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Investigation
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November 4, 2019

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

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination: Countervailing Duty Investigation of Certain
Collated Steel Staples from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain collated steel staples (collated staples) from the People's Republic of China (China), as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act). Pursuant to section 701(f) of the Act, Commerce is applying the countervailing duty law to countries designated as non-market economies under section 771(18) of the Act, such as China.

II. BACKGROUND

A. Initiation and Case History

On June 6, 2019, Commerce received a petition from Kyocera Senco Industrial Tools, Inc. (the petitioner) seeking the imposition of countervailing duties (CVD) on collated staples from China.¹ We describe the supplements to the Petition in the CVD Initiation Checklist.² Pursuant to section 702(b)(4)(A)(ii) of the Act, we invited representatives of the Government of China

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Collated Steel Staples from Korea, the People's Republic of China, and Taiwan," dated June 6, 2019 (Petition).

² See Memorandum, "Certain Collated Steel Staples from the People's Republic of China," dated June 26, 2019 (Initiation Checklist).

(GOC) for consultations with respect to the Petition.³ The GOC did not request consultations. On July 3, 2019, we initiated a CVD investigation on collated staples from China.⁴

In the *Initiation Notice*, we stated that in the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intended to select mandatory respondents based on U.S. Customs and Border Protection (CBP) entry data from the Harmonized Tariff Schedule of the United States (HTSUS) subheading listed in the scope of the investigation.⁵ On June 21, 2019, we released CBP data under Administrative Protective Order (APO) and indicated that interested parties wishing to comment on the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this CVD investigation.⁶ On July 9, 2019, we received CBP data comments from the petitioner⁷ and from Zhejiang Best Nail Industrial Co., Ltd. (Best Nail).⁸

On July 26, 2019, pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2), we selected Hai Sheng Xin Group Co., Ltd. (Xin Group) and Best Nail as mandatory respondents.⁹ We issued the Initial Questionnaire to the GOC via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).¹⁰ In the cover letter to the questionnaire, we notified the GOC that Commerce had selected Xin Group and Best Nail as mandatory respondents in this investigation and stated that the GOC "is responsible for forwarding copies of this cover letter and questionnaire to these respondent companies."¹¹ On August 12, 2019, the Xin Group failed to meet the deadline to submit a response to the Affiliated Companies portion of Section III of the Initial Questionnaire or request an extension. On August 13, 2019, the petitioner requested that Commerce select an additional mandatory respondent to replace the Xin Group in the investigation.¹² On August 19, 2019, we selected Ningbo Deli Stationery (Ningbo Deli) as an additional mandatory respondent and issued via ACCESS the Initial Questionnaire to the GOC for forwarding to this respondent.¹³ On September 2, 2019,

³ See Commerce's Letter, "Countervailing Duty Petition on Collated Steel Staples from the People's Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition," dated June 6, 2019.

⁴ See *Certain Collated Steel Staples from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 84 FR 31840 (July 3, 2019) (*Initiation Notice*).

⁵ *Id.* at 31843.

⁶ See Memorandum, "Certain Collated Steel Staples from the People's Republic of China Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection," dated June 21, 2019 (CBP Data).

⁷ See Petitioner's Letter, "Certain Collated Steel Staples from China: Comments on Respondent Selection," dated July 9, 2019.

⁸ See Best Nail's Letter, "Certain Collated Steel Staples from the People's Republic of China: Comments on CBP Data and Respondent Selection," dated July 9, 2019.

⁹ See Memorandum, "Countervailing Duty Investigation of Certain Collated Steel Staples from the People's Republic of China: Respondent Selection," dated July 26, 2019 (Respondent Selection Memorandum).

¹⁰ See Commerce's Letter, "Investigation of Certain Collated Steel Staples from the People's Republic of China: Countervailing Duty Questionnaire," dated July 29, 2019 (Initial Questionnaire).

¹¹ *Id.* at 1.

¹² See Petitioner's Letter, "Certain Collated Steel Staples from China Countervailing Duty Investigation: Request to Select Replacement Mandatory Respondent," dated August 13, 2019.

¹³ See Memorandum, "Countervailing Duty Investigation of Certain Collated Steel Staples from the People's Republic of China: Selection of Additional Mandatory Respondent," dated August 19, 2019; see also Commerce's Letter, "Investigation of Certain Collated Steel Staples from the People's Republic of China: Countervailing Duty Questionnaire," dated August 19, 2019.

Ningbo Deli failed to meet the deadline to submit a response to the Affiliated Companies portion of Section III of the Initial Questionnaire or request an extension. Between August 14 and October 16, 2019, we received timely initial and supplemental questionnaire responses from Best Nail¹⁴ and the GOC.¹⁵

On September 25, 2019, the petitioner filed two new subsidy allegations (NSAs).¹⁶ On October 23, 2019, Commerce initiated an investigation of both NSAs.¹⁷ We intend to seek further information and to address these programs in a post-preliminary analysis.

B. Postponement of Preliminary Determination

On August 9, 2019, based on a request from the petitioner,¹⁸ Commerce postponed the deadline for the preliminary determination until November 4, 2019, in accordance with sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).¹⁹

C. Period of Investigation

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

III. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

On September 17, 2019, the petitioner filed allegations that critical circumstances exist with respect to imports of subject merchandise from China.²⁰ On October 24, 2019, Commerce issued its preliminary critical circumstances determination.²¹ Pursuant to this determination, Commerce

¹⁴ See Best Nail's Letters, August 14, 2019 Affiliations Response to Section III of the CVD Questionnaire (Best Nail's Affiliation QR); August 28, 2019 Supplemental Affiliation Response (Best Nail's Affiliation SQR); September 11, 2019 Section III Response Zhejiang Best Nail Industrial Co., Ltd.; October 11, 2019 Supplemental Section III Response Zhejiang Best Nail Industrial Co., Ltd. (Best Nail SQR); and October 16, 2019 Second Supplemental Section III Response Zhejiang Best Nail Industrial Co., Ltd.

¹⁵ See GOC's Letters, September 11, 2019 Initial Questionnaire Response (GOC IQR); see also October 10, 2019 First Supplemental Questionnaire Response (GOC SQR); October 16, 2019 Second Supplemental Questionnaire Response (GOC SSQR); and October 16, 2019 Third Supplemental Questionnaire Response.

¹⁶ See Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Petitioner's New Subsidy Allegations," dated September 25, 2019.

¹⁷ See Memorandum, "Decision Memorandum on New Subsidy Allegations," dated October 23, 2019.

¹⁸ See Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Petitioner's Request to Postpone the Deadline for the Preliminary Determination," dated August 5, 2019.

¹⁹ See *Collated Steel Staples from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 84 FR 42896 (August 19, 2019).

²⁰ See Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Allegation of Critical Circumstances," dated September 17, 2019.

²¹ See *Certain Collated Steel Staples from the People's Republic of China: Preliminary Affirmative Determinations of Critical Circumstances in the Antidumping and Countervailing Duty Investigations*, 84 FR 59353 (November 4, 2019) (signed October 24, 2019).

found that critical circumstances exist for imports from all producers and exporters of the subject merchandise from China.²²

IV. ALIGNMENT

In accordance with section 705(a)(1) of the Act, and 19 CFR 351.210(b)(4), and based on the petitioner's request,²³ we are aligning the final determination in this CVD investigation with the final determination in the companion antidumping (AD) investigation of collated staples from China. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than March 17, 2020, unless postponed.²⁴

V. INJURY TEST

Because China is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry. On July 25, 2019, the ITC preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of collated staples from China that are allegedly subsidized by the GOC.²⁵

VI. DIVERSIFICATION OF CHINA'S ECONOMY

Concurrently with this decision memorandum, we are placing the following excerpts from the China Statistical Yearbook from the National Bureau of Statistics of China on the record of this investigation: Index Page; Table 14-7: Main Indicators on Economic Benefit of State-owned and State-holding Industrial Enterprise by Industrial Sector; Table 14-11: Main Indicators on Economic Benefit of Private Industrial Enterprise by Industrial Sector.²⁶ This information reflects a wide diversification of economic activities in China. The industrial sector in China alone is comprised of 37 listed industries and economic activities, indicating the diversification of China's economy.

