



C-570-913
Administrative Review
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November 12, 2019

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

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

SUBJECT: Decision Memorandum for the Preliminary Results and Partial
Rescission of the Countervailing Duty Administrative Review of
Certain New Pneumatic Off-The-Road Tires from the People's
Republic of China; 2017

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on certain new pneumatic off-the-road tires (OTR tires) from the People's Republic of China (China). The period of review (POR) is January 1, 2017 through December 31, 2017. The only company subject to this review is Weihai Zhongwei Rubber Co., Ltd. (Zhongwei). We preliminarily find that Zhongwei received countervailable subsidies from certain programs during the POR. In addition, we are rescinding this review with respect to three companies.

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

II. BACKGROUND

In September 2008, Commerce published in the *Federal Register* a CVD order on OTR tires from China.¹ On September 11, 2018, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the *OTR Tires CVD Order* for the period

¹ See *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Countervailing Duty Order*, 73 FR 51627 (September 4, 2008) (*OTR Tires CVD Order*).



January 1, 2017 through December 31, 2017.² On September 28, 2018, we received timely requests to conduct an administrative review from Triangle Tyre Co., Ltd. (Triangle), Laizhou Xiongying Rubber Industry Co., Ltd. (Xiongying), and Qingdao Jinhaoyang International Co., Ltd. (Jinhaoyang).³ On October 1, 2018, Super Grip Corporation (Super Grip) and Zhongwei each filed requests that Zhongwei be reviewed.⁴

On November 15, 2018, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published in the *Federal Register* a notice of initiation of an administrative review of the *OTR Tires CVD Order* covering Zhongwei, Xiongying, Jinhaoyang, and Triangle.⁵ Xiongying, Jinhaoyang, and Triangle each timely submitted withdrawal requests within the 90-day period stipulated in 19 CFR 351.213(d)(1).⁶

On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.⁷

On April 5, 2019, Commerce sent out an initial questionnaire to the Government of the People's Republic of China (GOC) seeking information regarding the alleged subsidies, instructing the GOC to forward the questionnaire to Zhongwei.⁸ Zhongwei submitted responses to the original questionnaire on April 19 and May 20, 2019.⁹ The GOC did not respond to our questionnaire.

On July 10, 2019, Commerce extended the deadline for issuing the preliminary results of this administrative review by 90 days to October 10, 2019.¹⁰ On October 4, 2019, Commerce

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 45888 (September 11, 2018).

³ See Triangle's Letter, "New Pneumatic Off-the-Road Tires from the People's Republic of China: Request for Administrative Review," dated September 28, 2018; see also Xiongying's Letter, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Request for Review," dated September 28, 2018; and Jinhaoyang's Letter, "Jinhaoyang's Request for CVD Administrative Review Certain New Pneumatic Off-the-Road Tires from China (C-570-913)," dated September 28, 2018.

⁴ See Super Grip's Letter, "New Pneumatic Off-the-Road Tires People's Republic of China Request for Administrative Review," dated October 1, 2018; and Zhongwei's Letter, "New Pneumatic Off-the-Road Tires from the People's Republic of China: Request for Administrative Review," dated October 1, 2018.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 57411 (November 15, 2018).

⁶ See Xiongying's Letter, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Withdrawal of Request for Review," dated November 22, 2018; Jinhaoyang's Letter, "Jinhaoyang's Withdrawal of Request for Administrative Review Certain New Pneumatic Off-the-Road Tires from China," dated December 18, 2018; and Triangle's Letter, "New Pneumatic Off-the-Road Tires from the People's Republic of China – Withdrawal of Triangle Tyre Request for Administrative Review," dated on February 4, 2019.

⁷ See Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

⁸ See Commerce's Letter, "2017 Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from China: Initial Questionnaire," dated April 5, 2019 (Initial Questionnaire).

⁹ See Zhongwei's Letter, "Section III Identifying Affiliated Companies Questionnaire Response: New Pneumatic Off-the-Road Tires from the People's Republic of China," dated April 19, 2019 (Zhongwei's April 19, 2019 Affiliation Response); and Zhongwei's Letter, "Section III Questionnaire Response: New Pneumatic Off-the-Road Tires from the People's Republic of China," dated May 20, 2019 (Zhongwei's May 20, 2019 IQR).

¹⁰ See Memorandum, "Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review -2017," dated July 10, 2019.

extended the deadline for issuing the preliminary results of this administrative review by an additional 30 days to November 12, 2019.¹¹

On May 10, 2019, as a result of the five-year (sunset) review, Commerce revoked the *OTR Tires CVD Order*.¹² In the *Revocation Notice*, Commerce stated that it intended to issue instructions to CBP to terminate the suspension of liquidation and to discontinue the collection of cash deposits on entries of subject merchandise, entered or withdrawn from warehouse, on or after February 4, 2019.¹³ Furthermore, because the *OTR Tires CVD Order* has been revoked as a result of the *Revocation Notice*, Commerce will not issue cash deposit instructions at the conclusion of this administrative review.

III. SCOPE OF THE ORDER

The products covered by the scope are new pneumatic tires designed for off-the-road (OTR) and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,¹⁴ combine harvesters,¹⁵ agricultural high clearance sprayers,¹⁶ industrial tractors,¹⁷ log-skidders,¹⁸ agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;¹⁹ (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,²⁰ front end loaders,²¹ dozers,²² lift

¹¹ See Memorandum, “Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review -2017,” dated October 4, 2019.

¹² See *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Results of Sunset Reviews and Revocation of Antidumping Duty and Countervailing Duty Orders*, 84 FR 20616 (May 10, 2019) (*Revocation Notice*).

¹³ See *Revocation Notice*, 84 FR at 20618.

¹⁴ Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

¹⁵ Combine harvesters are used to harvest crops such as corn or wheat.

¹⁶ Agricultural sprayers are used to irrigate agricultural fields.

