firm's future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan. Commerce normally considers a firm's ability to procure long-term commercial loans not backed by a government guarantee as dispositive evidence that the firm is not uncreditworthy, pursuant to 19 CFR 351.505(a)(4)(ii). Lacking evidence of such loans, Commerce turns to the other factors enumerated under 19 CFR 351.505(a)(4)(i)(B)-(D) to further assess the firm's creditworthiness.

During the years in question, the only long-term financing extended to Longyue came from banks within the GOC-dominated banking sector in China. Commerce does not consider such financing to be the type of commercial lending that is dispositive of creditworthiness under 19 CFR 351.505(a)(4)(ii).<sup>52</sup>

Turning to the other three factors, Commerce's recent practice has focused on whether the firm has adequate cash flow, cash on hand, and other current and liquid assets available to cover existing and upcoming short-term obligations. Commerce has focused particularly on two ratios that indicate whether a firm has sufficient cash and other liquid assets on hand to cover short-term obligations without having to additional borrowing: the firm's current and quick ratios.<sup>53</sup> As benchmarks, Commerce considers whether the firm's current ratio (current assets over current obligations) is above or below 2.0, and whether the firm's quick ratio (liquid assets over current obligations) is above or below 1.0. Commerce also considers a firm's debt-to-equity ratios under this factor and cash flow and any other factors raised by interested parties in their comments.

Longyue's current and quick ratios, calculated from Longyue's financial statements and supplemental questionnaire responses, were significantly below traditional norms during the years 2014-2017, indicating very poor short-term liquidity, *i.e.*, that Longyue would be unable to generate enough cash to cover all debts should they become due at once.<sup>54</sup> Other indicators, such as interest coverage and operating cash flow ratios, similarly show very poor financial performance, specifically indicating serious difficulty in paying the interest on outstanding debt and inability to generate enough cash to cover current liabilities. In terms of any assessment of Longyue by third parties, such as banks or rating agencies, undertaken before or during the years

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<sup>52</sup> See, e.g., *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Product from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016), and accompanying IDM at Comments 4, 5, and 6 (concluding lending from a consortium of Korean banks was not dispositive evidence of creditworthiness, despite the consortium including some commercial banks, because of the significant involvement of government of Korea institutions).

<sup>53</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012), and accompanying IDM at 56.

<sup>54</sup> See Longyue's August 8, 2019 NSA UCW SQR and Longyue's September 17, 2019 Third SQR.

in question, Longyue provided no such materials for the period 2014 through 2017.<sup>55</sup> With regard to indicators of the firm’s future financial position, such as market studies, and country or industry economic forecasts, no party has submitted such material on the record. Accordingly, consistent with Commerce’s past practice, described above, we preliminarily find that Longyue was uncreditworthy during the years 2014-2017.<sup>56</sup>

### Benchmarks to Determine 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.

#### *Land Benchmark*

As detailed in previous investigations, Commerce cannot rely on the use of so-called “first-tier” and “second-tier” benchmarks to assess the benefits from the provision of land for LTAR in China.<sup>57</sup> Accordingly, we used the 2010 Thailand benchmark information, i.e., “Asian Marketview Reports” by CB Richard Ellis (CBRE) that we relied on in calculating land benchmarks in the CVD investigation of *Passenger Tires from the China*<sup>58</sup> and the previous review. We initially selected this information in *Laminated Woven Sacks from China* after considering a number of factors, including national income levels, population density, and producers’ perceptions that Thailand is a reasonable alternative to China as a location for Asian production.<sup>59</sup> We find that these benchmarks are suitable for the preliminary results, adjusted

<sup>55</sup> See Longyue’s August 8, 2019 NSA UCW SQR at 7.

<sup>56</sup> See Longyue Preliminary Calculation Memorandum.

<sup>57</sup> See, e.g., *Laminated Woven Sacks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *Laminated Woven Sacks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Laminated Woven Sacks from China*).

<sup>58</sup> See Petitioner’s Letter, “Passenger Vehicle and Light Truck Tires from the People’s Republic of China (C-570-017) – The Petitioner’s Benchmark Factual Information,” dated August 15, 2019, at Exhibit 10.

<sup>59</sup> The complete history of our reliance on this benchmark is discussed in *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 6 and Comment 11. In that discussion, we reviewed our analysis from the laminated woven sacks investigation and concluded the CBRE data were still a valid land benchmark.

accordingly for inflation to account for benefits received by Cooper and Longyue during the POR.

### *Input Benchmarks*

For each of the inputs, as discussed below, we preliminarily determine that domestic input producers that supplied Cooper and Longyue are “authorities” within the meaning of section 771(5)(B) of the Act. Therefore, prices from their domestic suppliers are not usable as benchmarks, as they are prices charged by the very providers of the good at issue. We selected the benchmarks for measuring the adequacy of remuneration for carbon black, nylon cord, synthetic rubber and butadiene, and natural rubber, in accordance with 19 CFR 351.511(a). Below we analyze the information provided and the selection of a benchmark for each input. We note that, where possible, we have removed China-related pricing data (*i.e.*, imports into China) from all of the input benchmarks for these preliminary results for the reasons described below.

#### 1. *Carbon Black*

The GOC reported 57 carbon black producers in operation during the POR.<sup>60</sup> According to data provided by the GOC, the producers in which the GOC maintains an ownership or management interest accounted for 28.13 percent of domestic carbon black consumption during the POR (2017) and 24.94 percent of domestic production.<sup>61</sup> Given this relatively low level of government involvement in the market for carbon black, and given the lack of record information indicating government policies restricting exports of the input, we will derive our benchmarks from Tier 1 prices, *i.e.* from actual domestic transactions or from actual imports. As discussed below, we preliminarily find that all of the domestic supplying producers are “authorities” within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily find that none of the respondents’ domestic purchases of the input is appropriate for benchmarking. To measure the adequacy of remuneration for the provision of carbon black, we are relying on publicly available aggregate Chinese import prices as the Tier 1 benchmark provided for in 19 CFR 351.511(a)(2)(i).<sup>62</sup>

#### 2. *Nylon Cord*

The GOC reported 10 nylon cord producers in operation during the POR.<sup>63</sup> According to data provided by the GOC, the producers in which the GOC maintains an ownership or management interest account for 23.98 percent of domestic production by volume.<sup>64</sup> The data provided by the GOC show that the volume of imports as a percentage of domestic production is 7.36 percent, and that the vast majority of domestic production is exported. Moreover, the record shows that no export restraints on nylon cord were in place during the POR. Consequently, we preliminarily find that the record evidence does not support a conclusion that the market is distorted. As a Tier 1 benchmark, as set forth in 19 CFR 351.511(a)(2)(i), we may rely on prices

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<sup>60</sup> See GOC April 18, 2019 IQR at 39.