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an

²² See Memorandum, "Certain Collated Steel Staples from the People's Republic of China: Preliminary Massive Imports Analysis," dated October 31, 2019.

²³ See Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Petitioner's Request for Alignment of Countervailing Duty Investigation Final Determination Deadline with Antidumping Duty Investigation Final Determination Deadline," dated October 2, 2019.

²⁴ See *Certain Collated Steel Staples from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 84 FR 57845 (October 29, 2019).

²⁵ See *Certain Collated Steel Staples from China, Korea, and Taiwan; Determinations*, 84 FR 35884 (July 25, 2019).

²⁶ See Memorandum, "China Statistical Yearbook Memorandum," dated concurrently with this memorandum.

interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."²⁷ Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."²⁸ At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailing subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."²⁹ It is Commerce's practice to consider information to be corroborated if it has probative value.³⁰ In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.³¹ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.³² Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.³³

²⁷ See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

²⁸ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

²⁹ See, e.g., SAA at 870.

³⁰ *Id.*

³¹ *Id.* at 869.

³² *Id.* at 869-870.

³³ See section 776(c)(2) of the Act.

Under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.³⁴ For purposes of this preliminary determination, we are applying AFA in the circumstances outlined below.

B. Application of Total AFA: Ningbo Deli and Xin Group

As noted in the “Initiation and Case History” section above, we selected Ningbo Deli and Xin Group as mandatory respondents. Ningbo Deli and Xin Group both failed to provide a response to Commerce’s questionnaire, which requested that the respondents provide information pertaining to the programs identified in the *Initiation Notice*.³⁵ Moreover, the GOC did not respond to our Initial Questionnaire with respect to Ningbo Deli or Xin Group, which requested that the GOC provide information pertaining to the programs identified in the *Initiation Notice*.³⁶ By not responding to the Initial Questionnaire, we find that Ningbo Deli and Xin Group withheld information that was requested of them, failed to provide information by the established deadlines, and significantly impeded this proceeding. Additionally, by not responding to the Initial Questionnaire as discussed above, we find that the GOC withheld information that was requested of it, failed to provide information by the established deadlines, and significantly impeded this proceeding. Thus, in reaching a preliminary determination, pursuant to sections 776(a)(2)(A)-(C) of the Act, we are determining the subsidy rate for Ningbo Deli and Xin Group by selecting from among the facts otherwise available on the record.

Moreover, we preliminarily determine that an adverse inference is warranted in determining Ningbo Deli’s and Xin Group’s estimated countervailable subsidy rate, pursuant to section 776(b) of the Act, because, by not responding to our requests for information, Ningbo Deli and Xin Group did not cooperate to the best of their abilities to comply with our requests for information in this investigation. Additionally, we find that the GOC also did not cooperate to the best of its ability to comply with our requests for information in this investigation. Accordingly, we preliminarily find that application of AFA is warranted to ensure that Ningbo Deli and Xin Group do not obtain a more favorable result by failing to cooperate than if they had fully complied with Commerce’s requests for information. The application of AFA in this instance is consistent with Commerce’s practice.³⁷

³⁴ See section 776(d)(3) of the Act.

³⁵ See Initial Questionnaire; see also Commerce’s Investigation of Certain Collated Steel Staples from the People’s Republic of China: Countervailing Duty Questionnaire, dated August 19, 2019.

³⁶ *Id.*

³⁷ See, e.g., *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Preliminary Affirmative Determination*, 80 FR 68843 (November 6, 2015), and accompanying Issues and Decision Memorandum (IDM) at “Initiation and Case History” and “Use of Facts Otherwise Available and Adverse Inferences,” unchanged in *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016), and accompanying IDM at “Case History” and

Therefore, in selecting from among the facts otherwise available on the record, with an adverse inference, we find that all of the programs identified in the *Initiation Notice* constitute a financial contribution within the meaning of sections 771(5)(D) of the Act, are specific within the meaning of section 771(5A) of the Act, and confer a benefit with respect to Ningbo Deli and Xin Group within the meaning of sections 771(5)(B) and (E) of the Act.³⁸ Additionally, as discussed below in “Application of AFA: Provision of ‘Other Subsidies,’” the GOC did not respond to our requests for information regarding programs which were self-reported by the cooperating mandatory respondent, Best Nail. Therefore, we find that all self-reported programs included in this investigation provide a financial contribution within the meaning of sections 771(5)(B) and (D) of the Act and are specific within the meaning of section 771(5A) of the Act. Accordingly, we are including each of these programs in the determination of the AFA rate for Ningbo Deli and Xin Group.³⁹ We selected an AFA rate for each of the programs based on the statutory hierarchy provided in section 776(d) of the Act and in accordance with Commerce’s practice, and we included them in the determination of the AFA rate applied to Ningbo Deli and Xin Group. For a description of the selection of the AFA rate and our corroboration of this rate, see the “Selection of the AFA Rate” and “Corroboration of the AFA Rate” sections below.

Selection of the AFA Rate

It is Commerce’s practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.⁴⁰ When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a countervailable duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.⁴¹

“Use of Facts Otherwise Available and Adverse Inferences”; see also *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018), and accompanying IDM at “Use of Facts Otherwise Available and Adverse Inferences.”

³⁸ See *Initiation Notice*; and CVD Initiation Checklist. For further discussion of our determinations based on AFA with respect to the Provision of Electricity for Less-Than-Adequate-Renumeration (LTAR), Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR, and the Export Buyer’s Credit program, see discussion below. Additionally, for further discussion of certain determinations with respect to the Export Buyer’s Credit and Enterprise Income Tax Law, R&D Programs, see discussion below.

³⁹ See Memorandum, “AFA Calculation Memorandum for the Preliminary Determination in the Investigation of Certain Collated Steel Staples from China,” dated concurrently with this memorandum (AFA Memorandum).

⁴⁰ See, e.g., *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008), unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM at “Application of Facts Available, Including the Application of Adverse Inferences”; see also *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions Final*), and accompanying IDM at “Application of Adverse Inferences: Non-Cooperative Companies.”

⁴¹ See, e.g., *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM

Accordingly, when selecting AFA rates, if we have cooperating respondents, as we do in this investigation, we first determine if there is an identical program in the instant investigation and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).⁴² If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company-specific program in a CVD case involving the same country that the company's industry could conceivably use.⁴³

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

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."⁴⁴ No legislative history accompanied this provision. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

We find that the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: 1) Commerce may apply its hierarchy methodology; and 2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of

at 13; *see also* *Essar Steel, Ltd. v. United States*, 753 F. 3d 1368, 1373-74 (Fed. Cir. 2014) (*Essar Steel*) (upholding "hierarchical methodology for selecting an AFA rate").

⁴² 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."

⁴³ *See Shrimp from China*, and accompanying IDM at 13-14.

⁴⁴ *See* section 776(d)(2) of the Act.

AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.⁴⁵

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁶ Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”⁴⁷ It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.⁴⁸

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

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

⁴⁵ This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B). Under that provision, “any dumping margin from any segment of the proceeding under the applicable antidumping order” may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

⁴⁶ See SAA, H.R. Doc. No. 103-316, vol. 1, at 870, reprinted in 1994 U.S.C.C.A.N 4040, 4090; see also *Essar Steel*, 678 at 1276 (citing *F. Lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000) (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate’ with Commerce’s investigation, not to impose punitive damages.”)) (*De Cecco*).