¹⁷ Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

¹⁸ A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

¹⁹ Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver’s shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

²⁰ Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

²¹ Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

²² A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.*, typically around construction sites. They can also be used to perform “rough grading” in road construction.

trucks, straddle carriers,²³ graders,²⁴ mobile cranes,²⁵ compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks.²⁶ The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the proceeding range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type²⁷ or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.70.0010, 4011.70.0050, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol “DOT” must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

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

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

ST - Identifies a special tire for trailers in highway service.

²³ A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

²⁴ A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform “finish grading.” Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

²⁵ *I.e.*, “on-site” mobile cranes designed for off-highway use.

²⁶ A counterbalanced lift truck is a rigid framed, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

²⁷ While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

Suffix letter designations:

TR - Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156” or plus 0.250”;

MH - Identifies tires for Mobile Homes;

HC - Identifies a heavy duty tire designated for use on “HC” 15” tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.

Example: 8R17.5 LT, 8R17.5 HC;

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

MC - Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

IV. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. As noted in the “Background” section of this memorandum, Xiongying, Jinhaoyang, and Triangle each timely submitted withdrawal requests within 90 days of the publication date of the notice of initiation. No other parties requested an administrative review with respect to these entities. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the *OTR Tires CVD Order* with respect to these three parties.

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

In a CVD proceeding, Commerce requires information from both the government of the country whose merchandise is under investigation and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, Commerce may rely on adverse facts available (AFA) to preliminarily find that a financial contribution exists under the alleged program or that the program is specific.²⁸ However, where possible, Commerce will rely on the responsive producer’s or exporter’s records to determine the existence and amount of the benefit, to the extent that those records are useable and verifiable.

Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, use the “facts otherwise available” if: (1) necessary information is not on the record or (2) an interested party or any other person withholds information that has been requested; fails to

²⁸ See, e.g., *Hardwood and Decorative Plywood from the People’s Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013), and accompanying Issues and Decision Memorandum (IDM) at Comment 3.

provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in applying the facts otherwise available (AFA) when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.²⁹ Furthermore, 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 CVD investigation, a previous administrative review, or other information placed on the record.³⁰

Finally, under the new section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. When selecting an AFA rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."³¹ 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."³²

For purposes of these preliminary results, we are applying AFA to the programs as outlined below:

A. GOC – Markets Distorted by Government Presence

In this review, we are examining the provision of carbon black, nylon cord, natural rubber, and synthetic rubber for less-than-adequate-remuneration (LTAR). Commerce requested that the GOC provide information concerning the industries for these inputs in China for the POR. Specifically, we requested that the GOC provide the following information for these inputs:³³

- a. The total number of producers.
- b. The total volume and value of Chinese domestic consumption of {input} and the total volume and value of Chinese domestic production of {input}.
- c. The percentage of domestic consumption accounted for by domestic production.
- d. The total volume and value of imports of {input}.

²⁹ See section 776(b)(1)(B) of the Act.

³⁰ See 19 CFR 351.308(c).

³¹ See, e.g., *Countervailing Duty Investigation of Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 58175 (December 11, 2017), and accompanying IDM at "Use of Facts Otherwise Available and Adverse Inferences."

³² See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc 103-316, Vol. I at 870 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4199.

³³ See Initial Questionnaire.

- e. The percentage of total volume and (separately) value of domestic production that is accounted for by companies in which the Government maintains an ownership or management interest, either directly or through other Government entities, including a list of the companies that meet these criteria.
- f. A discussion of what laws, plans or policies address the pricing of the input, the levels of production of the input, the importation or exportation of the input, or the development of the input capacity. Please state which, if any, central and subcentral level industrial policies pertain to the input industry.

Commerce requested such information to determine to what extent the GOC is involved as a provider of these inputs in China and whether its presence in these markets is such that it distorts all transaction prices. As noted above, the GOC failed to respond to the questionnaire for this POR. Therefore, we preliminarily determine that the GOC withheld necessary information that was requested of it and, thus, we must rely on facts available in these preliminary results.³⁴ 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.³⁵ In drawing an adverse inference, we preliminarily find that prices from actual transactions involving Chinese buyers and sellers of carbon black, nylon cord, natural rubber, or synthetic rubber are significantly distorted by the involvement of the GOC.³⁶ Therefore, we preliminarily find that the use of an external benchmark, consistent with 19 CFR 351.511(a)(2)(ii), is warranted for calculating the benefit for the provision of carbon black, nylon cord, natural rubber, and synthetic rubber for LTAR.

B. Certain Producers of Carbon Black, Nylon Cord, Natural Rubber, and Synthetic Rubber are “Authorities”

As discussed above, Commerce is investigating the provision of carbon black, nylon cord, natural rubber and synthetic rubber for LTAR. We requested information from the GOC regarding the specific companies that produced the input products that Zhongwei purchased during the POR. Specifically, we sought information from the GOC that would allow us to determine whether the producers are “authorities” within the meaning of section 771(B) of the Act.³⁷ Furthermore we asked the GOC to: (1) provide information about the involvement of the Chinese Communist Party (CCP) in any input supplier identified by Zhongwei, including whether individuals in management positions are CCP members, in order to evaluate whether the input suppliers which supplied Zhongwei are “authorities” within the meaning of section 771(B) of the Act; and (2) identify any owners, members of the board of directors, or managers of the input suppliers who were government or CCP officials during the POR.³⁸

³⁴ See section 776(a)(2)(A) of the Act.

³⁵ See section 776(b) of the Act.

³⁶ Commerce has previously determined that China’s carbon black, nylon cord, natural rubber and synthetic rubber markets were distorted. See *New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 64268 (October 19, 2010) (*OTR Tires China 2007-08 Prelim*), unchanged in *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 23286 (April 26, 2011) (*OTR Tires China 2007-08 Final*).

³⁷ See Initial Questionnaire.