<sup>61</sup> *Id.* at 32-34.

<sup>62</sup> See Cooper’s Preliminary Calculation Memorandum and Longyue’s Preliminary Calculation Memorandum.

<sup>63</sup> See GOC April 18, 2019 IQR at 68.

<sup>64</sup> *Id.* at 54-55.

resulting from actual transactions within the country of investigation or on actual imports into the country. Cooper reported imports of nylon cord during the POR. Thus, for Cooper, we have relied on its actual imports for monthly benchmarks to determine the adequacy of remuneration for its domestic purchases. For Longyue, to measure the adequacy of remuneration for the provision of nylon cord, we are relying on publicly available aggregate Chinese import prices as the Tier 1 benchmark provided for in 19 CFR 351.511(a)(2)(i).<sup>65</sup>

### 3. *Synthetic Rubber and Butadiene*

According to data provided by the GOC, during the POR state-owned producers accounted for over 51 percent of the synthetic rubber produced in the country.<sup>66</sup> This level of GOC-controlled production is substantial. However, the record data also show that the volume of imports was a significant as a percentage of domestic consumption (44.12 percent).<sup>67</sup> Moreover, the record evidence shows no government export restraint measures on this input during the POR. Consequently, we preliminarily find no support in the record to find that the Chinese rubber market was distorted.<sup>68</sup>

As a Tier 1 benchmark, as set forth in 19 CFR 351.511(a)(2)(i), we may rely on prices resulting from actual transactions within the country of investigation or on actual imports into the country. For both Cooper and Longyue, we have used each respective company's monthly weighted-average prices of imports of synthetic rubber and butadiene.<sup>69</sup>

### 4. *Natural Rubber*

Neither Cooper nor Longyue reported domestic purchases of natural rubber, therefore a benchmark is not necessary.

### *Transportation*

For these preliminary results, we preliminarily determine to rely on an average of Maersk rates for 20-foot containers to the port of Shanghai from the following cities: Los Angeles, Cape Town, Jawharlal Nehru, and Jebel Ali, to value ocean freight.<sup>70</sup> Because the parties provided Maersk rates from a variety of apparently randomly selected cities, Commerce chose a major port from each of the five industrial continents.

## **IX. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF ADVERSE INFERENCES**

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<sup>65</sup> See Cooper's Preliminary Calculation Memorandum and Longyue's Preliminary Calculation Memorandum.

<sup>66</sup> See GOC April 18, 2019 IQR at 99.

<sup>67</sup> *Id.* at 99.

<sup>68</sup> We make this finding based solely on the facts of this particular case. In other cases, even if there are similar levels of import penetration and SOE production as here, we may consider other indicators of market distortion in determining whether domestic prices can serve as an appropriate benchmark.

<sup>69</sup> See Cooper Preliminary Calculation Memorandum and Longyue Preliminary Calculation Memorandum.

<sup>70</sup> See Longyue's Letter, "Passenger Vehicle and Light Truck Tires from China: Benchmark Submission" dated September 10, 2019, at Exhibit 1.

Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, use the “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person withholds information that has been requested; 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; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the Act.

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying 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. In so doing, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>71</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.<sup>72</sup>

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.<sup>73</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>74</sup> Further, Commerce is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.<sup>75</sup>

Finally, under section 776(d) of the Act, when applying an adverse inference, Commerce may use a 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 countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.<sup>76</sup> The Act also makes clear that, when selecting facts available with an adverse inference,

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<sup>71</sup> See section 776(b)(1)(B) of the Act.

<sup>72</sup> See 19 CFR 351.308(d).

<sup>73</sup> See 19 CFR 351.308(c).

<sup>74</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) at 870.

<sup>75</sup> See section 776(c)(2) of the Act.

<sup>76</sup> See section 776(d)(1) of the Act.

Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>77</sup>

#### Application of Adverse Facts Available: Input Producers are “Authorities”

As discussed below in the section “Programs Preliminarily Determined to be Countervailable,” Commerce is investigating the provision of four inputs for LTAR: carbon black, nylon cord, synthetic rubber and butadiene, and natural rubber. We requested information from the GOC regarding the specific companies that produced the input products that Cooper and Longyue, and their respective cross-owned companies, purchased during the POR. Specifically, we sought information from the GOC that would allow us to determine whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.<sup>78</sup>

In our original questionnaire, we requested detailed information from the GOC that would be needed for this analysis.<sup>79</sup> We asked the GOC to “[p]lease coordinate immediately with the company respondents to obtain a complete list of each respondent company’s {input} producers, including the producers of inputs purchased by the respondent through a supplier.”<sup>80</sup> In its initial questionnaire response the GOC stated that it could not collect the amount of documentation required in the Input Producer Appendix.<sup>81</sup>

The GOC did not attempt to identify particular producers as “private” or “state-owned.” However, Commerce’s analysis of the basic registration and ownership information provided indicates that some producers are state-owned enterprises. Regarding apparently non-state owned companies, the GOC was asked to provide information about the involvement of the Chinese Communist Party (CCP) in those companies, including whether individuals in management positions are CCP members, in order to evaluate whether these producers are “authorities” within the meaning of section 771(5)(B) of the Act.<sup>82</sup> While the GOC provided a long narrative explanation of the role of the CCP, when asked to identify any owners, members of the board of directors, or managers of the input suppliers who were government or CCP officials during the POR, the GOC instead replied “. . . that even if an owner, a director, or a manager of a supplier is a CCP member, a representative of National/Provincial/Local People’s Congress, or a CPPCC member, this individual can never have any additional responsibility, authority and/or capacity regarding the operation of the company as a consequence of his/her membership or representative identity.”<sup>83</sup> The GOC concluded its response to this question by stating that “. . . the GOC hereby requests that further investigation in this regard be terminated by the Department.”<sup>84</sup> Furthermore, Commerce requested that the GOC provide the articles of incorporation, capital verification reports, business licenses and tax registration, again in order to

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<sup>77</sup> See section 776(d)(3) of the Act.

<sup>78</sup> See Initial CVD Questionnaire, at section II, E (pp. 4-16).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 4, 7, 10, 14.

<sup>81</sup> See *e.g.*, GOC April 18, 2019 IQR at 11.

<sup>82</sup> See Public Bodies Analysis Memorandum (containing a previous Commerce decision memorandum concerning the role of the CCP in both public and private Chinese producers).

<sup>83</sup> See GOC April 18, 2019 IQR at 18.

<sup>84</sup> *Id.*

analyze whether these producers are “authorities” within the meaning of section 771(5)(B) of the Act. However, in response to the request for these documents, the GOC, as noted above, provided only basic business registration and ownership information, which does not provide the level of detail that would be provided by the requested documents.

With regard to the ownership of the producers that appear to be non-state-owned companies, but for whom the GOC provided an inadequate response to Commerce’s requests, we preliminarily determine that the GOC has the necessary information that was requested of it, but withheld that information. In so doing, the GOC significantly impeded the review. Therefore, in accordance with sections 776(a)(2)(A) and 776(a)(2)(C) of the Act, Commerce must rely on “facts otherwise available” in issuing our preliminary results. Moreover, we preliminarily find that the GOC did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. Thus, as AFA, we are finding that these producers are “authorities,” within the meaning of section 771(5)(B) of the Act.

#### Application of AFA: Provision of Electricity for LTAR

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

In order for Commerce to analyze the financial contribution and specificity of this program, we requested that the GOC provide information regarding the roles of provinces, the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in electricity price adjustments. Specifically, Commerce requested, *inter alia*, Provincial Price Proposals for each province in which mandatory respondents or any company “cross-owned” with those respondents is located for applicable tariff schedules that were in effect during the 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 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. 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, as of the issuance of the “NDRC Notification on Lowering the On-Grid Price of Coal-Fired Electricity and Electricity for

Industrial and Commercial-Use {2015 No. 748},” and “NDRC Notification on Lowering the On-Grid Price of Coal-Fired Electricity and Electricity for General Industrial and Commercial-Use {2015 No. 3015},”<sup>85</sup> the NDRC no longer reviews, *i.e.* approves, electricity pricing schedules submitted to it by the provinces. Therefore, according to the GOC, Provincial Price Proposals no longer exist and did not exist during the POR. Furthermore, the GOC also stated that, as a result of Notice 748, provincial price departments develop and establish grid and electricity sales prices.<sup>86</sup> Consequently, according to the GOC, the NDRC no longer has any impact on prices, which are set autonomously at the provincial level.

Notice 748 is based upon consultations between the NDRC and the National Energy Administration.<sup>87</sup> Article 1 contained therein stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.<sup>88</sup> Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts. Article 2 indicates that the “price space” formed due to this price reduction “{s}hall be mainly used to lower the sales price of electricity for industrial and commercial use.”<sup>89</sup> Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.<sup>90</sup> Articles 6 and 7, respectively, indicate that provincial pricing authorities “{s}hall make and distribute the on-grid price of electricity and specific plans of the price adjustment in accordance with the average standard of price adjustment in Annex 1 and submit filings to the National Development and Reform Commission,” and that the “{a}forementioned electricity price adjustment shall be enforced since April 20<sup>th</sup>, 2015.”<sup>91</sup> Lastly, Article 10 directs that, “Administrative departments at all levels in charge of pricing shall guarantee the implementation of the price adjustment.”<sup>92</sup>

NDRC Notice 3015, 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.<sup>93</sup> Consequently, both Notice 748 and Notice 3015 explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Neither Notice 748 nor Notice 3015 explicitly stipulates that relevant provisional pricing authorities determine and issue electricity prices within their own jurisdictions, as the GOC states to be the case.<sup>94</sup> Instead, both notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices, by mandating average price adjustment targets with which the provinces are obligated to comply in setting their own specific prices.<sup>95</sup>

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<sup>85</sup> See GOC April 18, 2019 IQR at 116.

<sup>86</sup> *Id.* at 125.

<sup>87</sup> *Id.* at Exhibit E3.1.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at Exhibit E3.2.

<sup>94</sup> *Id.* at Exhibit E3.2.

<sup>95</sup> See, *e.g.*, Notice 748 Article 10 and Notice 3015 Articles II and X.

Notice 748 and Notice 3015, issued by the NDRC, direct provinces to reduce prices by amounts specific to provinces. They neither explicitly eliminate Provincial Price Proposals nor define distinctions in price-setting roles between national and provincial pricing authorities. The GOC failed to fully explain the roles and nature of the cooperation between the NDRC and provinces in deriving electricity price adjustments. The information provided by the GOC indicates that despite its claim that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, the NDRC continues to play a major role in setting and adjusting prices. Furthermore, the GOC failed to explain both the derivation of price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves. Consequently, we preliminarily determine that the GOC withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, Commerce must rely on “facts available” in making our preliminary determination.<sup>96</sup> 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. We also note that the GOC did not ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available.<sup>97</sup> In drawing an adverse inference, we find that the GOC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. The GOC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we are also drawing an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.<sup>98</sup> The benchmark rates were selected from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* “Provision of Electricity for LTAR” section.

#### 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 responses, the GOC claimed that none of the U.S. customers of the respondent companies used export buyer’s credits from the China Export-Import Bank (Ex-Im Bank) during the POR.<sup>99</sup> The GOC also stated that “for a business contract to be supported by the export buyer’s credit, the contract amount must be more than 2 million U.S. dollars.”<sup>100</sup> Information on the record indicates that the GOC revised this program in 2013 to eliminate this minimum requirement.<sup>101</sup> In response to our request that it provide the documents pertaining to the 2013 program revision, the GOC refused to provide them, stating that “{t}he Ex-Im Bank has confirmed to the GOC that

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<sup>96</sup> *See* section 776(a)(2)(A) of the Act.

<sup>97</sup> *See* section 776(b) of the Act.

<sup>98</sup> *See* section 776(b)(4) of the Act.

<sup>99</sup> *See* the GOC April 18, 2019 IQR at 129.

<sup>100</sup> *Id.* at 130.

<sup>101</sup> *See* Memorandum, “Placing Documents on the Record,” dated September 10, 2019 (Additional Document Memorandum).

its 2013 guidelines are internal to the bank, not public, and not available for release. The GOC has no authority or right to force the Ex-Im Bank to provide a copy of the 2013 guidelines, and is therefore unable to provide a copy to the Department.”<sup>102</sup>

Moreover, information on the record also indicates that the China Ex-Im Bank may disburse Export Buyer’s Credits directly or through a third-party partner and/or correspondent banks.<sup>103</sup> In a supplemental questionnaire, we requested that the GOC provide a list of partner/correspondent banks involved in the program.<sup>104</sup> The GOC responded that it does not have the “authority or right to force the Ex-Im Bank to reveal details of other transactions because those are confidential commercial information belonging to Ex-Im Bank.”<sup>105</sup> Thus, in its initial and supplemental questionnaire responses, the GOC refused to provide the requested information or any information concerning the 2013 program revision and the partner/correspondent banks, which is necessary for Commerce to analyze how the program functions.

Pursuant to sections 776(a)(2)(A) and (a)(2)(C) of the Act, when an interested party withholds information requested by Commerce and/or significantly impedes a proceeding, Commerce uses facts otherwise available to reach a determination. Because the GOC withheld the requested information described above, thereby impeding this proceeding, we preliminarily determine that the use of facts available is appropriate. Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding information that was within its control, significantly impeded this proceeding, and failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted.

As noted above, the GOC has not answered Commerce’s questions with respect to this program. As a result, the GOC has not provided information that would permit us to make a determination as to whether this program constitutes a financial contribution and whether this program is specific. Because the GOC has not cooperated to the best of its ability in response to Commerce’s specific information requests, we determine, as AFA, that this program constitutes a financial contribution and meets the specificity requirements of the Act.<sup>106</sup> Therefore, we preliminarily find that the GOC has not cooperated to the best of its ability and, as AFA, find that Cooper and Longyue used and benefited from this program, despite their claims of non-use.

Under section 776(d) of the Act, Commerce may use, as AFA, a 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, 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

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<sup>102</sup> See GOC July 8, 2019 Supplemental Questionnaire Response (GOC July 8, 2019 SQR) at 9.

<sup>103</sup> See Additional Documents Memorandum.

<sup>104</sup> See Commerce’s Letter, “Passenger Vehicle and Light Truck Tires from the People’s Republic of China,” dated June 24, 2019.

<sup>105</sup> See GOC July 8, 2019 SQR 12.

<sup>106</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) and accompanying IDM at “Use of Facts Otherwise Available and Adverse Inferences.”

any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>107</sup>

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.<sup>108</sup> 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).<sup>109</sup> 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.<sup>110</sup> On this basis, we are applying an AFA rate of 17.49 percent *ad valorem*, the rate determined for Longyue for preferential loans in this proceeding.<sup>111</sup>

#### Application of AFA: Other Subsidies

Cooper, Cooper’s affiliate GRT, and Longyue reported receiving assistance with respect to our question, “Did 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 December 11, 2001, and the end of the POR?”<sup>112</sup> In its responses to our question regarding this government assistance reported by the company respondents, the GOC stated that it has cooperated with Commerce regarding requests for information, and citing Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures, stated that no reply to questions on these other programs are warranted or required.<sup>113</sup>

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 Cooper and Longyue. 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.<sup>114</sup> Further, the GOC

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<sup>107</sup> See section 776(d)(3) of the Act.

<sup>108</sup> 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”).

<sup>109</sup> For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at “1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program” and “2. Grant Under the Elimination of Backward Production Capacity Award Fund.”

<sup>110</sup> See *Shrimp from China* IDM at 13-14.

<sup>111</sup> See Longyue Preliminary Calculation Memorandum.

<sup>112</sup> See Cooper April 18, 2019 IQR at III-35 and Longyue’s April 18 IQR at 28-29.

<sup>113</sup> See GOC April 18, 2019 IQR at 140.

<sup>114</sup> See section 776(a)(1) of the Act.

withheld information that was requested of it by not providing information regarding these subsidies in response to our requests for information noted above.<sup>115</sup> 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 Cooper and Longyue 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 Cooper and Longyue.

## **X. 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 and Used by Cooper and Longyue**

#### **1. Government Policy Lending**

In the original investigation, Commerce determined that this program conferred countervailable subsidies on subject merchandise because: 1) it provides a financial contribution pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, and 2) the loans provide a benefit pursuant to section 771(E)(ii) equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.<sup>116</sup> Commerce further determined that there is a program of preferential policy lending specific to the tire sector, and passenger tires in particular, within the meaning of section 771(5A)(D)(i) of the Act. Information on the record of this review remains consistent with those determinations. Therefore, we continue to find that this program provides a countervailable subsidy.

In its questionnaire responses in this segment of the proceeding, the GOC stated that this program does not exist and that no loans to any of the respondents were issued pursuant to a policy lending program. The GOC further claimed that if an industrial policy existed, “such a policy had no connection to or effect upon the decision of any ban, state-owned or commercial, is issuing loans to respondents,” and, thus, those loans did not constitute a countervailable subsidy.<sup>117</sup> However, the GOC provided no documentation in support of these assertions that would call into question Commerce’s conclusions from the investigation. In a CVD

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<sup>115</sup> See section 776(a)(2)(A) of the Act.

<sup>116</sup> See *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination in Park*, 80 FR 34888 (*Passenger Tires from China*) and accompanying IDM at 31.

<sup>117</sup> See the GOC April 18 IQR at 2.

administrative review, we do not revisit past determinations of countervailability, absent new evidence, and none has been presented here.<sup>118</sup>

Cooper, its affiliate GRT, and Longyue reported having loans outstanding from banks in China during the POR under this program.<sup>119</sup> To calculate the benefit under this program, we used the benchmarks described under “Benchmark and Discount Rates” above. We divided the total benefits received during the POR by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable *ad valorem* subsidy rate of and 0.82 percent for Cooper and 17.49 percent for Longyue.

## 2. Export Buyer’s Credits

Commerce determined this program to be countervailable in the original investigation based on AFA. Through this program, the Ex-Im Bank provides loans at preferential rates for the purchase of exported goods from China. As further explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, for this review we preliminarily determine, relying upon AFA, that this program provides a countervailable subsidy, and that Cooper and Longyue used this program during the POR. On this basis, as explained above, we determine a countervailable subsidy rate of 17.49 percent *ad valorem* for both Cooper and Longyue for export buyer’s credits.

## 3. Provision of Inputs for LTAR

### a. Provision of Carbon Black, Nylon Cord and Synthetic Rubber and Butadiene and Natural Rubber for LTAR

In the investigation, we determined that carbon black, nylon cord, synthetic rubber and butadiene, and natural rubber were 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.<sup>120</sup> Our analysis of the limited information provided by the GOC indicates that certain producers of the four inputs are SOEs. Commerce has previously explained that majority state-owned enterprises in China possess, exercise, or are vested with government authority.<sup>121</sup> The GOC exercises meaningful control over these entities and used them to effectuate its goals of upholding the socialist market economy, allocating resources and maintaining the predominant role of the state sector. Accordingly, these state-owned input producers are “authorities” within the meaning of section 771(5)(B) of the Act. As discussed above in the section entitled “Use of Facts Otherwise Available and Application of Adverse Inferences,” we also find preliminarily, as AFA, that the remaining domestic producers of carbon black, nylon cord, synthetic rubber and butadiene and natural rubber purchased by the respondents are “authorities” within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily

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<sup>118</sup> See *Magnola Metallurgy, Inc. v. United States*, 508 F.3d 1349 (Fed. Cir. 2007) (*Magnola*); see also *Solar Cells from China*, 80 FR at 41005, and accompanying IDM at 27.

<sup>119</sup> See Cooper February 5, 2018 IQR at Exhibit 7 and Longyue’s April 18, 2019 IQR at 8.

<sup>120</sup> See 19 CFR 351.511(a).

<sup>121</sup> See Public Bodies Analysis Memorandum detailing Commerce’s analysis of SOEs in the PRC economy.

determine that all domestic producers that supplied the four inputs under examination 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. Further, no new information has been presented on the record of this review to call into question our findings of specificity from the investigation.<sup>122</sup> Therefore, we continue to find that these programs are countervailable.

To determine the benefit from these programs, we took the monthly benchmark for each input, added import duties, value-added tax (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 each respondent for the POR. To determine the subsidy rate for inputs provided for LTAR, we divided the total benefit for each respondent by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in the Preliminary Calculation Memoranda.

On this basis, we preliminarily determine a subsidy rate of 26.07 percent *ad valorem* for Cooper and its affiliate GRT, and 25.31 percent *ad valorem* for Longyue for carbon black; 0.01 percent *ad valorem* for Cooper and its affiliate GRT, and 0.00 rate for Longyue for nylon cord; and 0.12 percent *ad valorem* for Cooper and its affiliate GRT, and 5.80 percent *ad valorem* for Longyue for synthetic rubber and butadiene. For natural rubber, we preliminarily determine that neither Cooper nor Longyue used this subsidy during the POR.

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.<sup>123</sup> Likewise, for this review, as explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are preliminarily basing our determination regarding the GOC’s provision of electricity, in part, on AFA. For these preliminary results, we determine that Cooper and Longyue received a countervailable subsidy from electricity provided for LTAR.

As described above in more detail, the GOC did not provide certain information requested regarding its provision of electricity to the company respondents 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 the actual consumption volumes and rates paid reported by Cooper and Longyue. We compared the rates paid by Cooper and Longyue 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

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<sup>122</sup> See *Magnola*, 508 F.3d at 1355; see also *Solar Cells from China*, 80 FR at 41005, and accompanying IDM at 27.

<sup>123</sup> See *Passenger Tires from China*, 80 FR at 34888, and accompanying IDM at 17.

amount reported for that month and price category. We then calculated the total benefit to Cooper and Longyue during the POR by summing the difference between the benchmark prices and the prices paid by Cooper and Longyue, respectively.

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 respondents (*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.<sup>124</sup> As explained earlier, 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.<sup>125</sup>

To calculate the subsidy rate, we divided the benefit amount by the appropriate total sales denominator, as discussed in the Preliminary Calculation Memoranda. On this basis, we preliminarily determine a countervailable *ad valorem* subsidy rate of 0.77 percent for Cooper and its affiliate GRT, and 1.31 percent for Longyue.

c. Provision of Land-Use Rights for Foreign Invested Enterprises (FIEs) for LTAR

During the investigation, Commerce countervailed the provision of land to Cooper by the Kunshun Economic & Technical Development Zone,<sup>126</sup> which Commerce found to be a financial contribution in the form of a provision of a good under section 771(5)(D)(iii) of the Act, and that the subsidy was export-contingent and, thus, specific within the meaning of section 771(5A)(A)-(B) of the Act. Commerce found that the benefit was greater than 0.5 percent of relevant sales and thus allocable. In this review Cooper's affiliate GRT, an FIE, reported that it acquired land between 2001 and the end of the POR. We allocated the total unallocated benefit amounts across the terms of the land-use agreement, using the standard allocation formula of 19 CFR 351.524(d).<sup>127</sup> We divided the amount attributable to the POR by the export sales denominator to determine a subsidy rate of for Cooper. For GRT, we divided the amount attributable to the POR, and divided this by the combined input sales of GRT and Cooper's total sales to determine the subsidy rate. The combined subsidy rate for Cooper and GRT is 4.99 percent.

Longyue reported that it is an FIE<sup>128</sup> and that it obtained land use rights to nine parcels located in special economic or development zones between 2012 and 2019.<sup>129</sup> For each of the nine parcels of land we found the benefit was greater than 0.5 percent of relevant sales and thus allocable. We allocated the total unallocated benefit amounts across the terms of the land-use agreement, using the standard allocation formula of 19 CFR 351.524(d). We divided the amount attributable to the POR by the sales denominator to determine as subsidy rate of 14.44 percent for Longyue.

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<sup>124</sup> See the GOC April 18, 2019 IQR at Exhibit E3.7.

<sup>125</sup> See "Application of AFA: Provision of Electricity for LTAR" section, *supra*.

<sup>126</sup> Cooper reported that it did not purchase or lease any additional land use rights during the POR.

<sup>127</sup> See *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR at 34888 (June 18, 2019), and accompanying IDM at 30.

<sup>128</sup> See Longyue's April 18, 2019 IQR at 2.

<sup>129</sup> *Id.* at Exhibit 20.

#### 4. Enterprise Income Tax Law, R&D Program

In the original investigation, Commerce determined that that this program constitutes a countervailable subsidy that confers a financial contribution in the form of revenue forgone by the government, and 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), respectively. We also found that the 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. In a CVD administrative review, we do not revisit past determinations of countervailability, absent new evidence, and none has been presented here.<sup>130</sup> Therefore, we continue to find that this program provides a countervailable subsidy.

Longyue reported not using this program during the POR. Cooper reported receiving a benefit under this program during the POR. To calculate the benefit to Cooper, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).<sup>131</sup> To compute the amount of the tax savings, we calculated the amount of tax that Cooper would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator for Cooper. On this basis, we preliminarily determine a countervailable subsidy rate of 0.12 percent *ad valorem* for Cooper under this program.

#### 5. Import Tariff and VAT Exemptions for Use of Imported Equipment

Consistent with the investigation, we preliminarily determine that VAT and tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipient in the amount of VAT and tariff savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.510 (a), respectively. We also preliminarily determine that these VAT and tariff exemptions are specific under section 771(5A)(D)(i) of the Act because the program is limited to certain enterprises, *i.e.*, FIEs and domestic enterprises involved in “encouraged” projects.

As the program provides a benefit tied to the capital structure of respondents (plant and equipment used for production), to calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.<sup>132</sup> In the years that the benefits received by each company under this program did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described above in the section “Subsidies Valuation Information,” to

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<sup>130</sup> See *Magnola*, 508 F.3d at 1355; see also *Solar Cells from the China*, 81 FR 41005, and accompanying IDM at 27.

<sup>131</sup> These credits can be for either expensed or capitalized R&D expenditures. If a credit is for capitalized expenditures (*e.g.*, the expenditures were made toward developing an “intangible asset” or patent), however, the 50 percent deduction is amortized across the useful life of the developed asset. Therefore, even credits for capitalized expenditures would be allocated over tax returns filed during a number of years and would thus be recurring. See *e.g.*, *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 79 FR 33174 (June 10, 2014) and accompanying PDM at 34-35.

<sup>132</sup> See 19 CFR 351.524(b) and (c).

calculate the amount of the benefit allocable to the POR. We then divided the benefit amount by the appropriate sales denominator. On this basis, we determine a countervailable subsidy rate of 0.02 percent *ad valorem* for Longyue under this program. Cooper reported not using this program during the AUL.

#### 6. Other Subsidy Programs

Cooper and Longyue reported that they received various grants during the AUL. As stated above in the section, “Use of Facts Otherwise Available and Application of Adverse Inferences,” Commerce has preliminarily determined that numerous additional grants provided to the company respondents are countervailable based upon AFA. The majority of the grants received by the respondents do not pass the “0.5 percent test” described in 19 CFR 351.524(b)(2) and, thus, are expensed to the respective years of receipt prior to the POR. However, Cooper, Cooper’s affiliate GRT and Longyue received several grants that were expensed during the POR. We calculated *ad valorem* subsidy rates of 0.51 percent for Cooper and its affiliate GRT, and 3.72 percent for Longyue for these grants.

#### **B. Programs Preliminarily Determined Not Used by, or Not to Confer a Measurable Benefit During the POR to, Cooper and Longyue.**

1. Provision of Natural Rubber for LTAR
2. Export Seller’s Credit
3. Export Credit Insurance Subsidies
4. Preferential Loans to State-Owned Enterprises
5. Discounted Loans for Export-Oriented Enterprises
6. Export Credit Guarantees
7. Two Free, Three Half Program for FIE’s
8. Provision of Land-Use Rights to Passenger Tire Producers for LTAR

In the investigation, Commerce determined the existence of a program to provide land to producers of passenger tires for LTAR.<sup>133</sup> In particular, we determined that under the program, beginning in 2010, the GOC encouraged provincial governments to provide land for free or at a discounted rate. We found the program not to be used by Cooper and the other mandatory respondent in the investigation, GITI Tire (Fujian) Co., Ltd. As noted above, in this review we are countervailing land provided to Cooper and Longyue under a program specific to FIEs.

9. Provision of Land-Use Rights for SOEs for Less Than Adequate Remuneration
10. Provision of Land-Use Rights in Industrial and Other Special Economic Zones for Less Than Adequate Remuneration

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<sup>133</sup> See *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Preliminary Affirmative Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination*, 79 FR 71093 (December 1, 2014) and accompanying IDM at 44 unchanged *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888.

## 11. Tax Benefit Programs

- a. Income Tax Reduction for High-and-New-Technology Enterprises HNTES
- b. Income Tax Reduction for Advanced-Technology FIEs
- c. Income Tax Credits on Purchases of Domestically-Produced Equipment by FIEs
- d. Income Tax Credits for Domestically-Owned Companies Purchasing Chinese-Made Equipment

## 12. VAT Refunds for Domestic Firms on Purchases of Chinese-Made Equipment

## 13. VAT Rebates on FIE Purchases of Chinese-Made Equipment

## 14. Grant Programs

- a. State Key Technology Renovation Project Fund Program
- b. Famous Brands Program
- c. The Clean Production Technology Fund
- d. Export Interest Subsidy Funds for Enterprises Located in Guangdong and Zhejiang Provinces
- e. Funds for “Outward Expansion” of Industries in Guangdong Province
- f. Provincial International Market Development Fund Grant
- g. Provincial Import Discount Loan Subsidy

## 15. Subsidies for Companies Located in the Kunshan Economic and Technological Development Zone

## 16. Weihai Municipality Subsidies for the Automobile and Tire Industries

## 17. Subsidies for Companies Located in the Rongcheng Economic Development Zone

### **C. PROGRAMS PRELIMINARILY DETERMINED NOT TO BE SPECIFIC DURING THE POR**

#### **1. Provision of International Ocean Shipping Services for LTAR**

The petitioner alleged that the GOC provides exporters, including exporters of passenger tires, a subsidy in the form of ocean borne international freight shipping for LTAR. We initiated on this program as an export subsidy under section 771(5A)(B) of the Act.<sup>134</sup> Cooper reported purchasing international ocean shipping services during the POR.<sup>135</sup>

Section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. Commerce’s regulations concerning export subsidies, found at 19 CFR 351.514(a), state that, in general:

{t}he Secretary will consider a subsidy to be an export subsidy if the Secretary

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<sup>134</sup> See Memorandum, “Decision Memorandum on New Subsidy Allegation and Evaluation of Uncreditworthy Allegation,” dated July 17, 2019.

<sup>135</sup> See Cooper’s August 8, 2019 NSA SQR.

determines that eligibility for, approval of, or the amount of, a subsidy is contingent upon export performance. In applying this section, the Secretary will consider a subsidy to be contingent upon export performance if the provision of the subsidy is, in law or in fact, tied to actual or anticipated exportation or export earnings, alone or as one of two or more conditions.

However, pursuant to 19 CFR 351.514(b), “{i}n the case of export promotion activities of a government, a benefit does not exist if the Secretary determines that the activities consist of general informational activities that do not promote particular products over others.”

In the *Preamble to the CVD Regulations*, Commerce stated that in applying the standard contained in 19 CFR 351.514, we will “distinguish between broad development goals or economic policy, and specific program objectives and criteria.”<sup>136</sup> For purposes of our analysis, we have developed a list of factors that we may consider. This list is non-exhaustive and includes: (1) The stated purpose or purposes of the subsidy as put forth in the governing laws or regulations; (2) the selection criteria and reasons for approval/ disapproval; (3) application and approval documents, including market or economic viability studies; (4) the existence and nature of any monitoring or enforcement mechanism; (5) governmental collection of data regarding the program recipients’ exports (other than the customary collection of export and import data); (6) the exporting history of recipient firms or industries; and (7) other evidence that the Department deems relevant to consider. We need not examine all of the factors to determine that the program is an export subsidy if our examination of one or more factors provides sufficient evidence to determine that the program is a *de facto* export subsidy.”<sup>137</sup>

We asked the GOC to “describe the criteria governing the eligibility for and receipt of shipping services from the GOC or a government owned entity in China...describe the criteria for determining the amount of the service provided...{and to}...Provide a copy of any law, regulation or other official document detailing these criteria.” The GOC provided the requested law pertaining to international shipping, the *Detailed Rules for the Implementation of Waterway Freight Transport Contracts (2011 Revision)*.<sup>138</sup> Commerce examined this exhibit as well as information submitted by the petitioner in the new subsidy allegation (NSA): the eleventh five-year plan; guidelines of the twelfth five-year plan; the thirteenth five-year plan; *Several Opinions of the State Council on Promoting the Sound Development of the Maritime Industry*; *Notice of the Six Sectors on Printing and Distributing the “Action Plan for Deepening the Structure Adjustment of the Shipbuilding Industry to Accelerate the Transformation and Upgrading (2016-2020)*.<sup>139</sup> Based on our review of the Chinese law, as contained in these documents, we preliminarily do not find international shipping for LTAR to be either *de jure* specific or export-contingent. Commerce found no record evidence, in terms of program eligibility, approval, or

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<sup>136</sup> See *CVD Preamble*, 63 FR at 65380.

<sup>137</sup> *Id.*

<sup>138</sup> See GOC’s August 8, 2019 NSA SQR at Exhibit NSA-S-8 .

<sup>139</sup> See Petitioner’s Letter, “Third Administrative Review of the Countervailing Duty Order on Passenger Vehicle and Light Truck Tires from China (C-570-017)-Petitioner’s New Subsidy Allegation and Uncreditworthiness Allegation for Shandong Longyue Rubber Co., Ltd.” dated May 9, 2019 at Exhibits 5 and 7.

amount, that this program is limited to a particular industry or is contingent upon export performance.

Next, we analyze whether international shipping for LTAR is *de facto* specific, including whether it is *de facto* specific to exports. We examined record information in relation to the specificity factors listed in the *Preamble to the CVD Regulations*. In particular, Commerce notes the language in the *CVD Preamble* indicating that we should “distinguish between broad development goals or economic policy, and specific program objectives and criteria.”<sup>140</sup> While the record, including information submitted by the petitioner in the NSA and by the GOC in questionnaire responses, demonstrates a broad policy goal of promoting international trade and a commitment to shipbuilding, there is no record information demonstrating a program that provides ocean freight services at LTAR that tied to actual or anticipated exportation or export earnings of the beneficiaries of the shipping service, and, thus, there is no evidence of a *de facto* export subsidy. Further, the information provided by the GOC on this record show that the program is not limited to an industry, nor is the passenger tires industry a predominant user of this program or that it benefits disproportionately from it.<sup>141</sup> Thus, we preliminarily determine that international shipping for LTAR is not *de facto* specific.

## **XI. DISCLOSURE AND PUBLIC COMMENT**

Commerce intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of its public announcement.<sup>142</sup> Case briefs may be submitted to ACCESS within 30 days of issuance of the preliminary results, and rebuttal briefs, limited to issues raised on the case briefs, may be submitted no later than five days after the deadline for the submission for case briefs.<sup>143</sup> Parties who submit case 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.<sup>144</sup>

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 ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.<sup>145</sup> 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 to be determined. Prior to the hearing, Commerce will contact all parties who submitted case or rebuttal briefs to determine if they wish to participate in the hearing.

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<sup>140</sup> See *CVD Preamble*, 63 FR at 65380.

<sup>141</sup> See GOC’s August 8, 2019 NSA SQR at Exhibit NSA-4.

<sup>142</sup> See 19 CFR 351.224(b).

<sup>143</sup> See 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

<sup>144</sup> See 19 CFR 351.309(c)(2) and 351.309(d)(2).

<sup>145</sup> See 19 CFR 351.310(c).

Commerce will then distribute a hearing schedule to these 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.<sup>146</sup> Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,<sup>147</sup> on the due dates established above.

Parties will have seven days after the publication of this memorandum to rebut, clarify, or correct information that Commerce has placed on the record concurrently with this memorandum (*i.e.*, the Public Bodies Analysis Memorandum referred to above, containing our prior analysis of government authorities in China, the CCP, and the banking sector in China, as well as information pertaining to the export buyer's credits program).<sup>148</sup>

### XIII. CONCLUSION

We recommend that you approve the preliminary findings described above.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

10/10/2019

X



\_\_\_\_\_  
Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

<sup>146</sup> See 19 CFR 351.303(b)(2)(i).

<sup>147</sup> See 19 CFR 351.303(b)(1).

<sup>148</sup> See 19 CFR 351.301(c)(4).

## Appendix I

### Companies Listed in the Initiation Notice

1. Anhui Jichi Tire Co., Ltd.
2. Bridgestone (Tianjin) Tire Co., Ltd.
3. Bridgestone Corporation
4. Cooper (Kunshan) Tire Co.
5. Dynamic Tire Corp.
6. Fleming Limited
7. Guangrao Taihua International Trade Co., Ltd.
8. Hankook Tire China Co., Ltd.
9. Haohua Orient International Trade Ltd.
10. Husky Tire Corp.
11. Jiangsu Hankook Tire Co., Ltd.
12. Macho Tire Corporation Limited
13. Maxon Int'l Co., Limited
14. Mayrun Tyre (Hong Kong) Limited
15. Pirelli Tyre Co., Ltd.
16. Qingdao Fullrun Tyre Corp., Ltd.
17. Qingdao Jinhaoyang International Co., Ltd.
18. Qingdao Keter International Co., Limited
19. Qingdao Lakesea Tyre Co., Ltd.
20. Qingdao Odyking Tyre Co., Ltd.
21. Qingdao Sunfulcess Trye Co., Ltd.
22. Qinzhou Detai International Trading Co., Ltd.
23. Riversun Industry Limited
24. Safe & Well (HK) International Trading Limited
25. Sailun Jinyu Group Co., Ltd.
26. Sailun Jinyu Group (Hong Kong) Co., Limited
27. Sailun Tire International Corp.
28. Seatex International Inc.
29. Seatex PTE. Ltd.
30. Shandong Achi Tyres Co., Ltd.
31. Shandong Anchi Tyres Co., Ltd.
32. Shandong Duratti Rubber Corporation Co., Ltd.
33. Shandong Guofeng Rubber Plastics Co., Ltd.
34. Shandong Haohua Tire Co., Ltd.
35. Shandong Hengyu Science & Technology Co., Ltd.
36. Shandong Jinyu Industrial Co., Ltd.
37. Shandong Longyue Rubber Co., Ltd.
38. Shandong New Continent Tire Co., Ltd.
39. Shandong Province Sanli Tire Manufactured Co., Ltd.
40. Shandong Wanda Boto Tyre Co., Ltd.
41. Shengtai Group Co., Ltd.
42. Shouguang Firemax Tyre Co., Ltd.

43. Triangle Tyre Co., Ltd.
44. Tyrechamp Group Co., Limited
45. Windforce Tyre Co., Limited
46. Winrun Tyre Co., Ltd.

## Appendix II

### Non-Selected Companies Under Review

1. Anhui Jichi Tire Co., Ltd.
2. Bridgestone (Tianjin) Tire Co., Ltd.
3. Bridgestone Corporation
4. Dynamic Tire Corp.
5. Fleming Limited
6. Hankook Tire China Co., Ltd.
7. Haohua Orient International Trade Ltd.
8. Husky Tire Corp.
9. Jiangsu Hankook Tire Co., Ltd.
10. Macho Tire Corporation Limited
11. Mayrun Tyre (Hong Kong) Limited
12. Qingdao Fullrun Tyre Corp., Ltd.
13. Qingdao Lakesea Tyre Co., Ltd.
14. Qingdao Sunfulness Tyre Co., Ltd.
15. Riversun Industry Limited
16. Safe&Well (HK) International Trading Limited
17. Sailun Jinyu Group Co., Ltd.
18. Sailun Jinyu Group (Hong Kong) Co., Limited
19. Sailun Tire International Corp.
20. Seatex International Inc.
21. Seatex PTE. Ltd.
22. Shandong Achi Tyres Co., Ltd.
23. Shandong Anchi Tyres Co., Ltd.
24. Shandong Duratti Rubber Corporation Co., Ltd.
25. Shandong Haohua Tire Co., Ltd.
26. Shandong Hengyu Science & Technology Co., Ltd.
27. Shandong Jinyu Industrial Co., Ltd.
28. Shandong Province Sanli Tire Manufactured Co., Ltd.
29. Shandong Wanda Boto Tyre Co., Ltd.
30. Triangle Tyre Co., Ltd.
31. Tyrechamp Group Co., Limited
32. Windforce Tyre Co., Limited
33. Winrun Tyre Co., Ltd.