⁴⁷ See *De Cecco*, 216 F. 3d at 1032.

⁴⁸ Commerce has adopted a practice of applying its hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at 28-31 (applying the AFA hierarchical methodology within the context of CVD investigation); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

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

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

Finally, if no such rate exists, under the third step of Commerce's investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.⁴⁹

In all three steps of Commerce's AFA investigation hierarchy, if Commerce were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the "reward" for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce's investigation AFA hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.⁵⁰

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

⁴⁹ In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

⁵⁰ It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. *See, e.g., Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60632 (October 25, 2007), and accompanying IDM at 2 ("As AFA in the instant case, Commerce is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did not receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed..."). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as AFA under its hierarchy.

There are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy, in accordance with section 776(d)(1) of the Act, should be applied as AFA. As explained above, we are preliminarily applying AFA because Ningbo Deli and Xin Group failed to submit a response to the questionnaire and chose not to cooperate by not providing all the necessary information we requested. Therefore, we preliminarily find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

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

- Provision of Electricity for LTAR
- Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR

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

- Income Tax Reductions for High and New Technology Enterprises (HNTEs)
- Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax
- Enterprise Income Tax Law, Research and Development (R&D) Program
- Preferential Income Tax Policies for the Development of Western Regions of China

The standard income tax rate for corporations in China in effect during the POI was 25 percent.⁵¹ Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, that four programs, combined, provide a 25 percent benefit). Consistent with Commerce's practice, application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and value-added tax (VAT) exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.⁵²

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

- Import Tariff Exemptions for Foreign-Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

⁵¹ See Initiation Checklist at 14.

⁵² See, *e.g.*, *Aluminum Extrusions Final*, and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

- VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
- VAT Exemptions and Deductions for Central Regions
- Import Duty Exemptions for Equipment Under the Preferential Tax Policy of Development of Western Regions of China
- Policy Loans to the Certain Collated Steel Staples Industry
- Export Loans
- Export Buyer’s Credit
- Export Seller’s Credit
- Export Credit Guarantees
- Preferential Lending to Export-Oriented Enterprises Classified as “Honorable Enterprises”
- Export Credit Insurance Subsidies
- Provision of Wire Rod for LTAR
- Provision of Zinc for LTAR
- Provision of Land-Use Rights to Favored Industries for LTAR
- Subsidies for Development of Famous Brands and China World Top Brands
- Grants for Energy Conservation and Emission Reduction
- State Key Technology Fund Grants
- Small and Medium Enterprise International Market Exploration/Development Fund
- Export Interest Subsidies for Enterprises Located in Zhejiang Province
- Export Assistance Grants

For this preliminary determination, we were similarly able to match all of Best Nail’s self-reported subsidies for which we did not calculate a rate in the instant investigation to similar programs from other China CVD proceedings. A full list of such self-reported subsidies is located in the “Other Subsidies” and “Programs Preliminarily Determined Not to Have Conferred a Measurable Benefit to Best Nail During the POI” sections below and also contained in the AFA Memorandum.⁵³

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for the non-cooperating companies to be 156.99 percent *ad valorem*. The AFA Memorandum contains a chart summarizing our calculation of this rate.

Corroboration of AFA Rate

Section 776(c)(1) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject

⁵³ With respect to Best Nail’s self-reported subsidies, we have combined programs that had identical or nearly identical names, and which were received in the same year. See AFA Memorandum.

merchandise.”⁵⁴ The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.⁵⁵

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.⁵⁶ Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁵⁷

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.⁵⁸

In the absence of reliable record evidence concerning Ningbo Deli’s and Xin Group’s usage of the subsidy programs at issue due to their decision not to participate or provide complete information in the investigation, we have reviewed the information concerning Chinese subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this investigation. The relevance of these rates is that they are actual calculated subsidy rates for Chinese programs, from which the non-responsive companies could actually receive a benefit. Accordingly, we have corroborated the rates we selected to use as AFA to the extent practicable pursuant to section 776(c)(1) for this preliminary determination.

C. Application of AFA: Provision of Electricity for LTAR

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

⁵⁴ See SAA at 870.

⁵⁵ *Id.*

⁵⁶ *Id.* at 869-870.

⁵⁷ See section 776(d) of the Act.

⁵⁸ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

NDRC in electricity price adjustments. Specifically, Commerce requested, *inter alia*: Provincial Price Proposals for the province in which mandatory respondents or any company “cross-owned” with those respondents is located for applicable tariff schedules that were in effect during the POI; all original NDRC Electricity Price Adjustment Notice(s) that were in effect during the POI; the procedure for adjusting retail electricity tariffs and the role of the NDRC and the provincial governments in this process; the price adjustment conferences that took place between the NDRC and the provinces, grids and power companies with respect to the creation of all tariff schedules that were applicable during the POI; the cost elements and adjustments that were discussed between the provinces and the NDRC in the price adjustment conferences; and how the NDRC determines that the provincial-level price bureaus have accurately reported all relevant cost elements in their price proposals with respect to generation, transmission and distribution.⁵⁹ Commerce requested this information to determine the process by which electricity prices and price adjustments are derived, identify entities that manage and impact price adjustment processes, and examine cost elements included in the derivation of electricity prices in effect throughout China during the POI.

In its Initial Questionnaire response, the GOC stated that the provincial price proposals are not mandated by law and that the proposals are obsolete now that the provinces have the authority to set their own prices, under the *Notice of NDRC on Lowering Coal-Fired Electricity On-Grid Price and General Industrial and Commercial Electricity Price* (Notice 3105).⁶⁰ According to the GOC, the creation of this new structure has eliminated the need for Provincial Price Proposals that had previously been used by the NDRC to set prices for each province.⁶¹ Moreover, the GOC referenced its elimination of preferential rates for the fertilizer industry that went into effect under Article 4 of the *Notice of National Development and Reform Commission on Adjusting Schedule of Coal-fired Power Generation Grid Purchase Price and Sale Price of Industrial and Commercial Electricity of Each Province (District or City)* (Notice 748) as part of Notice 748’s intent to equalize electricity rates between industrial and commercial users.⁶²

However, both Notice 3105 and the Notice 748 explicitly direct provinces to reduce prices and to report the enactment of those changes to the NDRC. Specifically, Article 1 of Notice 748 stipulates a lowering of the on-grid sales price of coal-fired electricity by an average amount per kilowatt hour.⁶³ Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts.⁶⁴ Article 2 indicates that the price reduction is “mainly used for reducing the price of industrial and commercial electricity.”⁶⁵ Articles 3 and 4 specifically direct the reduction of the sales price for industrial and commercial electricity.⁶⁶ Articles 6 and 7 indicate that provincial pricing authorities will “develop and issue specific adjustment plan of electricity price and sales price in accordance

⁵⁹ See Initial Questionnaire at Electricity Appendix.

⁶⁰ See GOC IQR at 71-79.

⁶¹ *Id.*

⁶² *Id.* at 81 and Exhibit Elec-9.