³⁸ *Id.*

As we explained in the CCP Memorandum³⁹ we understand the CCP to exert significant control over economic activities in China. Thus, Commerce finds, as it has in prior CVD proceedings,⁴⁰ that the information requested regarding the role of CCP officials and CCP committees in the management and operations of Zhongwei's input suppliers is necessary to our determination of whether these producers are "authorities" within the meaning of section 771(5)(B) of the Act.

As noted above, the GOC provided no information with respect to Zhongwei's input suppliers or information about the involvement of CCP members in the ownership and/or operations of those suppliers. Thus, we preliminarily determine that the GOC has the necessary information that was requested of it, but withheld that information. In so doing, the GOC significantly impeded the review. Therefore, in accordance with sections 776(a)(2)(A) and 776(a)(2)(C) of the Act, Commerce must rely on "facts otherwise available" in conducting our analysis of the producers that supplied Zhongwei with these inputs during the POR.⁴¹ Moreover, we preliminarily find that the GOC did not act to the best of its ability to comply with our request for information. Consequently, we find that an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. Thus, as AFA, we are finding that these producers are "authorities," within the meaning of section 771(5)(B) of the Act.⁴²

C. Provision of Electricity for LTAR

As discussed under the "Programs Preliminarily Determined to be Countervailable" section below, we are reviewing the alleged provision of electricity for LTAR. Because the GOC failed to respond to the questionnaire for this POR in this review, we preliminarily determine that the use of AFA is warranted in determining the countervailability of the alleged provision of electricity for LTAR. 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 us, and that the GOC significantly impeded this proceeding. Thus, we must rely on "facts available" in these preliminary results.⁴³ 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 requests for information. As a result, an adverse inference is warranted in the application of facts available.⁴⁴ The GOC failed to provide the requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the National Development and Reform Commission and provincial governments. Therefore, we

³⁹ See Memorandum, "2017 Countervailing Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Additional Documents for the Preliminary Results," at Attachment III, which includes the Public Body Memorandum and its attachment, the CCP Memorandum, dated concurrently with this memorandum (Additional Documents Memorandum).

⁴⁰ See, e.g., *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014), and accompanying IDM at Comment 5.

⁴¹ See sections 776(a)(1) and 776(a)(2)(A) of the Act.

⁴² 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) (*OTR Tires from China 2015 Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM), unchanged in *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018) (*OTR Tires from China 2015 Final Results*), and accompanying IDM (collectively, *OTR Tires from China 2015*).

⁴³ See sections 776(a)(1), (a)(2)(A) and (a)(2)(C) of the Act.

⁴⁴ See section 776(b) of the Act.

are also drawing an adverse inference in selecting from the facts available to select the benchmark for determining the existence and amount of the benefit.⁴⁵ The benchmark rates we selected are derived from information from the record of *OTR Tires from China 2015* administrative review⁴⁶ and are the highest electricity rates for the applicable rate and user categories.

D. Land-Use Rights for LTAR

As discussed below in the section “Programs Preliminarily Determined to be Countervailable,” Commerce is investigating the provision of four land-use rights programs for less than adequate remuneration: Government Provision of Land to State-Owned Enterprises (SOEs); Provision of Land-Use Rights to OTR Tire Producers for LTAR; Provision of Land for LTAR to Foreign-Invested Enterprises (FIEs); and Provision of Land-Use Rights in Industrial and Other Special Economic Zones (SEZs) for LTAR. We requested information from the GOC regarding these four programs.⁴⁷

Specifically, we asked the GOC to identify all instances in which it provided land or land-use rights to Zhongwei during the average useful life (AUL).⁴⁸ The information requested regarding the provision of land and land-use rights to Zhongwei and the basis for which they were provided is crucial for our analysis to determine whether an alleged program is a financial contribution and specific. This type of information has been provided and verified in previous investigations.⁴⁹

Given that the GOC has provided information and supporting evidence regarding the provision of land and land-use rights in previous proceedings, we preliminarily determine that the GOC has, but did not provide, the necessary information that was requested of it and, thus, that Commerce must rely on “facts otherwise available” in issuing its preliminary results, pursuant to section 776(a)(2)(A) of the Act. Moreover, because the GOC failed to provide information it is 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 preliminarily find that AFA is warranted, pursuant to section 776(b) of the Act. For details regarding the remainder of our analysis for the Provision of Land-Use Rights to OTR Tire Producers for LTAR program, including the benefit determination, *see* the “Analysis of Programs” section below.

⁴⁵ *Id.*

⁴⁶ *See OTR Tires from China 2015.*

⁴⁷ Zhongwei reported purchasing land-use rights during the AUL through the Provision of Land-Use Rights to OTR Tire Producers for LTAR and has provided supporting documentation for the program. *See* Zhongwei’s May 20, 2019 IQR at III-22 -26 and Exhibits 22-23.

⁴⁸ *See* Initial Questionnaire.

⁴⁹ *See, e.g., Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 72 FR 71360, 71363 (December 17, 2007), and accompanying PDM at 10 (“we examined these companies’ land-use rights agreements and discussed the agreements with the relevant government authorities”), unchanged in *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*OTR Tires from China Final Determination*), and accompanying IDM (collectively, *OTR Tires from China Investigation*).

E. Other Subsidy Programs

Zhongwei also self-reported several subsidy programs.⁵⁰ Given the GOC's failure to respond to our requests for information in this administrative review, we preliminarily determine that the use of facts available pursuant to sections 776(a)(1) and (2)(A) of the Act is warranted in determining the countervailability of these apparent subsidies reported by Zhongwei. First, necessary information regarding whether these programs provide a financial contribution, within the meaning of section 771(5)(D) of the Act, and whether these programs are specific, within the meaning of section 771(5A) of the Act, is not on the record of this review due to the GOC's lack of cooperation.⁵¹ Further, the GOC withheld information that was requested of it by not providing information regarding these subsidies in response to our questionnaire.⁵² Because the GOC failed to provide the requested information, we find that the GOC failed to cooperate to the best of its ability regarding our request for information on the subsidies that it provided. Therefore, we find that an adverse inference is warranted with respect to these subsidies, pursuant to section 776(b) of the Act. As a result, we preliminarily find that, as AFA, these subsidies reported by Zhongwei provide a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. To preliminarily determine whether benefits were provided as a result of these subsidies within the meaning of section 771(5)(E) of the Act, Commerce relied on Zhongwei's usage information.