⁶³ *Id.* at Exhibit Elec-9.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

with the average price adjustment standards of Annex 1” and will submit the adjustments to the NDRC, and further that the price adjustment will be enforced on April 20th, 2015.⁶⁷ Finally, Article 10 directs that “{l}ocal price departments shall organize and arrange carefully to put in place the electricity price adjustment measures.”⁶⁸ NDRC Notice 3105 also directs additional price reductions, and stipulates at Articles II and X, that local price authorities shall implement in time the price reductions included in its Annex, and must report resulting prices to the NDRC.⁶⁹

Neither Notice 748 nor Notice 3105 explicitly stipulates that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions, as the GOC states to be the case.⁷⁰ Rather, 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.⁷¹ The notices do not explicitly eliminate Provincial Price Proposals and do not define distinctions in price-setting roles between national and provincial pricing authorities. In a supplemental questionnaire, we requested that the GOC explain how the NDRC monitors compliance with the price changes directed in Notice 748 and what action the NDRC would take were any province not to comply with the directed price changes. The GOC’s response failed to explain what actions the NDRC would take in the event of non-compliance with a directed price change.⁷² The GOC, did however, note that “...the provincial authorities make specific calculations of price changes using the specific data of their own provinces... {s}uch calculation results are filed with the NDRC to ensure that each price adjustment follows the established principles.”⁷³

As explained above, the GOC’s response does not constitute a full explanation regarding the roles and nature of cooperation between the NDRC and provinces in deriving electricity price adjustments. In fact, 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.

Consequently, we preliminarily determine, in accordance with sections 776(a)(1), (a)(2)(A), and (a)(2)(C) of the Act, that information necessary to our analysis of financial contribution and specificity is not available on the record, that the GOC withheld information requested by Commerce, and that the GOC significantly impeded this proceeding. Thus, we must rely on “facts available” in making our preliminary determination.⁷⁴ Moreover, we preliminarily determine, in accordance with section 776(b) of the Act, that the GOC failed to cooperate to the best of its ability to comply with our repeated requests for information. As a result, an adverse inference is warranted in the application of facts available.⁷⁵ In applying AFA, we find that the GOC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. The GOC failed to provide certain requested information regarding the relationship (if any) between

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at Exhibit Elec-3.

⁷⁰ *Id.* at 72-74.

⁷¹ *Id.* at Exhibit Elec-9 and Exhibit Elec-3.

⁷² *See* GOC SQR at 20.

⁷³ *Id.* at 19.

⁷⁴ *See* section 776(a) of the Act.

⁷⁵ *See* section 776(b) of the Act.

provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we are also relying on AFA in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we selected are derived from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* “Provision of Electricity for LTAR,” below.

D. Application of AFA: Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR

As noted in the Initiation Checklist, Commerce is investigating the provision of land-use rights provided in Jining Hi-Tech Zone, Shaoxing County Coastal Industrial Zone, Paojiang Industrial Zone, and Zaozhuang High-Tech Industrial Development Zone. In its initial response, Best Nail reported that it completed its purchase of land-use rights in the Paojiang Industrial Zone from the Land Resources Bureau of Shaoxing City on July 14, 2004.⁷⁶ Commerce, in the initial questionnaire to the GOC, requested that the GOC identify any instances in which mandatory respondents received land-use rights in the cities or zones listed, to provide all government laws or regulations pertaining to the provision of land or land-use rights in the respective cities or zones, and to indicate whether the provision of land or land-use rights was contingent upon the firm’s status (*i.e.*, located in a particular geographical area) or activity. In its initial response, the GOC indicated that Commerce should review Best Nail’s response, provided minimal national-level documents regarding land, and claimed that “{the} GOC believes the provisions of land or land-use rights were not contingent upon the firm’s status... or activity” without providing additional information.⁷⁷

Moreover, Best Nail reported that it negotiated the price for the land-use rights with the Land Resources Bureau of Shaoxing City but that it did not have any documents related to the negotiations.⁷⁸ In its first supplemental questionnaire, Commerce requested that the GOC provide supporting documentation relating to the price negotiation for the land-use rights by Best Nail and the price specified in the land-use contract. The GOC did not provide any supporting documentation, stating only that “[the] GOC confirms the accuracy of Zhejiang Best’s response.”⁷⁹

The information requested regarding the provision of land and land-use rights to the mandatory respondent and the basis on which they were provided is crucial for our analysis to determine whether an alleged program constitutes a financial contribution and is specific. This type of information has been provided and verified in previous proceedings.⁸⁰ Thus, we preliminarily find that the information requested, but not provided, was available to the GOC.

⁷⁶ *See* Best Nail’s IQR at 30.

⁷⁷ *See* GOC IQR at 84.

⁷⁸ *See* Best Nail’s IQR at 31-32.

⁷⁹ *See* GOC SQR at 18.

⁸⁰ *See Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM.

Further, the GOC's statement that it "believes" the provision of land or land-use rights is not contingent upon status or activities,⁸¹ without providing any supporting evidence to corroborate this statement, is wholly inadequate. As in prior proceedings, Commerce finds unpersuasive the GOC's response that it "believes" that none of the land-use rights reported by the respondent in this investigation were contingent upon status or activities; moreover, the GOC provided no other evidence to demonstrate the basis for its "belief."⁸²

Given that the GOC has provided information regarding the provision of land and land-use rights in previous proceedings,⁸³ we preliminarily determine that the GOC has the necessary information that was requested of it and that, lacking the information, Commerce must rely on "facts otherwise available" in issuing its preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, because the GOC failed to provide information it is otherwise able to provide, 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. In drawing an adverse inference, we find that the GOC's provision of land-use rights 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. For details regarding the remainder of our analysis for this program, *see* the "Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR" section below.

E. Application of AFA: Export Buyer's Credit Program

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

In the Initial Questionnaire, we requested that the GOC provide a copy of its "7th Supplemental Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China" (EBC Supplemental Questionnaire Response).⁸⁴ However, the GOC responded that "{it} understands that this question is not applicable."⁸⁵ Additionally, we requested in our Initial Questionnaire that the GOC also provide original and translated copies of any laws, regulations or other governing documents cited by the GOC in the EBC Supplemental

⁸¹ *See* GOC IQR at 84.

⁸² *See, e.g., Truck and Bus Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Determination*, 81 FR 43577 (July 5, 2016), and accompanying Preliminary Decision Memorandum (PDM) at 12-14, unchanged in *Truck and Bus Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606 (January 27, 2017).

⁸³ *See, e.g., Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent to Rescind Review, in Part; 2016*, 83 FR 67229 (December 28, 2018), and accompanying PDM at 12-14.

⁸⁴ *See* Initial Questionnaire at 6; *see also Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017).

⁸⁵ *See* GOC IQR at 9.

Questionnaire Response.⁸⁶ In response to this request for information, the GOC stated that “{it} understands that this question is not applicable.”⁸⁷ Commerce requested this information because, in other CVD proceedings, the GOC has indicated that the GOC revised the Export Buyer’s Credit Program in 2013 to eliminate the two million U.S. dollar (USD) contract minimum associated with this lending program.⁸⁸ Thus, we requested in our Initial Questionnaire that the GOC provide original and translated copies of any laws, regulations or other governing documents cited by the GOC in the Export Buyer’s Credit Supplemental Questionnaire Response. This request included the 2013 *Administrative Measures* revisions (2013 Revisions) to the Export Buyer’s Credit program. In its response, the GOC failed to provide any of the requested information, including the 2013 Revisions.⁸⁹ We, therefore, again requested that the GOC provide original and translated copies of any laws, regulations or other governing documents cited by the GOC in the Export Buyer’s Credit Supplemental Questionnaire Response, which include the 2013 Revisions.⁹⁰ Additionally, we requested that the GOC complete the standard questions appendix for this program.⁹¹ While the GOC provided the *7th Supplemental Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China*,⁹² and certain original and translated copies of any laws, regulations or other governing documents related to the operation of Export Buyer’s Credit, it did not provide the 2013 Revisions.⁹³ Moreover, the GOC stated that the China ExIm Bank confirmed that it strictly limits the provision of Export Buyer’s Credits to business contracts exceeding two million USD.⁹⁴ Further, the GOC stated that the “Ex-Im Bank has confirmed that this requirement for contract amount has been strictly implemented in practice and no business contract can be approved for loan support through this program without identifying the contract amount.”⁹⁵ We again requested the 2013 Revisions.⁹⁶ The GOC responded that because none of Best Nail’s U.S. customers used the program the “question is not applicable” and referred to its initial questionnaire response.⁹⁷ Through its response to Commerce’s initial and supplemental questionnaires, the GOC has refused multiple times to provide the requested information or any information concerning the 2013 program revision, which is necessary for Commerce to analyze how the program functions.