F. All Other Programs Previously Found to be Countervailable

Further, for the programs that Commerce has previously found to be countervailable, in part because these programs constituted a financial contribution by an authority and were specific,⁵³ we are continuing to find these programs to constitute a financial contribution by an authority and to be specific. It is Commerce's practice not to revisit financial contribution and specificity determinations made in a prior segment of the same proceeding, absent the presentation of new facts or evidence.⁵⁴ The United States Court of Appeals for the Federal Circuit (CAFC) has affirmed this practice, under section 751(a)(1)(A) of the Act.⁵⁵ In this administrative review, the GOC withheld information requested of it, including new information regarding the financial contribution and specificity of these programs. In light of the lack of new information on the record, and consistent with our practice and *Magnola*, we are continuing to find these programs to be countervailable.

⁵⁰ See Zhongwei's May 20, 2019 IQR at III-31 and Exhibit 28.

⁵¹ See section 776(a)(1) of the Act.

⁵² See section 776(a)(2)(A) of the Act.

⁵³ See *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014), and accompanying IDM at sections VIII.A and B.1.a; and *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review, 2014-2015*, 82 FR 42792 (September 12, 2017), and accompanying IDM at section X.A.

⁵⁴ See *Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, Products from the People's Republic of China: Final Results of Countervailing Duty Administrative Review, 2012*, 80 FR 41003 (July 14, 2015) (*Solar Cells from China 2012*), and accompanying IDM at 27 n.130 ("In a CVD administrative review, we do not revisit past determinations of countervailability made in the proceeding, absent new information.").

⁵⁵ See *Magnola Metallurgy, Inc. v United States*, 508 F. 3d 1349, 1353-56 (CAFC 2007) (*Magnola*).

VI. DIVERSIFICATION OF CHINA'S ECONOMY⁵⁶

Concurrently with this decision memorandum, Commerce has placed the following excerpts from the National Bureau of Statistics of China's *China Statistical Yearbook* on the record of this review: Index Page; Table 14-7: Main Indicators on Economic Benefit of State-owned and State-holding Industrial Enterprise by Industrial Sector; and Table 14-11: Main Indicators on Economic Benefit of Private Industrial Enterprise by Industrial Sector.⁵⁷ 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. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the AUL of renewable physical assets used in the production of subject merchandise.⁵⁸ Commerce preliminarily finds the AUL in this proceeding to be 14 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.⁵⁹ Commerce notified the respondents of the AUL in the Initial Questionnaire and requested data accordingly. No party in this proceeding disputed this allocation 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 subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than over the AUL.

B. Attribution of Subsidies

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

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

⁵⁶ In accordance with section 701(f) of the Act, Commerce continues to apply CVD law to China.

⁵⁷ See Memorandum, "Public Bodies Analysis Memorandum," dated September 10, 2019 (Public Bodies Analysis Memorandum).

⁵⁸ See 19 CFR 351.524(b).

⁵⁹ See U.S. Internal Revenue Service Publication 946 (2015), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

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 cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.⁶⁰

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade 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.⁶¹

Zhongwei reported that: it neither sells its merchandise through any export trading companies nor exports merchandise produced by other companies; none of its affiliates produced the subject merchandise or supply it with any input products; and none of its affiliates received a subsidy and transferred it to Zhongwei during the POR.⁶² Accordingly, in determining the countervailable subsidy rate for Zhongwei, we are relying on 19 CFR 351.525(b)(6)(i) and making no attributions under 19 CFR 351.525(b)(6)(ii)-(v) and (c).

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators we used to calculate the countervailable subsidy rate for the various subsidy programs described below are explained in further detail in the preliminary calculations memorandum prepared for this preliminary review.⁶³

VIII. BENCHMARKS AND DISCOUNT RATES

We are examining loans received by the respondents from Chinese policy banks and state-owned commercial banks (SOCBs). We are also examining non-recurring, allocable subsidies.⁶⁴ The derivation of the benchmark interest rates and discount rates used to measure the benefit from these subsidies are discussed below.

⁶⁰ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998).

⁶¹ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600 (CIT 2001).

⁶² See Zhongwei's April 19, 2019 Affiliation Response at III-2-5 and Exhibit 1.

⁶³ See Zhongwei's Preliminary Results Calculation Memorandum at 3-4.

⁶⁴ See 19 CFR 351.524(b)(1).

A. Short-Term RMB-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, Commerce uses comparable commercial loans reported by the company as a benchmark.⁶⁵ 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.”⁶⁶ As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate.

For the reasons explained in *CFS from China*,⁶⁷ 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. In an analysis memorandum dated July 21, 2017, Commerce conducted a re-assessment of the lending system in China.⁶⁸ Based on this re-assessment, Commerce has concluded that despite reforms to date, the Government of China’s role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that any loans received by the respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, Commerce is selecting an external market-based benchmark interest rate.⁶⁹ The use of an external benchmark is consistent with Commerce’s practice.⁷⁰

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China*⁷¹ and later updated in *Thermal Paper from China*.⁷² 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*,⁷³ this pool of countries captures the broad inverse relationship between income and interest rates. For 2002 through 2009, China fell in the lower-middle income category.⁷⁴ Beginning with 2010, however, China is in the upper-middle income category and remained

⁶⁵ See 19 CFR 351.505(a)(3)(i).

⁶⁶ See 19 CFR 351.505(a)(3)(ii).

⁶⁷ 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.

⁶⁸ See Memorandum, “Review of China’s Financial System Memorandum,” dated September 20, 2019.

⁶⁹ See World Bank Country Classification at <http://econ.worldbank.org/>.

⁷⁰ See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002), and accompanying IDM at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

⁷¹ See *CFS from China* IDM at Comment 10.

⁷² See *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.

⁷³ See *CFS from China* IDM at Comment 10.

⁷⁴ See Memorandum, “2017 Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Loan Interest Rate Benchmarks,” dated September 19, 2019 (Loan Interest Rate Benchmarks).

there for 2011 to 2015.⁷⁵ Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for the years 2002-2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for the years 2010-2015.

After identifying the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in the 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 year from 2002-2009, and 2011-2015, the results of the regression-based analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates. For 2010, however, the regression does not yield that outcome for China's income group. This contrary result for a single year does not lead Commerce 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 benchmark for the years from 2002-2009, and 2011-2015. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, 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 - 2015, and "lower-middle income" for 2002 -2009.⁷⁶ First, we did not include those economies that Commerce considers to be non-market economies for antidumping purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments.⁷⁷ Finally, for each year Commerce calculated an inflation-adjusted short-term benchmark rate and excluded any countries with aberrational or negative real interest rates for the year in question.⁷⁸ Because the resulting rates are net of inflation, we adjusted the benchmark rates to include an inflation component before comparing them to the interest rates on loans issued to the respondents by SOCBs.⁷⁹

⁷⁵ See World Bank Country Classification, <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD?locations=XM-XD-XI-XN>.

⁷⁶ See Loan Interest Rate Benchmarks.

⁷⁷ For example, in certain years, Jordan reported a deposit rate, not a lending rate, and Ecuador and Timor L'Este reported dollar-denominated rates; therefore, such rates have been excluded.

⁷⁸ For example, we excluded Brazil from the 2010 and 2011 benchmarks because the country's real interest rates were 34.95 percent and 37.25 percent, respectively. See Loan Interest Rate Benchmarks.

⁷⁹ See Loan Interest Rate Benchmarks for the adjusted benchmark rates including an inflation component.

B. Long-Term RMB-Denominated Loans

The lending rates reported in the IFS represent short-and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, Commerce developed an adjustment to the short-and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.⁸⁰

In the *Citric Acid from China Final Determination*, this methodology was revised by switching from a long-term markup 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.⁸¹ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁸²

C. Foreign Currency-Denominated Loans

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

For any long-term foreign currency-denominated loans, Commerce added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-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.⁸³

D. Benchmarks to Determine Adequacy of Remuneration for Inputs

The adequacy of remuneration for government-provided goods or services is determined pursuant to 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2), Commerce measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in

⁸⁰ See *Light-Walled Rectangular Pipe and Tube from the People’s Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008), and accompanying IDM at 8.

⁸¹ 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 Final Determination*), and accompanying IDM at Comment 14.

⁸² See Loan Interest Rate Benchmarks for the resulting inflation adjusted benchmark lending rates.

⁸³ See Loan Interest Rate Benchmarks.

our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation (*i.e.*, tier one). This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

E. Provision of Inputs for LTAR

For all of the inputs, as discussed in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we preliminarily determine that all of Zhongwei’s domestically purchased carbon black, nylon cord, natural rubber and synthetic rubber suppliers are “authorities.” We selected the benchmarks for measuring the adequacy of the remuneration for carbon black, nylon cord, natural rubber, and synthetic rubber in accordance with 19 CFR 351.511(a).

As discussed in the “Use of Facts Otherwise Available and Application of Adverse inferences” section above, as the GOC did not respond to Commerce’s questionnaire, we preliminarily find, as AFA, that the domestic markets for these inputs are distorted by the government’s involvement in those markets. Accordingly, to measure the adequacy of remuneration for the provision of all these material inputs, we are relying instead on world market prices (tier two) to derive our benchmarks as provided for in 19 CFR 351.511(a)(2)(ii).

Pursuant to 19 CFR 351.511(a)(2)(iv), benchmarks should reflect “delivered prices” and should include import and delivery charges. As such, where appropriate, we have added freight charges, value added tax (VAT), and import duties applicable on purchases of these inputs in order to calculate the prices that Zhongwei would have paid on the world market for these inputs.

F. Provision of Land-Use Rights for LTAR

As explained in detail in previous investigations, Commerce cannot rely on the use of tier one and/or tier two benchmarks to assess the benefits from the provision of land for LTAR in China.⁸⁴ For this review, we relied on the Thailand benchmark information, *i.e.*, “Asian Marketview Reports” by CB Richard Ellis (CBRE), that we relied upon in calculating land benchmarks in the *Solar Cells from China Investigation*.⁸⁵ We initially selected this information in the *Laminated Woven Sacks from China* investigation after considering a number of factors, including national income levels, population density, and producers’ perceptions that Thailand is

⁸⁴ See, e.g., *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015), and accompanying IDM at 10-11; and *Laminated Woven Sacks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *Laminated Woven Sacks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Laminated Woven Sacks from China*).

⁸⁵ 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 Investigation*), and accompanying IDM at 6 and Comment 11.

a reasonable alternative to China as a location for production in the region.⁸⁶ We preliminarily find that these benchmarks, adjusted for inflation, are suitable for these preliminary results to measure any benefit received by the respondent companies through the provision of land by the government during the AUL of this investigation.

IX. 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. Provision of Land-Use Rights to OTR Tire Producers for LTAR

In the investigation, Commerce countervailed the Provision of Land-Use Rights to OTR Tire Producers for LTAR,⁸⁷ which Commerce found to be a financial contribution in the form of a provision of a good under section 771(5)(D)(iii) of the Act, and that the subsidy was specific to SOEs and, thus, specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. There is no information on the record that leads us to reconsider that determination. Therefore, consistent with our practice to revisit financial contribution and specificity determinations made in a prior segment of the same proceeding, absent the presentation of new facts or evidence,⁸⁸ we preliminarily continue to find under section 771(5)(D)(iii) of the Act that this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Zhongwei has reported purchasing land-use rights during the AUL and has provided supporting documentation.⁸⁹ To determine the benefit pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we have relied on data provided by Zhongwei. We first compared the price actually paid by Zhongwei for land-use rights to the Thailand industrial land benchmarks discussed above under the “Benchmarks and Discount Rates” section above, to the price actually paid for the land to derive the total benefit for each year in which a land-use right was purchased. We next conducted the “0.5 percent test” of 19 CFR 351.524(b)(2) for each year in which Zhongwei purchased land-use rights by dividing the total benefit by the appropriate sales denominator. When we found that the benefits were at least 0.5 percent of relevant sales, we allocated the total benefit amounts across the terms of the land-use agreement, using the standard allocation formula of 19 CFR 351.524(d). On this basis, we calculated and determined the benefit amount attributable to the POR. We divided this amount by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above.