⁸⁶ See Initial Questionnaire at 6.

⁸⁷ See GOC IQR at 10.

⁸⁸ See *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China: Final Affirmative Determination*, 82 FR 8405 (January 25, 2017); see also *Certain Quartz Surface Products From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23760 (May 23, 2019), and accompanying IDM at Section V. Use of Adverse Facts Available, C. Application of AFA: Export Buyer’s Credits.

⁸⁹ See GOC IQR at 9-10.

⁹⁰ See GOC SQR at 3.

⁹¹ See Commerce’s Letter, “Countervailing Duty Investigation of Certain Collated Steel Staples from the People’s Republic of China: Initial Questionnaire Response Supplemental Questionnaire,” dated September 23, 2019 (Supplemental Questionnaire).

⁹² See GOC SQR at Exhibit Loan-22.

⁹³ See GOC SSQR at 15.

⁹⁴ See GOC SQR at 10 and Exhibit Loan-20.

⁹⁵ *Id.* at 10.

⁹⁶ See Commerce’s Letter, “Countervailing Duty Investigation of Certain Collated Steel Staples from the People’s Republic of China: Initial Questionnaire Response Second Supplemental Questionnaire,” dated October 3, 2019.

⁹⁷ See GOC SSQR at 15.

We requested the 2013 Revisions because information on the record of this proceeding indicated that the 2013 Revisions affected important program changes. For example, the 2013 Revisions may have eliminated the two million USD contract minimum associated with this lending program.⁹⁸ By refusing to provide the requested information, and instead asking Commerce to rely upon unverifiable assurances that the 2000 Rules Governing Export Buyer's Credit remained in effect, the GOC impeded Commerce's understanding of how this program operates and how it can be properly verified. Thus, the GOC's refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administered by the China ExIm Bank, impeded Commerce's ability to conduct its investigation of this program.

In response to our request that it provide a list of all partner/correspondent banks involved in the disbursement of funds under the program, the GOC stated that “{t}o the best of the GOC's knowledge, neither {Best Nail} nor its affiliates or U.S. customers applied for, used, or benefited from this program during the POI. Therefore, the GOC understands that this question is not applicable.”⁹⁹ Further, the GOC asserted that “...while the export contract is between the exporter and importer, the Export Buyer's Credit loan contract is between China Ex-Im Bank and the importer, and the importer is the party responsible for repaying the loan...if there is an Export Buyer's Credit loan provided by China Ex-Im Bank, the Chinese exporter and the U.S. importer are involved and can verify usage.”¹⁰⁰ In Exhibit Loan-20 of the GOC SQR, “Rules Governing Export Buyers Credit of the Export-Import Bank of China,” the China ExIm Bank rules include loans made to approved banks and not only importers.¹⁰¹ Commerce cannot verify claims of non-usage, whether originating with the respondents or their U.S. customers, if it does not know the names of the intermediary banks that might appear in the books and records of the recipient of the credit (*i.e.*, loan) or the cash disbursement made pursuant to the credit. There will not necessarily be an account in the name “China ExIm Bank” or “Ex-Im Bank” in the books and records (*e.g.*, subledger, tax return, bank statements) of either the exporter or the U.S. customer.

Pursuant to section 776(a)(1) of the Act, we find that necessary information is missing from the record for Commerce to have a clear understanding of how this program operates and to be able to verify purported claims of non-use of this program. Furthermore, pursuant to sections 776(a)(2)(A) and (2)(C) of the Act, when an interested party withholds information requested by Commerce and significantly impedes a proceeding, Commerce uses facts otherwise available. We find that the use of facts otherwise available is appropriate in light of the GOC's refusal to provide the 2013 Revisions, which is necessary information for Commerce to make a determination regarding this program.

Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding of information and significantly impeding this proceeding, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted. Specifically, the GOC has not provided complete information concerning the administration and operation of the program, including how loans are disbursed (*e.g.*, the 2013 Revisions), such as through

⁹⁸ See Petitioner's Letter, “Certain Collated Steel Staples from the People's Republic of China: Petitioner's Benchmark and Factual Information” dated October 9, 2019 (Benchmark Information), at Exhibit 7, Attachment 5.

⁹⁹ See GOC IQR at 10 and GOC SQR at 13.

¹⁰⁰ See GOC SQR at 12.

¹⁰¹ *Id.* at Exhibit Loan-20.

intermediate or correspondent banks, the identities of which the GOC has withheld from Commerce, or whether the China ExIm Bank employs threshold criteria, such as minimum two million USD contract value. This information is necessary to understand fully how the Export Buyer's Credit program operates, and is therefore critical to Commerce's ability to verify the program operation and the accuracy of the GOC's claims, including with respect to the respondent's claimed non-use of this program. By not providing us with this critical information, we find that the GOC failed "to do the maximum it is able to do."¹⁰²

In its supplemental questionnaires, as noted above, the GOC has indicated its refusal to provide information about the internal administration of the program. The GOC is the only party that can answer questions about the internal administration of this program, and, thus, its failure to provide the requested information further undermines Commerce's ability to verify the GOC's and respondent company's claims of non-use of this program. Commerce cannot verify non-use at the China ExIm Bank without a complete set of administrative measures on the record that would provide guidance to Commerce in querying the records and electronic databases of the China ExIm Bank. As explained above, without understanding how this program operates, we cannot ascertain what a proper database search entails. For example, we do not know whether the searches should have been performed using the U.S. customers' names or on other entities (for example, the partner/correspondent banks that worked with the U.S. customers rather than the U.S. customers themselves). Nor do we know whether there are different electronic systems for different types of credits. Similar to the obstacles we would face in attempting to verify usage by the exporter or U.S. customer, Commerce would not know what indicia to look for in searching for usage or even what records or databases we need to examine in conducting the verification (*i.e.*, without a complete set of laws, regulations, administrative measures, Commerce would not even know what books and records the China ExIm Bank maintains in the ordinary courses of its operations). Essentially, Commerce is unable to verify the little information on the record indicating non-usage (*e.g.*, the claims of the GOC and emails and certifications of U.S. customers), with the exporters, U.S. customers or at the China ExIm Bank itself given the refusal of the GOC to provide the 2013 Revisions and a complete list of correspondent/partner/intermediate banks. Therefore, we determine that the GOC has not cooperated to the best of its ability and, as AFA, find that the respondents used and benefited from this program.

For these reasons, we preliminarily find, as AFA, that under this program the GOC bestowed a financial contribution pursuant to section 771(5)(D) of the Act, provided a benefit pursuant to section 771(5)(E) of the Act, and that this program is specific because it is contingent on exports within the meaning of sections 771(5A)(A) and (B) of the Act. Regarding specificity, although the record regarding this program suffers from significant deficiencies, we note that the GOC's description of the program and supporting materials (albeit found to be deficient) demonstrates that through this program, state-owned banks, such as the China ExIm Bank, provide loans at preferential rates for the purchase of exported goods from China.¹⁰³ In addition, the program was alleged by the petitioner as a possible export subsidy.¹⁰⁴ Finally, Commerce has found this

¹⁰² See *Nippon Steel Corp v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003).

¹⁰³ See GOC SQR at Exhibits Loan-20 and Loan-21.

¹⁰⁴ See CVD Initiation Checklist at 10.

program to be an export subsidy in the past.¹⁰⁵ Thus, taking all such information into consideration indicates the provision of export buyer's credits is contingent on exports within the meaning of section 771(5A)(A) and (B) of the Act.

Based on the AFA rate selection hierarchy described above, for this program we are using an AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in the *Coated Paper from China Investigation Amended Final* proceeding, as the rate applicable to Best Nail and the non-cooperative companies.¹⁰⁶ Additionally, based on the methodology also described above for corroborating secondary information, we have corroborated the selected rate to the extent possible and find that the rate is reliable and relevant for use as an AFA rate for the Export Buyer's Credits program.

F. Application of AFA: Provision of "Other Subsidies"

In response to the question in the Initial Questionnaire requesting that respondents report whether they had received assistance under any other program, Best Nail identified numerous additional instances of assistance under programs not otherwise identified in our Initial Questionnaire.¹⁰⁷ In response to our request for information on these self-reported subsidies, the GOC responded:

The Department has requested information on numerous programs in this investigation. The responding companies and the GOC have cooperated to the best of their ability to provide the information requested. The GOC further notes that Article 11.2 of the *WTO Agreement on Subsidies and Countervailing Measures* dictates that investigations may not be initiated on the basis of "simple assertion, unsubstantiated by relevant evidence." Sufficient evidence with regard to the existence, amount, and nature of a subsidy must be presented for the Department to initiate the investigation of another program, consistent with Article 11.2(iii). The GOC believes, therefore, that an answer to this question would not be appropriate. For more information about the subsidies received by the respondent enterprises, please refer to the respondent enterprises' responses.¹⁰⁸

Subsequently, we issued a supplemental questionnaire requesting that the GOC provide a full response regarding the measurable "Other Subsidies" reported by Best Nail. However, in its response, the GOC did not provide any of the requested information concerning the programs at issue.¹⁰⁹

Based upon the foregoing, we preliminarily determine that the information necessary to analyze whether these reported "Other Subsidies" constitute a financial contribution and are specific is

¹⁰⁵ See, e.g., *Countervailing Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 17382 (April 25, 2019), and accompanying IDM at Comment 16.

¹⁰⁶ See *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 75 FR 70201 (November 17, 2010) (*Coated Paper from China Investigation Amended Final*) (revised rate for "Preferential Lending to the Coated Paper Industry" program).

¹⁰⁷ See Best Nail's SQR at Exhibit S1-8.

¹⁰⁸ See GOC IQR at 87-88.

¹⁰⁹ See GOC SQR at 25-26 and Exhibit Other-1.

not available on the record and that the GOC has withheld information that was requested of it. Thus, we must rely on facts available for purposes of this preliminary determination, in accordance with section 776(a)(1) and 776(a)(2)(A) of the Act.

Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. In applying AFA, we find that the “Other Subsidies” reported by Best Nail constitute financial contributions, pursuant to section 771(5)(D) of the Act, and are specific, within the meaning of section 771(5A) of the Act. For details regarding the remainder of our analysis for this program, *see* the “Other Subsidies,” section below.

VIII. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.¹¹⁰ In the Initial Questionnaire to the GOC and the mandatory respondents, we notified the respondents to this proceeding that the AUL period would be 12 years, on the basis of U.S. Internal Revenue Service Publication 946 (2016).¹¹¹ No party submitted comments challenging this AUL period.

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

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), we normally attribute a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

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

¹¹⁰ *See* 19 CFR 351.524(b).

¹¹¹ *See* 19 CFR 351.524(d)(2).

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.¹¹²

Thus, Commerce’s regulations make clear that we must look at the facts presented in each case to determine whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.¹¹³

Best Nail

As discussed above, we selected Best Nail as a mandatory respondent. Best Nail responded to Commerce’s questionnaire on behalf of itself, and reported that it had no cross-owned affiliates.¹¹⁴

Best Nail produces the subject merchandise.¹¹⁵ Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Best Nail to its own sales.

However, Best Nail reports that it has an affiliated trading company which was established during the POI, but did not export until after the POI.¹¹⁶ Pursuant to 19 CFR 351.525(c), “{b}enefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated.” Accordingly, as the affiliated trading company did not export subject merchandise until after the POI, we did not request information regarding this company.

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents’ receipt of benefits under each program. As discussed in further detail below under “Programs Preliminarily Determined to Be

¹¹² See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

¹¹³ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

¹¹⁴ See Best Nail’s Affiliation QR at 4.

¹¹⁵ *Id.* at 1.

¹¹⁶ See Best Nail’s Affiliation QR at 3; and Best Nail’s Affiliation SQR at Exhibits 1 and 2.

Countervailable,” where the program has been found to be countervailable as a domestic subsidy, we used the recipient’s total sales as the denominator (or, when appropriate, the total combined sales of the cross-owned affiliates, as described above). Where the program has been found to be contingent upon export activities, we used the recipient’s total export sales as the denominator. All sales used in our net subsidy rate calculations are net of intra-company sales. For a further discussion of the denominators used, *see* the Best Nail Preliminary Calculation Memorandum.¹¹⁷

IX. BENCHMARKS AND INTEREST RATES

We are investigating non-recurring, allocable subsidies received by Best Nail.¹¹⁸ The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

A. Discount Rates

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, we use comparable commercial loans reported by the respondent as a benchmark.¹¹⁹ 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.”¹²⁰

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from China*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.¹²¹ On July 21, 2017, Commerce conducted a reassessment of China’s financial system for CVD benchmarking purposes.¹²² Based on this reassessment, Commerce has concluded that, despite the reforms to date, the GOC’s role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that 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 selected an external market-based benchmark interest rate. The use of an external benchmark is consistent with Commerce’s practice.¹²³

¹¹⁷ *See* Memorandum, “Best Nail Calculations for Preliminary Determination” dated concurrently with this memorandum (Best Nail Preliminary Calculation Memorandum).

¹¹⁸ *See* 19 CFR 351.524(b)(1).

¹¹⁹ *See* 19 CFR 351.505(a)(3)(i).

¹²⁰ *See* 19 CFR 351.505(a)(3)(ii).

¹²¹ *See Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*), and accompanying IDM at Comment 10.

¹²² *See* Memorandum, “Countervailing Duty Investigation of Certain Collated Steel Staples from the People’s Republic of China: Review of China’s Financial System Memorandum,” dated concurrently with this memorandum at Attachment 1 “Review of China’s Financial System for Countervailing Duty (CVD) Benchmarking Purposes.”

¹²³ *See, e.g., Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82 FR 46754 (October 6, 2017), and accompanying PDM at

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China* and later updated in *Thermal Paper from China*.¹²⁴ 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.¹²⁵ Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2017.¹²⁶ Accordingly, as explained below, we used the interest rates of lower-middle income countries to construct the discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2017. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.¹²⁷

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

In each of the years from 2003-2009 and 2011-2017, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.¹²⁸ For 2010, however, the regression did not yield that outcome for China's income group.¹²⁹ This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmarks for the years from 2001-2009 and 2011-2017. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

21, unchanged in *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2015, 83 FR 16055 (April 13, 2018).

¹²⁴ See *CFS from China*, and accompanying IDM at Comment 10; see also *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*), and accompanying IDM at 8-10.

¹²⁵ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups> (World Bank Country Classification); see also Memorandum, "Countervailing Duty Investigation of Certain Collated Steel Staples from the People's Republic of China: Interest Rate Benchmark Memorandum," dated concurrently with this memorandum (Interest Rate Benchmark Memorandum).

¹²⁶ See World Bank Country Classification.

¹²⁷ See, e.g., *Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 60178 (December 19, 2017), and accompanying PDM at "Benchmarks and Discount Rates," unchanged in *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 32075 (July 11, 2018), and accompanying IDM.

¹²⁸ See Interest Rate Benchmark Memorandum.