⁸⁶ The complete history of our reliance on this benchmark is discussed in *Solar Cells from China Investigation* at 6 and Comment 11. In that discussion, we reviewed our analysis from the *Laminated Woven Sacks from China* investigation and concluded the CBRE data were still a valid land benchmark.

⁸⁷ See *OTR Tires from China Final Determination* IDM at “Government Provision of Land”; and *OTR Tires from China 2015 Final Results* IDM at 6-7.

⁸⁸ See *Solar Cells from China 2012* IDM at 27 n.130.

⁸⁹ See Zhongwei’s May 20, 2019 IQR at III-22 -26 and Exhibits 22-23.

On this basis, we preliminarily determine that Zhongwei received land-use rights under the program *Provision of Land-Use Rights to OTR Tires Producers for LTAR* at a countervailing subsidy rate of 1.48 percent *ad valorem*.⁹⁰

2. *Government Policy Lending*

Commerce determined in the original investigation that this program was countervailable.⁹¹ Specifically, we found that policy lending was *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act, constituted financial contributions by “authorities” (*i.e.*, state-owned commercial banks) within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act, and provided benefits within the meaning of section 771(5)(E)(ii) of the Act equal to the difference between what the recipients paid on loans from government-owned banks and the amount they would have paid on comparable commercial loans.⁹² The record information in this segment of the proceeding supports the same findings and there is otherwise no other information on the record that leads us to reconsider that determination. Therefore, consistent with our practice to not revisit financial contribution and specificity determinations made in a prior segment of the same proceeding, absent the presentation of new facts or evidence,⁹³ we preliminarily continue to find that this program provides a financial contribution within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act and is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

Zhongwei reported having loans outstanding from Chinese policy banks or SOCBs during the POR under this program.⁹⁴ To calculate the benefit, we used the benchmarks described under “Benchmark and Discount Rates” above. We divided the total benefits received during the POR by the appropriate total sales denominator, as discussed in the “Subsidies Valuation Information” section above, and in Zhongwei’s preliminary calculation memoranda. On this basis, we determine a countervailable subsidy rate of 0.00 percent *ad valorem* for Zhongwei under this program.⁹⁵

3. *Provision of Electricity for LTAR*

Commerce has investigated and determined this program constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act in a prior segment of this proceeding.⁹⁶ There is no information on the record that leads us to reconsider that determination. Therefore, consistent with our practice to not revisit financial contribution and specificity determinations made in a prior segment of the same proceeding, absent the presentation of new facts or evidence,⁹⁷ we preliminarily continue to find that this program 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.

⁹⁰ See Zhongwei’s Preliminary Results Calculation Memorandum at 3-4.

⁹¹ See *OTR Tires from China Investigation*.

⁹² *Id.*

⁹³ See *Solar Cells from China 2012 IDM* at 27 n.130.

⁹⁴ See Zhongwei’s May 20, 2019 IQR at III 5-6 and Exhibit 11.

⁹⁵ See Zhongwei’s Preliminary Results Calculation Memorandum at 4-5.

⁹⁶ See, *e.g.*, *OTR Tires from China 2015*.

⁹⁷ See *Solar Cells from China 2012 IDM* at 27 n.130.

To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the actual consumption volumes and rates paid reported by Zhongwei.⁹⁸ To measure the benefit under the program, we compared the rates paid by Zhongwei for its electricity to the highest rates that it could have paid in China during the POR.

In deriving the benchmark, we referred to the GOC's provision of electricity in the *OTR Tires from China 2015* and adjusted for price index.⁹⁹ This benchmark reflects the use of AFA, which we applied as a result of its provision of electricity in this review. We calculated benchmark electricity payments by multiplying consumption volumes by the benchmark electricity rate corresponding to the user category, voltage class, and time period (*i.e.*, peak, normal, and valley), where applicable. We then compared the calculated benchmark payments to the actual electricity payments made by Zhongwei during the POR. Where the benchmark payments exceeded the payments made by the company, a benefit was conferred. Based on this comparison, we preliminarily find that electricity was provided for LTAR to Zhongwei.

To calculate the countervailable subsidy rate for the POR, we summed each of Zhongwei's benefits and divided the amounts by the total sales of Zhongwei for the POR. On this basis, we preliminarily find a countervailable subsidy of 1.06 percent ad valorem for Zhongwei.¹⁰⁰

4. *Provision of Natural and Synthetic Rubber at LTAR*

Commerce determined in the original investigation that this program was countervailable.¹⁰¹ Specifically, we found that the provision of rubber to be specific within the meaning of section 771(5A)(D)(iii)(I) of the Act and conferred a financial contribution within the meaning of section 771(5)(D) of the Act. The record information in this segment of the proceeding supports the same findings and there is otherwise no other information on the record that leads us to reconsider that determination. Therefore, consistent with our practice to not revisit financial contribution and specificity determinations made in a prior segment of the same proceeding, absent the presentation of new facts or evidence,¹⁰² we preliminarily continue to find that this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act and confers a financial contribution within the meaning of section 771(5)(D) of the Act.

To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the actual purchases of natural and synthetic rubber reported by Zhongwei.¹⁰³ As discussed in the "Benchmarks and Discount Rates" section above, Commerce is selecting benchmark prices for these rubber purchases based on 19 CFR 351.511(a)(2). As discussed above, we are applying tier two benchmark prices for both natural and synthetic rubber.

Regarding delivery charges, where necessary, we included actual ocean freight and inland freight charges that Zhongwei incurred to transport natural rubber and synthetic rubber to Zhongwei's production facilities. Further, where appropriate, we added the actual import duty and VAT

⁹⁸ See Zhongwei's May 20, 2019 IQR at 64-66 and Exhibit I42 and I43.

⁹⁹ See *OTR Tires from China 2015* PDM at 31.

¹⁰⁰ See Zhongwei's Preliminary Results Calculation Memorandum at 4.

¹⁰¹ See *OTR Tires from China Final Determination* IDM at 9-12.

¹⁰² See *Solar Cells from China 2012* IDM at 27 n.130.

¹⁰³ See Zhongwei's May 20, 2019 IQR at III-5-6 and Exhibit 12.

payments that Zhongwei made. We compared these monthly benchmark prices to Zhongwei's reported purchase prices for individual domestic transactions, including VAT and any delivery charges. We then divided the total amount of these benefits by the company's total sales during the POR and preliminarily determined a countervailable subsidy rate of 1.58 percent *ad valorem* for natural rubber and 5.55 percent *ad valorem* for synthetic rubber for Zhongwei.

5. Provision of Nylon Cord by SOEs for LTAR

Commerce determined in the first administrative review that this program was countervailable.¹⁰⁴ Specifically, we found the provision of nylon cord to be specific within the meaning of section 771(5A)(D)(iii)(II) of the Act, and program conferred a financial contribution within the meaning of section 771(5)(D) of the Act. The record information in this segment of the proceeding supports the same findings and there is otherwise no other information on the record that leads us to reconsider that determination. Therefore, consistent with our practice to not revisit financial contribution and specificity determinations made in a prior segment of the same proceeding, absent the presentation of new facts or evidence,¹⁰⁵ we preliminarily continue to find that this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act and confers a financial contribution within the meaning of section 771(5)(D) of the Act.

To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the actual purchases of nylon cord reported by Zhongwei.¹⁰⁶ As discussed in the "Benchmarks and Discount Rates" section above, in selecting benchmark prices for nylon cord purchases under 19 CFR 351.511(a)(2)(ii), we are applying tier two world market benchmark prices for nylon cord.

Regarding delivery charges, where necessary, we included ocean freight and inland freight charges that would be incurred to transport nylon cord to Zhongwei's production facilities. Further, where appropriate, we added import duties and the VAT applicable to import prices of nylon cord into China. In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for any ocean freight and/or import duties. We compared these monthly benchmark prices to the respondents' reported purchase prices for individual domestic transactions, including VAT and any delivery charges. We then divided the total amount of these benefits by Zhongwei's total sales during the POR and preliminarily determined a countervailable subsidy rate of 7.86 percent *ad valorem* for Zhongwei.¹⁰⁷

6. Provision of Carbon Black by SOEs for LTAR

Commerce determined in the first administrative review that this program was countervailable.¹⁰⁸ Specifically, we found the provision of carbon black to be specific within the meaning of section 771(5A)(D)(iii)(II) of the Act, because the tire industry is the predominant user of carbon black. Commerce determined this program conferred a financial contribution within the meaning of section 771(5)(D) of the Act. The record information in this segment of the proceeding supports the same findings and there is otherwise no other information on the record that leads us to

¹⁰⁴ See *OTR Tires China 2007-08 Prelim*, 75 FR at 64275, unchanged in *OTR Tires China 2007-08 Final*.

¹⁰⁵ See *Solar Cells from China 2012 IDM* at 27 n.130.

¹⁰⁶ See Zhongwei's May 20, 2019 IQR at III-7 and Exhibit 16.

¹⁰⁷ See Zhongwei's Preliminary Results Calculation Memorandum at 6.

¹⁰⁸ See *OTR Tires China 2007-08 Final*.

reconsider that determination. Therefore, consistent with our practice to not revisit financial contribution and specificity determinations made in a prior segment of the same proceeding, absent the presentation of new facts or evidence,¹⁰⁹ we preliminarily continue to find that this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act and confers a financial contribution within the meaning of section 771(5)(D) of the Act.

To determine the existence and the amount of any benefit under this program pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we relied on the actual purchases of carbon black reported by Zhongwei.¹¹⁰ As discussed in the “Benchmarks and Discount Rates” section, in selecting benchmark prices for carbon black purchases based on 19 CFR 351.511(a)(2), we are applying tier two benchmark prices for carbon black.

Regarding delivery charges, where necessary, we included ocean freight and inland freight charges that would be incurred to transport carbon black to the Respondents’ production facilities. Further, where appropriate, we added import duties and the VAT applicable to import prices of carbon black into China. In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding amounts for any ocean freight and/or import duties. We compared these monthly benchmark prices to the respondents’ reported purchase prices for individual domestic transactions, including VAT and any delivery charges. We then divided the total amount of these benefits by Zhongwei’s total sales during the POR and preliminarily determined a countervailable subsidy rate of 5.47 percent *ad valorem* for Zhongwei.¹¹¹

7. *Preferential Tax Policies for Research and Development Program*

Commerce determined that this program was countervailable in *OTR Tires from China 2015*.¹¹² The record information in this segment of the proceeding supports the same findings and there is otherwise no other information on the record that leads us to reconsider that determination. Therefore, consistent with our practice to not revisit financial contribution and specificity determinations made in a prior segment of the same proceeding, absent the presentation of new facts or evidence,¹¹³ we preliminarily continue to find that this program is specific within the meaning of section 771(5A)(D)(i) of the Act, and confers a financial contribution within the meaning of section 771(5)(D)(ii) of the Act.

To calculate the benefit from this program to Zhongwei, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax that Zhongwei would have paid absent the tax deductions at the tax rate that would otherwise apply.¹¹⁴ We then divided the tax savings by the

¹⁰⁹ See *Solar Cells from China 2012* IDM at 27 n.130.

¹¹⁰ See Zhongwei’s May 20, 2019 IQR at III-8-9 and Exhibits 17 and 18.

¹¹¹ See Zhongwei Preliminary Results Calculation Memorandum at 5-6.

¹¹² See *OTR Tires from China 2015 Preliminary Result* PDM at 28-29; unchanged in *OTR Tires from China 2015 Final Results* IDM at 7.

¹¹³ See *Solar Cells from China 2012* IDM at 27 n.130.

¹¹⁴ See Zhongwei’s May 20, 2019 IQR at III-15-18 and Exhibit 7, in which Zhongwei reported that it applied for Preferential Tax Policies for Research and Development Program and accrued certain deduction amount from the taxable income during the POR. Zhongwei also demonstrated the tax savings it received from this program through a calculation table based on 25 percent income tax rate.

appropriate total sales denominator for Zhongwei. On this basis, we calculated a countervailable subsidy rate of 0.52 percent *ad valorem* for Zhongwei.¹¹⁵

8. Other Subsidy Programs

Zhongwei reported that it received various grants during the AUL.¹¹⁶ However, these benefits do not pass the “0.5 percent test” provided in CFR 351.524(b)(2), and the benefits were expensed in the year of receipt, pursuant to 19 CFR 351.524(b)(2). In addition, Zhongwei received several grants, including the grants for export credit insurance,¹¹⁷ that did pass the “0.5 percent test.”¹¹⁸ We used the discount rates described above in the section “Subsidies Valuation Information,” to calculate the amount of the benefit allocable to the POR. We then divided the benefit amount by the appropriate sales denominator. On this basis, we preliminarily determine a countervailable subsidy rate of 0.07 percent *ad valorem* and 0.90 percent *ad valorem* for the grants for export credit insurance and other subsidy grant programs, respectively.¹¹⁹

B. Programs Preliminarily Determined to be Not Used

- Government Debt Forgiveness
- Special Fund for Environmental Protection of 2004
- Loan Forgiveness for SOEs
- Funds for Outward Expansion of Industries in Guangdong Province
- Export Interest Subsidy Funds for Enterprises Located in Guangdong and Zhejiang Provinces
- Export Buyer’s Credit Program
- Grants to Loss-Making SOEs
- Exemption for SOEs from Distributing Dividends to the State
- State Key Technology Renovation Project Fund
- Government Provision of Land to SOEs
- Provision of Land for LTAR to FIEs
- Provision of Land-Use Rights in Industrial and Other SEZs for LTAR
- Provincial Support in Antidumping Proceedings
- Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Income Tax Program)
- Preferential Tax Policies for Export-Oriented FIEs
- Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises
- Tax Benefits for FIEs in Encourage Industries that Purchase Domestic Origin Machinery
- Import Duty and VAT Exemptions on Imports of Raw Materials
- VAT Rebate for FIE Purchases of Domestically Produced Equipment
- VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries
- Tax Subsidies to FIEs in Specially Designated Geographic Areas

¹¹⁵ See Zhongwei’s Preliminary Results Calculation Memorandum at 2-3.

¹¹⁶ See Zhongwei’s May 20, 2019 IQR at III-31 and Exhibit 28.

¹¹⁷ See Zhongwei’s May 20, 2019 IQR at III-28-30 and Exhibit 27.

¹¹⁸ See Zhongwei’s May 20, 2019 IQR at III-31 and Exhibit 28.

¹¹⁹ See Zhongwei’s Preliminary Results Calculation Memorandum at 9.

- Local Income Tax Exemption and Reduction Programs for “Productive” FIEs
- Preferential Tax Policies for Advanced Technology Foreign Invested Enterprises
- Preferential Tax Policies for Knowledge or Technology Intensive FIEs
- Foreign Currency Retention Scheme
- Discounted Loans for Export Oriented Enterprises
- Preferential Tax Policies for High or New Technology FIEs
- The Clean Production Technology Fund
- Xuzhou Municipal Government Subsidies for Nurturing Industrial Enterprises (Groups) with Revenue Above 100 Billion Yuan and 10 Billion Yuan
- Municipal Major Technical Innovation Program
- Famous Brands Program
- Local and Provincial Technology Renovation Grants to Guizhou Tyre and its Affiliates
- Special Fund for Energy-Saving Technology Reform
- Special Funds for the Development of Industrialization and Informationization of Guiyang
- Local and Provincial Export Grants to Guizhou Tyre and Its Affiliates
- Export Loan Interest Subsidies
- Export Seller’s Credits from State-Owned Banks
- Business Development and Industrial and Trading Development Funds
- Local and Provincial Export Grants to Guizhou Tyre
- Local and Provincial Technology Renovation Grants to Guizhou Tyre and Its Affiliates
- Special Fund for Energy-Saving Technology Reform
- Special Fund for the Development of Industrialization and Informatization of Guiyang
- Export Loan Interest Subsidies
- Advanced Technology Innovation Reward
- Patent Supportive Reward
- Well-known Brand Reward
- Business Development Funds
- Industrial and Trading Development Funds
- Export Credit Insurance Supportive Funds
- Business Development Specific Funds
- 2013 Encouragement Funds to Private Enterprise

X. DISCLOSURE AND PUBLIC COMMENT

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹²⁰ Case briefs may be submitted to Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.

¹²⁰ See 19 CFR 351.224(b).

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹²¹ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.¹²² Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time, and location to be determined. Parties will be notified of the date, time, and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.¹²³ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time, on the due dates established above.¹²⁴

XI. RECOMMENDATION

We recommend that you approve the preliminary results described above.

Agree

Disagree

11/12/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

¹²¹ See 19 CFR 351.309(c)(2) and (d)(2).

¹²² See 19 CFR 351.310(c).

¹²³ See 19 CFR 351.303(b)(2)(i).

¹²⁴ See 19 CFR 351.303(b)(1).