¹²⁹ *Id.*

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, and they are included in that agency’s International Financial Statistics (IFS). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as “upper middle income” by the World Bank for 2010-2017 and “lower middle income” for 2001-2009.¹³⁰ First, we did not include those economies that we considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we remove any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency-denominated instruments. Finally, for each year we 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.¹³¹ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.¹³²

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.¹³³

In *Citric Acid from China*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.¹³⁴ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.¹³⁵ The resulting interest rate benchmarks and discount rates used in our preliminary calculations are provided in Best Nail’s Preliminary Calculation Memorandum.¹³⁶

B. Benchmark for Government Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR

As explained in detail in previous investigations, Commerce cannot rely on the use of the so-called “tier one” and “tier two” benchmarks described above to assess the benefits from the provision of land for LTAR in China. Specifically, in *Sacks from China*, Commerce determined that “Chinese land prices are distorted by the significant government role in the market,” and

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ See, e.g., *Thermal Paper from China*, and accompanying IDM at 10.

¹³⁴ 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.

¹³⁵ See Interest Rate Benchmark Memorandum.

¹³⁶ See Best Nail’s Preliminary Calculation Memorandum.

hence, no usable “tier one” benchmarks exist.¹³⁷ Furthermore, Commerce also found that “tier two” benchmarks (world market prices that would be available to purchasers in China) are not appropriate.¹³⁸

On October 2, 2018, Commerce completed a memorandum analyzing developments in China’s land market since 2007.¹³⁹ The Land Analysis Memorandum was prepared to assess the continued application of Commerce’s land for LTAR benchmark methodology, as established in 2007 in *Sacks from China*.¹⁴⁰ As discussed in the Land Analysis Memorandum, although reforms in China’s land markets have improved the use-rights of some landholders, such improvements have not been comprehensive, and reforms have been implemented on an *ad hoc* basis.¹⁴¹ The reforms to date have not addressed the fundamental institutional factors that underlie the Chinese government’s monopoly control over land-use, which precludes landholders from putting their land to its best use and realizing the market value of their landholdings.¹⁴² The GOC still owns all land in China, and exercises direct control over the sale of land-use rights and land pricing in the primary market and indirect control in the secondary market.¹⁴³

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

In this investigation, the petitioner submitted benchmark information for land prices, specifically information to value land from “Asian Marketview Reports” by CB Richard Ellis (CBRE) for Thailand for 2010.¹⁴⁴ We used this benchmark in the CVD investigations of *Solar Cells from*

¹³⁷ See, e.g., *Laminated Woven Sacks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *Laminated Woven Sacks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Sacks from China*).

¹³⁸ *Id.*

¹³⁹ See Benchmark Information at Exhibit 8 (Land Analysis Memorandum).

¹⁴⁰ 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 *Sacks from the PRC*.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ See Benchmark Information at Exhibit 9.

China and *Plywood from China*,¹⁴⁵ and more recently in *Steel Racks*.¹⁴⁶ We initially selected this information in the *Sacks from China* investigation 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.¹⁴⁷ We find that this benchmark is similarly suitable for this preliminary determination, based on the same considerations as were taken into account in *Sacks from China*. We have adjusted the benchmark for inflation, and we relied on it for our calculation of benefits relating to purchases of land-use rights by Best Nail.

We will continue to examine benchmark prices on a case-by-case basis and will consider the extent to which proposed benchmarks represent prices in a comparable setting (*e.g.*, a country proximate to China; the country's level of economic development, *etc.*). Therefore, we invite parties to submit alternative benchmark data that are consistent with the guidance provided in *Sacks from China* and the Land Analysis Memorandum.¹⁴⁸

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

1. Export Buyer's Credit

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

¹⁴⁵ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells from China*), and accompanying IDM at 6 and Comment 11; see also *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, In Part*, 82 FR 53473 (November 16, 2017) (*Plywood from China*), and accompanying IDM.

¹⁴⁶ See *Certain Steel Racks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 62297 (December 3, 2018) (*Steel Racks*), and accompanying PDM at 35-36.

¹⁴⁷ The complete history of our reliance on this benchmark is discussed in the above-referenced *Solar Cells from China* IDM. In that discussion, we reviewed our analysis from the *Sacks from China* investigation and concluded the CBRE data remained a valid land benchmark.

¹⁴⁸ See Land Analysis Memorandum at 30-31.

Consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 10.54 percent *ad valorem* for Best Nail, a rate calculated for the same or similar program in another CVD proceeding involving imports from China.¹⁴⁹

2. Provision of Electricity for LTAR

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

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

Consistent with our approach in *Wind Towers*, we first calculated Best Nail’s variable electricity costs by multiplying the monthly kilowatt hours (kWh) consumed at each price category (*e.g.*, peak, normal, and valley, where appropriate) by the corresponding electricity rates paid during each month of the POI.¹⁵⁰ Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by Best Nail during the POI from the monthly benchmark variable electricity costs.¹⁵¹

To measure whether Best Nail received a benefit with regard to its base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to the company by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the company’s consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the maximum demand or transformer capacity costs paid by Best Nail during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from Best Nail’s variable electricity payments and base rate payments.¹⁵² To calculate the net subsidy rate attributable to Best Nail, we divided Best Nail’s benefit by its respective POI sales.

On this basis, we preliminarily calculated a net countervailable subsidy rate of 0.02 percent *ad valorem* for Best Nail.¹⁵³

¹⁴⁹ See *Coated Paper from China Investigation Amended Final*, 75 FR at 70202 (identifying a revised *ad valorem* subsidy rate of 10.54 percent under “Preferential lending to the Coated Paper Industry”).

¹⁵⁰ See *Utility Scale Wind Towers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers*), and accompanying IDM at 21-22.

¹⁵¹ See Best Nail Preliminary Calculation Memorandum.

¹⁵² *Id.*

¹⁵³ *Id.*

3. Enterprise Income Tax Law, R&D Program

Under Article 30.1 of the Enterprise Income Tax Law, which became effective January 1, 2008, companies may deduct from their taxable income R&D expenses incurred in the development of new technologies, products, or processes.¹⁵⁴ Article 95 of the Implementing Regulations of the Enterprise Income Tax Law of China (Decree 512 of the State Council, 2007) provides that, if eligible research expenditures do not “form part of the intangible assets value,” an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount.¹⁵⁵ Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets’ costs.¹⁵⁶ Best Nail reported use of this program.¹⁵⁷

We preliminarily determine that this program constitutes a countervailable subsidy. This income tax deduction is a financial contribution in the form of revenue foregone by the GOC under section 771(5)(D)(ii) of the Act, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also find that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with R&D in eligible high-technology sectors and, thus, is *de jure* specific under section 771(5A)(D)(i) of the Act. Commerce has previously found this program to be countervailable.¹⁵⁸

To calculate the benefit from this program, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).¹⁵⁹ To compute the amount of the tax savings, we calculated the amount of tax Best Nail would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator, as discussed in the “Subsidies Valuation” section.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.55 percent *ad valorem* for Best Nail.¹⁶⁰

¹⁵⁴ See GOC IQR at 26.

¹⁵⁵ *Id.* at 27 and Exhibits C1-1 and C1-2.

¹⁵⁶ *Id.*

¹⁵⁷ See GOC IQR at 20 and Exhibits 10 -11.

¹⁵⁸ See *Solar Cells from China*, and accompanying IDM at 17.

¹⁵⁹ These credits can be either expensed or capitalized as 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 5 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, unchanged in *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014).

¹⁶⁰ See Best Nail Preliminary Calculation Memorandum.

4. Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR

Best Nail reported receiving benefits under this program as it is located in the Paojiang Industrial Zone as noted above.¹⁶¹ As stated above, in the “Application of AFA: Provision of Land-Use Rights in Industrial and Other Special Economic Zones for LTAR” section, we are basing our determination regarding the GOC’s provision of land on AFA, in part. For this preliminary determination, we determine that Best Nail received a countervailable subsidy through land provided for LTAR. Specifically, as discussed above in the “Use of Facts Otherwise Available and Application of Adverse Inferences” section, because the GOC provided no information regarding the entities that provided land-use rights to Best Nail, we preliminarily determine as AFA that these entities are authorities and that the provision of land-use rights to Best Nail constitutes a financial contribution. Additionally, as discussed above, we find as AFA that this subsidy is specific under section 771(5A) of the Act because the GOC did not provide any evidence to corroborate its statements regarding specificity.

To determine the benefit pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we first multiplied the Thailand industrial land benchmarks discussed above under the “Benchmarks and Interest Rates” section, by the total land areas of the land-use rights held by of Best Nail. We then subtracted the net price actually paid for the land to derive the total unallocated benefit. We next conducted the “0.5 percent test” provided for under 19 CFR 351.524(b)(2) for the year(s) of the relevant land-rights agreement by dividing the total unallocated benefit by the appropriate sales denominator. Please note that as there was no sales information available for 2004, Commerce preliminarily used the sales information from the next year available, 2006 as a denominator. As a result, we found that the benefits were greater than 0.5 percent of relevant sales and, therefore, allocated the benefits to the POI over a 50-year land-use rights period and determined the amounts attributable to the POI. We divided this amount by the appropriate total sales denominator, as discussed in the “Subsidies Valuation” section.¹⁶² On this basis, we preliminarily determine a subsidy rate of 0.76 percent *ad valorem* for Best Nail.

5. “Other Subsidies”

Best Nail self-reported various non-recurring subsidies from the GOC during the AUL.¹⁶³ The subsidies self-reported by Best Nail, which conferred a measurable benefit, are as follows (rates included in parentheses):¹⁶⁴

- (1) Land-Use Tax Reduction (.05%)
- (2) Export Credit Insurance Bonus (.01%)
- (3) Authorized Patent Award (.01%)
- (4) Payment for Enterprise to Increase Investment in Science and Technology Research and Development (.44%)

¹⁶¹ See Best Nail’s IQR at 30.

¹⁶² See Best Nail Calculation Memorandum.

¹⁶³ See Best Nail SQR at Exhibit S1-8.

¹⁶⁴ With respect to Best Nail’s self-reported subsidies, we have combined programs that had identical or nearly identical names, and which were received in the same year.

As discussed above in the section “Use of Facts Otherwise Available and Adverse Inferences,” we preliminarily determine, as AFA, that these subsidies constitute a financial contribution under section 771(5)(D)(i) of the Act and are specific under section 771(5A) of the Act. Further, we preliminarily determine that each of these subsidies confers a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a). To calculate the benefit received under these programs, we followed the methodology described in 19 CFR 351.524. To calculate the *ad valorem* subsidy rate for these programs, we divided the benefit conferred under each of these programs by the appropriate POI sales denominator.

Based on the methodology outlined above, we preliminarily calculated a cumulative *ad valorem* subsidy rate of 0.51 percent for Best Nail for such “other subsidies.”¹⁶⁵

Based on the methodology outlined above, we preliminarily calculated a cumulative *ad valorem* subsidy rate of 12.38 percent for Best Nail.

B. Programs Preliminarily Determined Not to Have Conferred a Measurable Benefit to Best Nail During the POI

1. Certain Self-Reported Subsidy Programs

Best Nail reported receiving benefits under various self-reported programs that did not confer a measurable benefit.¹⁶⁶ Based on the record evidence, we preliminarily determine that the benefits from the programs listed below were fully expensed prior to the POI or are less than 0.005 percent *ad valorem* when attributed to the respondent’s applicable sales, as discussed in the “Attribution of Subsidies” section above.

1. 2006 Termite Control Subsidy
2. 2006 Science and Technology Project Fund
3. 2007 Shaoxing City Foreign Trade Development Fund
4. 2008 Science and Technology Bureau Grant for Development of Roll Carton-Closing Staples
5. 2008 Financial Subsidies (Self-Export, Technological Project, Municipal Trademark)
6. 2008 Financial Support Fund for Open Economy Development in 2007
7. 2008 Shaoxing City Science and Technology Enterprises Award in 2007
8. 2009 Subsidy for Participating in North International Exhibition
9. 2009 Export Credit Insurance Bonus in 2008/Foreign Trade Development Fund
10. 2009 Technology Development Fee Award in 2008
11. 2009 Open Economy Support Fund in 2008
12. 2009 Science and Technology Enterprise Award for 2008
13. 2009 Self-Export Award
14. 2010 Export Credit Insurance Bonus in 2009/Shaoxing City Foreign Trade Development Fund
15. 2010 Financial Support Fund for Urban Open Economy Development in 2009
16. 2010 Enterprise Export Award
17. 2011 Special Fund for Industrial Support

¹⁶⁵ See Best Nail Preliminary Calculation Memorandum.

¹⁶⁶ See Best Nail SQR at Exhibit S1-8.

18. 2011 Special Fund for Supporting Development of Tertiary Industry
19. 2011 Enterprise Export Award
20. 2012 Special Fund for Supporting Development of Tertiary Industry
21. 2013 Self-Export Award
22. 2013 Special Fund for Supporting Development of Tertiary Industry
23. 2013 Land Tax Return from Paojiang Economic and Technological Development Zone Management Committee
24. 2013 Self-Export Award
25. 2014 Land Subsidy (Land tax return)
26. 2014 Land-Use Tax Reduction for Loss Caused by Typhoon in October 2013
27. 2014 Real Estate Tax Reduction for Loss Caused by Typhoon in October 2013
28. 2014 Water Conservancy Fund (Tax Reduction for Loss Caused by Typhoon in October 2013)
29. 2015 Subsidy for Enterprise Operation
30. 2015 Award for Standardization of Safety Production (Level 3)
31. 2015 Municipal Authorized Patent Grants in 2014
32. 2016 Reward for Industrial Transformation and Upgrading in 2014
33. 2016 Export Credit Insurance Bonus
34. 2017 Land Subsidy (Land tax return)
35. 2018 Professional Invention Patent Award

These programs are also listed in the respondent's calculation memorandum,¹⁶⁷ and are included in the AFA calculation reflected in the AFA Memorandum as they pertain to the non-cooperative respondents in this investigation.

C. Programs Preliminarily Determined to Be Not Used by Best Nail

1. State Key Technology Fund Grants
2. Grants for Energy Conservation and Emission Reduction
3. Subsidies for Development of Famous Brands and China World Top Brands
4. Small and Medium Enterprise International Market Exploration and Development Fund
5. Export Loans
6. Export Seller's Credit
7. Export Credit Guarantees
8. Export Assistance Grants
9. Export Credit Insurance Subsidies
10. Export Interest Subsidies for Enterprises Located in Zhejiang Province
11. Import Tariff Exemptions for Foreign-Invested Enterprises (FIEs) and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
12. Value Added Tax (VAT) Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
13. Preferential Lending to Export-Oriented Enterprises Classified as "Honorable Enterprises"
14. Income Tax Reductions for HNTEs
15. Reduction in or Exemption from Fixed Assets Investment Orientation Regulatory Tax

¹⁶⁷ See Best Nail Preliminary Calculation Memorandum.

- 16. Preferential Income Tax Policies for the Development of Western Regions of China
- 17. VAT Exemptions and Deductions for Central Regions
- 18. Import Duty Exemptions for Equipment Under the Preferential Tax Policy of Development of Western Regions of China
- 19. Policy Loans to the Certain Collated Steel Staples Industry
- 20. Provision of Wire Rod for LTAR
- 21. Provision of Zinc for LTAR
- 22. Provision of Land-Use Rights to Favored Industries for LTAR

XI. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

11/4/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance