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May 18, 2020

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 Determination of the
Countervailing Duty Investigation of Forged Steel Fluid End
Blocks 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 forged steel fluid end blocks (fluid end blocks) from the People’s Republic of China (China), as provided in section 703 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 (NMEs) under section 771(18) of the Act, such as China.

II. BACKGROUND

A. Initiation and Case History

On December 19, 2019, the FEB Fair Trade Coalition, Ellwood Group, and Finkl Steel (collectively, the petitioners), filed a petition with Commerce seeking the imposition of countervailing duties (CVD) on imports of fluid end blocks from China.¹ On January 8, 2020, Commerce initiated a CVD investigation on fluid end blocks from China.² Pursuant to section 702(b)(4)(A)(ii) of the Act, on December 19, 2019, we invited representatives of the Government of China (GOC) for consultations with respect to the Petition.³ However, the GOC did not request consultations; therefore, consultations were not held.

¹ See “Fluid End Blocks from China, Germany, India, and Italy: Antidumping and Countervailing Duty Petitions,” dated December 19, 2019 (Petition).

² See *Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 2385 (January 15, 2020) (*Initiation Notice*).

³ See Commerce’s Letter, “Countervailing Duty Petition on Forged Steel Fluid End Blocks from the People’s Republic of China: Invitation for Consultations,” dated December 19, 2019.

B. Respondent Selection

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 available resources, Commerce would select mandatory respondents based on quantity and value (Q&V) questionnaires issued to potential respondents.⁴ Commerce normally selects mandatory respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope of the investigations. However, for this investigation, the HTSUS numbers under which the subject merchandise would enter (7218.91.0030, 7218.99.0030, 7224.90.0015, 7224.90.0045, 7326.19.0010, 7326.90.8688, or 8413.91.9055) are basket categories containing a wide variety of manufactured steel products unrelated to fluid end blocks. Commerce determined, therefore, that CBP entry data could not be used for selecting respondents.

On January 9, 2020, Commerce issued 35 Q&V questionnaires to the exporters/producers merchandise identified by the petitioners, with complete contact information in the Petition.⁵ Additionally, Commerce posted the Q&V questionnaire, along with filing instructions, on the Enforcement and Compliance website.⁶ Three companies refused the package upon delivery.⁷ The questionnaires were successfully delivered to 27 companies.⁸ Commerce received timely filed Q&V questionnaire responses from 15 producers/exporters of subject merchandise.⁹ Commerce did not receive a response from 13 producers/exporters that received, and did not refuse, the questionnaire.¹⁰

⁴ *Id.*, 85 FR at 2388.

⁵ See Volume I of the Petition at 14-18. We noted that, out of the 38 exporters/producers named in the Petition, the following three company names, along with their addresses, were duplicated: GE Petroleum Equipment (Beijing) Co., Ltd., Qingdao RT G&M Co., Ltd., and Sichuan L/G Oilfield Equipment Co., Ltd.

⁶ See <http://trade.gov/enforcement/news.asp>.

⁷ See Memorandum, "Forged Steel Fluid End Blocks from the People's Republic of China: Quantity & Value Questionnaire Delivery Confirmation," dated January 21, 2020 (Delivery Confirmation Memo). In the Delivery Confirmation Memo, we noted that four companies refused delivery of the questionnaire, but Honghua International Co., Ltd., ultimately submitted a response after initially refusing delivery.

⁸ *Id.*

⁹ These companies, in alphabetical order, are: (1) BMZ Precision Metal Works Ltd.; (2) China Machinery Industrial Products Co., Ltd.; (3) Gardner Denver Thomas Pneumatic System (Wuxi) Co., Ltd.; (4) Honghua International Co., Ltd.; (5) Hongze Dongjun Machinery Co., Ltd.; (6) Nanjing Develop Advanced Manufacturing Co., Ltd.; (7) National Oilwell Varco Petroleum Equipment (Shanghai) Co., Ltd.; (8) Ningbo Daming Precision Casting Co., Ltd.; (9) Qingdao HNA Oilfield Equipment Manufacturing Co., Ltd.; (10) Shanghai Qinghe Machinery Co., Ltd.; (11) Sichuan Honghua Petroleum Equipment Co., Ltd.; (12) Sichuan LG Oilfield Equipment Ltd.; (13) SJ Petroleum Machinery Co.; (14) SJS Ltd.; and (15) Yantai Jereh Petroleum Equipment & Technologies Co., Ltd. Honghua International Co., Ltd., initially refused delivery before submitting a response, and Sichuan Honghua Petroleum Equipment Co., Ltd., submitted a response even though Commerce did not issue them a Q&V questionnaire.

¹⁰ These companies, in alphabetical order, are: (1) Anhui Tianyu Petroleum Equipment Manufacturing Co Ltd; (2) CNCCC Sichuan Imp & Exp Co Ltd; (3) GE Petroleum Equipment (Beijing) Co Ltd.; (4) Jiaxing Shenghe Petroleum Machinery Co Ltd.; (5) Ningbo Minmetals & Machinery Imp & Exp Co Ltd. (Ningbo) and Ningbo Minmetals & Machinery Imp & Exp Co Ltd. (Zhejiang); (6) Qingdao RT G&M Co Ltd.; (7) Shandong Fenghuang Foundry Co Ltd.; (8) Shandongshengjin Ruite Energy Equipment Co Ltd (part of Shengli Oilfield R&T Group); (9) Shanghai Baisheng Precision Machine; (10) Shanghai Boss Petroleum Equipment; (11) Shanghai CP Petrochemical and General Machinery Co Ltd.; (12) Suzhou Douson Drilling & Production Equipment Co Ltd.; and (13)

On February 5, 2020, Commerce selected China Machinery Industrial Products Co., Ltd. (CMIPC) and Shanghai Qinghe Machinery Co., Ltd. (Qinghe) for individual examination as mandatory respondents in this investigation. These two companies are the largest producers/exporters of the subject merchandise by volume based on the Q&V questionnaire responses.¹¹ On February 11, 2020, CMIPC notified Commerce that it does not intend to participate in the investigation, as it no longer exports subject merchandise to the United States.¹² Subsequently, Commerce selected Nanjing Develop Advanced Manufacturing Co., Ltd. (Nanjing Develop) as an additional mandatory respondent, pursuant to 777A(e)(2) of the Act.¹³ Notwithstanding its claim, CMIPC remains a mandatory respondent in this investigation.

C. Questionnaires and Responses

On February 4, 2020, Commerce issued its initial questionnaire to the Government of China (GOC) requesting information on programs used by CMIPC and Qinghe which may constitute subsidies under U.S. law.¹⁴ On February 4, 2020, we also placed memoranda on the record concerning China's financial system, NME status, real estate market, and whether particular enterprises should be considered to be "public bodies." On February 18, we sent another questionnaire to the GOC requesting information on programs used by Nanjing Develop.¹⁵ Commerce received from the GOC, Nanjing Develop, and Qinghe timely responses to the affiliation,¹⁶ initial¹⁷ and supplemental questionnaires.¹⁸

Zhangjiagang Haiguo New Energy Equipment Manufacturing Co Ltd. Ningbo Minmetals & Machinery Imp & Exp Co Ltd. was listed twice in the petition under two different physical addresses. The Q&V questionnaire was delivered to this company at both addresses, with no response from either location.

¹¹ See Memorandum, "Countervailing Duty Investigation of Forged Fluid End Blocks from the People's Republic of China: Respondent Selection," dated February 4, 2020.

¹² See CMIPC's Letter, "CMIPC Statement of Countervailing Duty (CVD) Investigation of Forged Steel Fluid End Blocks from the People's Republic of China," dated February 10, 2020.

¹³ See Memorandum, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People's Republic of China: Selection of Additional Mandatory Respondent," dated February 18, 2020.

¹⁴ See Commerce's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People's Republic of China: Countervailing Duty Questionnaire," dated February 4, 2020 (Initial Questionnaire).

¹⁵ See Commerce's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People's Republic of China: Additional Countervailing Duty Questionnaire," dated February 18, 2020.

¹⁶ See Qinghe's Letter, "Qinghe Response to Section III Identifying Affiliated Companies: Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People's Republic of China (C-570-116)," dated February 25, 2020 (Qinghe AQR); see also Nanjing Develop's Letter, "Forged Steel Fluid End Blocks from the People's Republic of China: Response to Section III Identifying Affiliated Companies," dated March 10, 2020 (Nanjing Develop AQR).

¹⁷ See GOC's Letter, "Forged Steel Fluid End Blocks from the People's Republic of China: Government of China's Response to Section II," dated March 27, 2020 (GOC IQR); see also Qinghe's Letter, "Qinghe Response to Initial Questionnaire: Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People's Republic of China (C-570-116)," dated March 26, 2020 (Qinghe IQR) and Nanjing Develop's Letter, "Forged Steel Fluid End Blocks from the People's Republic of China: Nanjing Develop Advanced Manufacturing Co., Ltd.'s Response to Section III," dated March 30, 2020 (Nanjing Develop IQR).

¹⁸ See GOC's Letter, "Forged Steel Fluid End Blocks from the People's Republic of China: Government of China's Response to Supplemental Questionnaire," dated April 24, 2020 (GOC April 24 SQR); see also Nanjing Develop's Letter, "Forged Steel Fluid End Blocks from the People's Republic of China: Nanjing Develop Advanced Manufacturing Co., Ltd.'s Response to the Section III Supplemental Questionnaire," dated April 22, 2020 (Nanjing Develop April 22 SQR) and Qinghe's Letter, "Qinghe Response to Supplemental Questionnaire – Part 1:

On April 24, 2020, interested parties submitted data for Commerce to consider using as benchmarks in the less than adequate remuneration (LTAR) subsidy rate calculations.¹⁹

D. Issues for Post-Preliminary Analysis

In responding to the questions regarding subsidies listed in Commerce's initiation, Qinghe reported benefits from a large number of additional subsidies.²⁰ Furthermore, Commerce discovered possible unreported subsidies in Qinghe's and Nanjing Develop's tax returns and financial statements. On May 6 and 7, 2020, Nanjing Develop and Qinghe responded to our supplemental questions regarding these programs.²¹ On May 7, 2020, the petitioners also filed pre-preliminary comments.²² Due to time constraints, we were unable to consider these supplemental questionnaires and the petitioners' comments for the preliminary determination; however, we will do so for the post-preliminary analysis and the final determination.

Qinghe also reported ownership of land-use rights in Nanxiang Industrial Park, an economic development zone that was specified in our initiation.²³ As Qinghe's original owner purchased the land-use rights prior to December 11, 2001, Qinghe maintains that the land is not reportable; however, the actual transfer of the land to Qinghe occurred in July 2004.²⁴ As there is insufficient information on the record to make a countervailability determination, we intend to seek information regarding the particulars of the transaction and to address Qinghe's usage of this program in a post-preliminary analysis.

Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People's Republic of China (C-570-116)," dated April 23, 2020 (Qinghe April 23 SQR).

¹⁹ See Petitioners' Letter, "Forged Steel Fluid End Blocks from China: Petitioner's Submission of Factual Information to Measure the Adequacy of Remuneration" (Petitioners' Benchmark Submission), dated April 24, 2020; *see also* the GOC and Nanjing Develop's Letter, "Forged Steel Fluid End Blocks from the People's Republic of China: Benchmark Data Submission," dated April 24, 2020 (GOC and Nanjing Develop's Benchmark Submission) and Qinghe' Letter, "Qinghe Benchmark Submission: Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People's Republic of China (C-570-116)," dated April 24, 2020 (Qinghe's Benchmark Submission).

²⁰ See Qinghe IQR at Exhibit III.G.

²¹ See Nanjing Develop's Letter, "Forged Steel Fluid End Blocks from the People's Republic of China: Nanjing Develop Advanced Manufacturing Co., Ltd.'s Response to the Section III Supplemental Questionnaire," dated May 6, 2020; *see also* Qinghe's Letter, "Qinghe Response to Supplemental Questionnaire – Part 2: Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People's Republic of China (C-570-116)," dated May 7, 2020.

²² See Petitioners' Letter, "Forged Steel Fluid End Blocks from China: Petitioner's Comments in Advance of the Preliminary Determination," dated May 7, 2020.

²³ See Qinghe IQR at 30 and Exhibit III.F.2.a.

²⁴ *Id.* at 30.

E. Postponement of the Preliminary Determination

On February 27, 2020, based on a request from the petitioners,²⁵ Commerce postponed the deadline for the preliminary determination until May 18, 2020, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).²⁶

F. Period of Investigation

The POI is January 1, 2018 through December 31, 2018.

G. Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioners' request,²⁷ we are aligning the final CVD determination in this investigation with the final determination in the companion antidumping duty (AD) investigations of fluid end blocks from Germany, India, and Italy. Consequently, the final CVD determination will be issued on the same date as the final AD determinations, which are currently scheduled to be due no later than September 29, 2020, unless postponed.

H. 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 February 7, 2020, the ITC published a preliminary determination that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of fluid end blocks from China that are alleged to be subsidized by the GOC.²⁸

III. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,²⁹ we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, *i.e.*, scope. BGH

²⁵ See Petitioners' Letter, "Forged Steel Fluid End Blocks from China, Germany, India, and Italy: Request to Extend Preliminary Results," dated February 10, 2020.

²⁶ See *Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 85 FR 11336 (February 27, 2020).

²⁷ See Petitioners' Letter, "Forged Steel Fluid End Blocks from China, Germany, India, and Italy: Petitioner's *{sic}* Request for Alignment of the Countervailing Duty Investigations with the Concurrent Antidumping Duty Investigations," dated April 1, 2020.

²⁸ See *Fluid End Blocks from China, Germany, India, and Italy Investigation Nos. 701-TA-632-635 and 731-TA-1466-1468 (Preliminary)*, Publication 5017, February 2020 (ITC Publication 5017); see also *Fluid End Blocks from China, Germany, India, and Italy*, 85 FR 7330 (February 7, 2020).

²⁹ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

Edelstahl Siegen GmbH (BGH),³⁰ Ultra Engineers (Ultra),³¹ and Qinghe³² commented on the scope of these investigations as it appeared in the *Initiation Notice*, and the petitioners submitted rebuttal comments.³³ BGH requested that special martensitic precipitation hardening stainless components and forged steel blocks which are not used in fluid end block applications be excluded from the scope, and Ultra and Qinghe requested an exclusion for fluid end block assemblies. Based on our analysis of these comments, we preliminarily determined that special martensitic precipitation hardening stainless components and forged steel blocks, which meet the physical and chemical characteristics specified in the scope, are covered by the scope, while certain fluid end block assemblies are not covered by the scope.³⁴ For the reasons explained in the Preliminary Scope Decision Memorandum, Commerce has preliminarily revised the scope language to exclude only fluid end block assemblies.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are forged steel fluid end blocks (fluid end blocks), whether in finished or unfinished form, and which are typically used in the manufacture or service of hydraulic pumps.

The term “forged” is an industry term used to describe the grain texture of steel resulting from the application of localized compressive force. Illustrative forging standards include, but are not limited to, American Society for Testing and Materials (ASTM) specifications A668 and A788.

For purposes of this investigation, the term “steel” denotes metal containing the following chemical elements, by weight: (i) iron greater than or equal to 60 percent; (ii) nickel less than or equal to 8.5 percent; (iii) copper less than or equal to 6 percent; (iv) chromium greater than or equal to 0.4 percent, but less than or equal to 20 percent; and (v) molybdenum greater than or equal to 0.15 percent, but less than or equal to 3 percent. Illustrative steel standards include, but are not limited to, American Iron and Steel Institute (AISI) or Society of Automotive Engineers (SAE) grades 4130, 4135, 4140, 4320, 4330, 4340, 8630, 15-5, 17-4, F6NM, F22, F60, and XM25, as well as modified varieties of these grades.

³⁰ See BGH’s Letters, “Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People’s Republic of China; Comments on the Scope of the Investigations,” dated February 4, 2020 (BGH Scope Comments); and “Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People’s Republic of China; Additional Scope Comments,” dated March 13, 2020.

³¹ See Ultra’s Letters, “*Ultra Comments on Scope* in the Antidumping and Countervailing Duty Investigations on Forged Steel Fluid End Blocks From the Federal Republic of Germany, India, Italy, and the People’s Republic of China,” dated February 4, 2020; and “*Ultra Additional Comments on Scope* in the Antidumping and Countervailing Duty Investigations on Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy and the People’s Republic of China,” dated March 13, 2020.

³² See Qinghe’s Letter, “*Qinghe Comments on Scope* in the Antidumping and Countervailing Duty Investigations on Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy and the People’s Republic of China,” dated March 13, 2020.

³³ See Petitioners’ Letters, “Forged Steel Fluid End Blocks from China, Germany, India, and Italy: Petitioners’ Scope Rebuttal Comments,” dated February 11, 2020.; and “Forged Steel Fluid End Blocks from China, Germany, India, and Italy: Petitioners’ Supplemental Scope Rebuttal Comments,” dated February 18, 2020.

³⁴ See Memorandum, “Forged Steel Fluid End Blocks from the Federal Republic of Germany, India, Italy, and the People’s Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated May 18, 2020 (Preliminary Scope Decision Memorandum).

The products covered by this investigation are: (1) cut-to-length fluid end blocks with an actual height (measured from its highest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), an actual width (measured from its widest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), and an actual length (measured from its longest point) of 11 inches (279.4 mm) to 75 inches (1,905.0 mm); and (2) strings of fluid end blocks with an actual height (measured from its highest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), an actual width (measured from its widest point) of 8 inches (203.2 mm) to 40 inches (1,016.0 mm), and an actual length (measured from its longest point) up to 360 inches (9,144.0 mm).

The products included in the scope of this investigation have a tensile strength of at least 70 KSI (measured in accordance with ASTM A370) and a hardness of at least 140 HBW (measured in accordance with ASTM E10).

A fluid end block may be imported in finished condition (*i.e.*, ready for incorporation into a pump fluid end assembly without further finishing operations) or unfinished condition (*i.e.*, forged but still requiring one or more finishing operations before it is ready for incorporation into a pump fluid end assembly). Such finishing operations may include: (1) heat treating; (2) milling one or more flat surfaces; (3) contour machining to custom shapes or dimensions; (4) drilling or boring holes; (5) threading holes; and/or (6) painting, varnishing, or coating.

Excluded from the scope of this investigation are fluid end block assemblies which: (1) include (a) plungers and related housings, adapters, gaskets, seals, and packing nuts, (b) valves and related seats, springs, seals, and cover nuts, and (c) a discharge flange and related seals, and (2) are otherwise ready to be mated with the “power end” of a hydraulic pump without the need for installation of any plunger, valve, or discharge flange components, or any other further manufacturing operations.

The products included in the scope of this investigation may enter under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7218.91.0030, 7218.99.0030, 7224.90.0015, 7224.90.0045, 7326.19.0010, 7326.90.8688, or 8413.91.9055. While these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

V. DIVERSIFICATION OF CHINA’S ECONOMY

On February 4, 2020, we placed 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.³⁵ 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.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

³⁵ See Memorandum, “Placing Information on the Record,” dated February 4, 2020.

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 interested party or any other person withholds information that has been requested; fails to provide information within the established deadlines 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 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 AFA rule to induce respondents to provide Commerce with complete and accurate information in a timely manner.”³⁶ 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.”³⁷ At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that, while the statute does not provide an express definition of the “failure to act to the best of its ability” standard, the ordinary meaning of “best” is “one’s maximum effort.”³⁸ Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency’s inquiries would suffice to find that a respondent did not act to the best of its ability. While the Federal Circuit noted that the “best of its ability” standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.³⁹ The “best of its ability” standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, “have familiarity with all of the records it maintains,” and “conduct prompt, careful, and comprehensive investigations of all relevant

³⁶ 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).

³⁷ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, vol 1 (1994) at 870.

³⁸ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

³⁹ *Id.*, 337 F.3d at 1382.

records that refer or relate to the imports in question to the full extent of its ability to do so.⁴⁰ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁴¹

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.”⁴² It is Commerce’s practice to consider information to be corroborated if it has probative value.⁴³ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.⁴⁴ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.⁴⁵ Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.⁴⁶

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.⁴⁷ For purposes of this preliminary determination, we are applying AFA for the circumstances outlined below.

B. Application of AFA: Non-Responsive Companies

As noted above, Commerce issued Q&V questionnaires to 35 companies identified in the Petition via Federal Express (FedEx).⁴⁸ We confirmed that 27 of the 35 Q&V questionnaires were delivered.⁴⁹ Of the 27 companies that received successful deliveries of the questionnaires, 13 did not respond, and three companies refused delivery.⁵⁰ Furthermore, CMIPC notified Commerce that it does not intend to participate in the investigation. The following 17 companies, in alphabetical order, will be treated as non-responsive companies: (1) Anhui Tianyu

⁴⁰ *Id.*

⁴¹ *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel*, 337 F.3d at 1382-83.

⁴² *See, e.g., SAA* at 870.

⁴³ *Id.* at 870.

⁴⁴ *Id.* at 869.

⁴⁵ *Id.* at 869-870.

⁴⁶ *See* section 776(c)(2) of the Act.

⁴⁷ *See* section 776(d)(3) of the Act.

⁴⁸ *See* Delivery Confirmation Memo.

⁴⁹ *Id.*

⁵⁰ *Id.*

Petroleum Equipment Manufacturing Co. Ltd; (2) Anhui Yingliu Electromechanical Co., Ltd.; (3) CMIPC; (4) CNCCC Sichuan Imp & Exp Co. Ltd; (5) Daye Special Steel Co., Ltd., (Citic Specific Steel Group); (6) GE Petroleum Equipment (Beijing) Co. Ltd.; (7) Jiaxing Shenghe Petroleum Machinery Co. Ltd.; (8) Ningbo Minmetals & Machinery Imp & Exp Co. Ltd.; (9) Qingdao RT G&M Co. Ltd.; (10) Shandong Fenghuang Foundry Co. Ltd.; (11) Shandongshengjin Ruite Energy Equipment Co. Ltd (part of Shengli Oilfield R&T Group); (12) Shanghai Baisheng Precision Machine; (13) Shanghai Boss Petroleum Equipment; (14) Shanghai CP Petrochemical and General Machinery Co. Ltd.; (15) Suzhou Douson Drilling & Production Equipment Co. Ltd.; (16) Suzhou Fujie Machinery Co., Ltd., (Fujie Group); and (17) Zhangjiagang Haiguo New Energy Equipment Manufacturing Co. Ltd. (collectively, the non-responsive companies).

We preliminarily determine that the non-responsive companies withheld necessary information that was requested of them, failed to provide information within the deadlines established, and significantly impeded this proceeding. Thus, Commerce will rely on facts otherwise available in making its preliminary determination with respect to these companies, pursuant to sections 776(a)(2)(A)-(C) of the Act.⁵¹ Moreover, we preliminarily determine that an adverse inference is warranted in selecting from the facts available, pursuant to section 776(b) of the Act, because, by not responding to the Q&V questionnaire, each of these companies did not cooperate to the best of its ability to comply with the requests for information in this investigation. Accordingly, we preliminarily find that application of AFA is warranted to ensure that these companies do not obtain a more favorable result by failing to cooperate than if they had fully complied with our requests for information.

As facts otherwise available with an adverse inference, we find the non-responsive companies used and benefitted from all programs at issue in this proceeding. For the eight initiated-upon programs that were used by the cooperating mandatory respondents, we selected an AFA rate for each program 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 the non-responsive companies. Commerce has previously countervailed these or similar programs.⁵² 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.

⁵¹ For the derivation of the preliminary AFA subsidy rate assigned to the non-responsive companies, see Appendix.

⁵² See *High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2017, 84 FR 71373 (December 27, 2019) (HPSC from China); see also *Aluminum Wire and Cable from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 58137 (October 30, 2019) (AWC from China); *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) (CORE from China); *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011); *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions Inv Final*); and *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 Amended Final*).

Selection of the AFA Rate

It is our practice in CVD proceedings to determine an 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.⁵³ When selecting AFA rates, section 776(d) of the Act provides that we may use a countervailable subsidy rate determined for the same or a similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates.⁵⁴ Accordingly, when selecting AFA rates, if we have cooperating respondents, as 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 for which we calculated 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).⁵⁵ If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in any 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.⁵⁶

Commerce's methodology is consistent with section 776(d) 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, we 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,

⁵³ See, e.g., *Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination with Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018), and accompanying Preliminary Decision Memorandum (PDM) at "18-24: Use of Facts Otherwise Available and Adverse Inferences: Application of Total AFA: Chalco Ruimin and Chalco-SWA," unchanged in *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018); see also *Aluminum Extrusions Inv Final* and accompanying Issues and Decision Memorandum (IDM) at "VI. Use of Facts Otherwise Available and Adverse Inferences: Application of Adverse Inferences: Non-Cooperative Companies"; *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."

⁵⁴ See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

⁵⁵ 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."

⁵⁶ See *Shrimp from China* and accompanying IDM at 13-14.

use a countervailable subsidy for a subsidy rate from a proceeding that we consider reasonable to use.” Thus, section 776(d)(1)(A) of the Act expressly allows for our 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 we “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.”⁵⁷ No legislative history accompanied this particular provision. Accordingly, we are left to interpret this “evaluation by the administering authority of the situation” language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

The Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its hierarchy methodology, and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different from the rate derived from the hierarchy be applied.⁵⁸

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, we seek 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.”⁵⁹ 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.”⁶⁰ It is pursuant to this knowledge and experience that we have implemented our AFA hierarchy in CVD cases to select an appropriate AFA rate.⁶¹

⁵⁷ Section 776(d)(2) of the Act.

⁵⁸ 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.

⁵⁹ See SAA at 870; see also *Essar Steel*, 678 at 1276 (citing *F. Lii 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*)).

⁶⁰ See *De Cecco*, 216 F.3d at 1032.

⁶¹ We have adopted a practice of applying this 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

In applying its AFA hierarchy in CVD investigations, Commerce's goal is as follows: in the absence of necessary information from cooperative respondents, we are 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 we take 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 we 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; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

Under the first step of Commerce' investigation hierarchy, we apply 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 we 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 CVD 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, we apply 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.⁶²

accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, we may not always apply the AFA hierarchy. *See e.g.*, *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016) and accompanying IDM 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

⁶² 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.

In all three steps of Commerce’s AFA investigation hierarchy, if we 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), we strike a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.⁶³

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

There are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy applied in accordance with section 776(d)(1) of the Act should be applied as AFA. As explained above, we are preliminarily applying AFA because the 17 non-responsive companies chose not to cooperate by not providing the 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 applied the methodology detailed above. We began by selecting, as AFA, the highest calculated program-specific above-zero rates determined for mandatory respondents in the instant investigation. Accordingly, we are applying the highest subsidy rate calculated for mandatory respondents for the following programs:

1. Policy Loans to the Fluid End Blocks Industry
2. Export’s Seller’s Credits
3. Import Tariff and Value Added Tax (VAT) Exemptions on Imported Equipment
4. Provision of Electricity for LTAR
5. Provision of Steel Ingots for LTAR

⁶³ 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 60645 (October 25, 2007) (*CFS from China*) and accompanying IDM at 2, dated October 17, 2007 (“As AFA in the instant case, the Department 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.

In determining an AFA rate for the following income tax deduction 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:

1. Income Tax Reduction for High and New Technology Enterprises
2. Income Tax Deductions for Research and Development (R&D) Expenses under the Enterprise Income Tax Law
3. Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
4. Income Tax Deductions/Credits for Purchase of Special Equipment
5. Tax Incentives for Businesses in the China (Shanghai) Pilot Free Trade Zone⁶⁴

The standard income tax rate for corporations in China in effect during the POI was 25 percent.⁶⁵ Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, that the five 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.⁶⁶

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:

Preferential Lending

1. Export Loans from Chinese State-Owned Banks
2. Preferential Loans for State-Owned Enterprises (SOEs)
3. Export Buyer's Credits

Debt-to-Equity Swaps, Equity Infusions, and Loan Forgiveness

4. Exemptions for SOEs from Distributing Dividends

Indirect Tax Programs

5. VAT Rebates on Domestically Produced Equipment
6. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring

⁶⁴ See Memorandum, "Forged Steel Fluid End Blocks from the People's Republic of China," dated January 8, 2020 (Initiation Checklist) at 18-19. Commerce initiated on both income tax and import tariff exemptions under this program. For the purposes of calculating an AFA rate for non-responsive companies, we are including the income tax portion of this program in the application of the 25 percent AFA rate on a combined basis.

⁶⁵ See GOC IQR at 33-34 and 60.

⁶⁶ See, *e.g.*, *Aluminum Extrusions Inv Final* and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

7. Tax Incentives for Businesses in the China (Shanghai) Pilot Free Trade Zone⁶⁷

Grant Programs

8. GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands
9. The State Key Technology Project Fund
10. Foreign Trade Development Fund Grants
11. Grants for Energy Conservation and Emission Reduction
12. Grants for the Retirement of Capacity

Government Provision of Goods or Services for Less Than Adequate Remuneration (LTAR)

13. Provision of Land and/or Land Use Rights to SOEs for LTAR
14. Provision of Land for LTAR in Economic Development Zones⁶⁸
15. Provision of Steam Coal for LTAR

Based on the methodology described above, we preliminarily determine the AFA net countervailable subsidy rate for the non-cooperating companies to be 138.53 percent *ad valorem*. The Appendix 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 merchandise.”⁶⁹ The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.⁷⁰

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.⁷¹ Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party

⁶⁷ See Initiation Checklist at 18-19. Commerce initiated on both income tax and import tariff exemptions under this program. For the purposes of calculating an AFA rate for non-responsive companies, we are applying the highest above *de minimis* subsidy rate calculated for the same or comparable import tariff exemption program in a CVD proceeding involving China.

⁶⁸ Commerce plans to seek further information regarding this program to confirm whether respondent companies received this land benefit.

⁶⁹ See SAA at 870.

⁷⁰ *Id.*

⁷¹ *Id.* at 869-870.

failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁷²

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.⁷³

In the absence of record evidence concerning the non-responsive companies’ usage of the subsidy programs at issue due to their decision not to participate 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. Due to the lack of participation by these companies and the resulting lack of record information concerning these programs, we have corroborated the rates we selected to use as AFA to the extent practicable pursuant to section 776(c)(1) of the Act for this preliminary determination.

Because certain information relied upon for our “facts otherwise available” analysis is derived from the Petition, and, consequently, is based upon secondary information, Commerce must corroborate this information to the extent practicable. In this investigation, we determined that the information alleged in the Petition regarding the programs for which we have calculated a rate is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.⁷⁴

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the petitioner’s information pertaining to the financial contribution and specificity of programs for which we calculated a rate to be reliable. Because we obtained no other information that calls into question the validity of the sources of information, based on our examination of the aforementioned information, we preliminarily consider the information in the Petition to be reliable.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal to determine whether there are circumstances that would render the information relied upon not relevant. Because there is incomplete information on the record from the GOC regarding the programs that we are countervailing, we relied upon the information in the Petition in certain respects, which is the only information regarding these

⁷² See section 776(d) of the Act.

⁷³ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

⁷⁴ See Initiation Checklist.

programs reasonably, and currently, at Commerce’s disposal. Accordingly, Commerce preliminarily determines that the information alleged in the Petition pertaining to the programs for which Commerce is determining financial contribution and specificity has probative value. Commerce has corroborated this information to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the information: (1) was determined to be reliable in the pre-initiation state of this investigation (and there is no record information indicating otherwise), and (2) is relevant to the mandatory respondents.⁷⁵

C. Application of AFA: Input Producers Are “Authorities”

As discussed below under “Programs Preliminarily Found to Be Countervailable,” Commerce is investigating whether the GOC provided steel ingots for LTAR. As part of its analysis, Commerce sought information that would allow it to analyze whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act. Specifically, we asked Qinghe and Nanjing Develop to provide a complete list of the suppliers and producers from which they sourced steel ingots during the POI.⁷⁶ We also requested information from the GOC with which to assess the relationship between the identified producers of steel ingots and the GOC.⁷⁷

The GOC provided a response to Commerce’s questions regarding the respondents’ steel ingots producers in the GOC IQR, which included basic ownership structure registration information of the suppliers.⁷⁸ However, the GOC did not provide information tracing the ownership of the producers back to the ultimate individual or state owners of the companies.⁷⁹ Moreover, the GOC did not provide articles of incorporation, capital verification reports, articles of groupings, company by-laws, annual reports, and articles of association, as requested.⁸⁰ According to the GOC’s response, this type of information is routinely supplied to government authorities, pursuant to the Enterprise Credit Information Publicity System (ECIPS), established in Article 3.1 of the *Circular of the State Council on Printing and Issuing the Reform Proposals for the Registered Capital Registration System (Gu Fa (2014) No. 7)*.⁸¹ In response to our supplemental questionnaire, where we repeated our request for the documents listed above, the GOC stated that it had “provided ownership structures and business registration information from ECIPS of the relevant steel ingot suppliers and producers at Exhibit II.F.5-1 to Exhibit II.F.5-6 in the GOC’s IQR.” Thus, the GOC again refused to provide this information, undermining Commerce’s ability to accurately determine whether the steel ingots producers are “authorities.”

Furthermore, we requested information on the owners, members of the board of directors, or managers of the steel ingots producers who were also government or Chinese Communist Party (CCP) officials or representatives during the POI. In its response, the GOC stated several times that it is “unable to require the CCP, the People’s Congress, the CPPCC, or the other entities as mentioned in the question to provide the information as required by the {Commerce} because

⁷⁵ See section 776(c) of the Act and 19 CFR 351.308(c) and (d).

⁷⁶ See Initial Questionnaire at III.16.

⁷⁷ *Id.* at II-15 to II-16.

⁷⁸ See GOC IQR at 103-105 and at Exhibits II.F.5-1 through II.F.5-6.

⁷⁹ *Id.* at 105.

⁸⁰ *Id.* at 105.

⁸¹ *Id.* at 105 and at Exhibit II.F.5-7 (Items 1 and 2).

they are not governmental agencies.”⁸² The GOC also claimed that there were databases to access such information.⁸³ Because the GOC did not provide the requested information, we do not have the information necessary for our analysis.

The information we requested regarding the role of CCP officials in the management and operations of the steel ingots producers is necessary for our determination as to whether these producers are “authorities” within the meaning of section 771(5)(B) of the Act. The GOC did not indicate that it had attempted to contact the CCP, or that it consulted any other sources. The GOC’s responses in prior CVD proceedings demonstrate that it is, in fact, able to access information similar to what we requested.⁸⁴ Additionally, pursuant to section 782(c) of the Act, if the GOC could not provide any of the requested information, it should have promptly explained to Commerce what attempts it made to obtain this information, and proposed providing this information in an alternative form.⁸⁵

We preliminarily find that the GOC has withheld necessary information that was requested of it and, thus, that Commerce must rely on “facts otherwise available” for the preliminary determination, pursuant to section 776(a)(2)(A) of the Act. Moreover, we preliminarily find that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, we find that AFA is warranted pursuant to section 776(b) of the Act. As AFA, we preliminarily find that the producers from whom respondents purchased steel ingots and for whom the GOC failed to provide complete information necessary for our financial contribution analysis are “authorities” within the meaning of section 771(5)(B) of the Act. Accordingly, we further find preliminarily that, as such, these producers provided a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.

For details on the calculation of the subsidy rate for the respondents, *see* below at “Provision of Steel Ingots for LTAR.”

D. Application of AFA: Provision of Steel Ingots Is Specific

Commerce asked the GOC to provide a list of industries in China that use steel ingots directly, and to provide the amounts (volume and value) purchased by each of the industries, including the industry classification that includes fluid end block producers.⁸⁶ Commerce requests such information for purposes of its *de facto* specificity analysis. Specifically, our questionnaire asked the GOC to:

⁸² *Id.* at 117-121.

⁸³ *Id.* at 118-119.

⁸⁴ *See, e.g., High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying IDM at 13.

⁸⁵ Section 782(c)(1) of the Act states, “{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.”

⁸⁶ *See* Initial Questionnaire, at II-15.

Provide a list of the industries in China that purchase steel ingot directly, using a consistent level of industrial classification. Provide the amounts (volume and value) purchased by the industry in which the mandatory respondent companies operate, as well as the totals purchased by every other industry. In identifying the industries, please use whatever resource or classification scheme the Government normally relies upon to define industries and to classify companies within an industry. Please provide the relevant classification guidelines, and please ensure the list provided reflects consistent levels of industrial classification. Please clearly identify the industry in which the companies under investigation are classified.⁸⁷

The GOC did not provide this information, nor did it explain what efforts it made to compile this information. Instead, the GOC simply replied in the following manner:

In this investigation, it is a widely known fact that there are a vast number of users for steel ingot and the types of consumers that purchase steel ingots varies across numerous industries. Therefore, there is no specificity exists with regards to this program.⁸⁸

This response is insufficient.

In this case, the GOC did not provide the required data on the relative consumption of steel ingot at *any* industry level. Thus, we preliminarily determine that because necessary information is missing from the record and the GOC withheld information requested of it, the use of the “facts available” is warranted in accordance with sections 776(a)(1) and 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, AFA is warranted, pursuant to section 776(b) of the Act. Applying AFA, we find that the GOC’s provision of steel ingot is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

E. Application of AFA: Whether the Steel Ingot Market is Distorted

In order to determine the appropriate benchmark with which to measure the benefit from the provision of inputs at LTAR under 19 CFR 351.511, Commerce asked the GOC several questions concerning the structure of the steel ingot industry (the key input used by the respondents).⁸⁹ Specifically, Commerce requested that the GOC provide the following information for this input:

⁸⁷ *Id.*

⁸⁸ See GOC IQR at 128.

⁸⁹ See Initial Questionnaire, at II-14 through 15.

1. The total number of producers;
2. The total volume and value of Chinese domestic consumption of steel ingot, and the total volume and value of Chinese domestic production of steel ingot;
3. The percentage of domestic consumption accounted for by domestic production.
4. The total volume and value of imports of steel ingot;
5. The percentage of total volume and (separately) value of domestic production that is accounted for by companies in which the Government maintains a majority ownership or a controlling management interest, either directly or through other Government entities. Please also provide a list of the companies that meet these criteria.
6. If the share of total volume and/or value of production that is accounted for by the companies identified in paragraph “e”, above, is less than 50 percent, please provide the following information:
 - a. The percentage of total volume and value of domestic production that is accounted for by companies in which the Government maintains some, but not a majority, ownership interest or some, but not a controlling, management interest, either directly or through other Government entities.
 - b. A list of the companies that meet the criteria under sub-paragraph “i”, above.
 - c. A detailed explanation of how it was determined that the government has less than a majority ownership or less than a controlling interest in such companies, including identification of the information sources relied upon to make this assessment.
7. A discussion of what laws, plans or policies address the pricing of steel ingot, the levels of production of steel ingot, the importation or exportation of steel ingot, or the development of steel ingot capacity. Please state which, if any, central and subcentral level industrial policies pertain to the steel ingot industry.

Commerce requested such information to determine whether the GOC is the predominant provider of this input in China and whether its presence in the market distorts all transaction prices.

In response, the GOC provided only the total volume and value of imports of steel ingot⁹⁰ and repeatedly stated that it does not have the other industry data that we requested.⁹¹ In response to our supplemental questionnaire, the GOC stated that it had “provided the requested information in the GOC’s IQR on pages 122-124.”⁹²

⁹⁰ See GOC IQR at 123.

⁹¹ *Id.* at 123-125.

⁹² See GOC April 24 SQR at 28.

Because the GOC provided none of the requested industry data, Commerce is unable to determine the number of steel ingot producers in operation during the POI, the percentage of steel ingot producers in which the GOC maintained ownership interest, the share of steel ingot production that is represented by GOC-affiliated producers, and the share of domestic consumption represented by domestic production versus imports. However, record evidence indicates that there are export tariffs in place ranging from 10 to 15 percent, indicating there is possible market distortion.⁹³

In sum, the GOC provided import data related to steel ingots, but did not provide any industry statistics necessary for Commerce to analyze whether there is any market distortion. Nor did the GOC elect to supplement its initial filing when presented with a second opportunity to do so.

In past proceedings, the GOC has demonstrated that it has the ability, through the State Statistical Bureau or other sources (*e.g.*, industry associations), to report data concerning the production of a wide variety of inputs.⁹⁴ Therefore, we preliminarily determine that the GOC, having failed to provide such data, has withheld information that was requested of it, and that the use of facts available is warranted, pursuant to section 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, and thus, the application of AFA pursuant to section 776(b) of the Act is warranted.

For these reasons and based on the record evidence discussed above, we preliminarily determine, as AFA, that the domestic market for steel ingots is distorted through the intervention of the GOC, and we are, therefore, relying on an external benchmark for determining the benefit from the provision of steel ingot at LTAR, in accordance with 19 CFR 351.511(a)(2)(ii).

F. Application of AFA: Provision of Electricity for LTAR

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

In order to analyze the financial contribution and specificity of this program, we requested that the GOC provide information regarding the roles of provinces, the National Development and Reform Commission (NDRC), and cooperation between the provinces and the NDRC in making electricity price adjustments. Specifically, we requested, *inter alia*: (1) copies of the Provincial Price Proposals for each province in which the mandatory respondent or any of its "cross-

⁹³ See GOC IQR at 126.

⁹⁴ 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 14-15 (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)) (*Crystalline Silicon Photovoltaic Products from the PRC*).

owned” companies were located including applicable tariff schedules that were in effect during the POI; (2) all original NDRC Electricity Price Adjustment Notices in effect during the POI; (3) an explanation of the procedure for adjusting retail electricity tariffs and the role of the NDRC and provincial governments in this process; (4) details of 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 applicable to the POI; (5) identification of the cost elements and adjustments that were discussed between the provinces and the NDRC in the price adjustment conferences; and (6) an explanation of how the NDRC determines that the provincial level price bureaus have accurately reported all relevant cost elements in their price proposals with respect to electricity generation, transmission and distribution.⁹⁵ Commerce requested this information in order to determine the process by which electricity prices and price adjustments were 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).⁹⁶ 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.⁹⁷

However, both Notice 3105 and 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) 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.⁹⁸ Annex 1 of Notice 748 indicates that this average price adjustment applies to all provinces and at varying amounts.⁹⁹ Article 2 indicates that the price reduction is “mainly used for reducing the price of industrial and commercial electricity.”¹⁰⁰ Articles 3 and 4 specifically direct the reduction of the sales price for industrial and commercial electricity.¹⁰¹ Articles 6 and 7 indicate that provincial pricing authorities will “develop and issue specific adjustment plan of electricity price and sales price in accordance 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, 2015.¹⁰² Finally, Article 10 directs that “{l}ocal price departments shall organize and arrange carefully to put in place the electricity price adjustment measures.”¹⁰³ NDRC Notice 3105 also directs additional

⁹⁵ See Initial Questionnaire at Electricity Appendix.

⁹⁶ See GOC IQR at 86.

⁹⁷ *Id.* at 86-87.

⁹⁸ *Id.* at Exhibit II.F.3-1.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

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.¹⁰⁴

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. 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.¹⁰⁵ 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 our 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 responded that the “NDRC’s role in the regulatory framework is to carry out research and propose advisory opinions on electricity price reform programs, and participate in the electricity mechanism reforms, as well as the construction of the electricity market.”¹⁰⁶ Commerce also requested that the GOC explain what steps are taken in the NDRC’s review of provincial price schedules. Additionally, we requested that the GOC explain whether the pricing values set forth in Notices 3105 and 748 were mandatory for each province and sub-Central jurisdiction, as indicated in the schedule. The GOC responded that “electric power market transaction must abide by the principle of independent consultation with enterprises” and that “local governments and relevant departments should not designate the transaction price, should not enforce the implementation of preferential electricity price policy for specific electric power users, and should not enforce non-transparent transactions between the power generation enterprises and specific electric power users.”¹⁰⁷ However, as discussed above, Notices 748 and 3105, issued by the NDRC, direct provinces to reduce prices by amounts specific to provinces and provide specific formulae by which price adjustments must be made. They neither explicitly eliminate Provincial Price Proposals nor define distinctions in price-setting roles between national and provincial pricing authorities.

In its initial questionnaire response, the GOC stated that Provincial Price Proposals did not exist during the POI and that all provincial governments “located, have been given authority to prepare and publish the schedules of electricity tariff rates for their own jurisdictions under the Notices of NDRC on Lowering Coal-Fired Electricity On-Grid Price and General Industrial and Commercial Electricity Price.”¹⁰⁸ Consequently, according to the GOC, the NDRC no longer has any impact on prices, which are set autonomously at the provincial level. The GOC contends that electricity prices in China are based on purely market mechanisms.¹⁰⁹

¹⁰⁴ *Id.* at Exhibit II.F.3-2.

¹⁰⁵ *Id.*

¹⁰⁶ *See* GOC April 24 SQR at 20.

¹⁰⁷ *See* April 24 SQR at 19-20.

¹⁰⁸ *See* GOC IQR, at 84.

¹⁰⁹ *Id.* at 91.

The GOC referred to the *Completing Price Linkage Mechanism Between Coal and Electricity (NDRC 2015-3169)* (Notice 3169) and explained that Notice 3169 regulating the electricity calculation adjustment method allows “authorities to make specific calculations of price changes using the specific data of their own provinces based on the variable factors provided in the formula.”¹¹⁰ According to the GOC, “such calculation results are filed with the NDRC to ensure that each price adjustment follows the established principles” and that “the NDRC does not develop specific price levels of a certain electricity usage category or voltage level for specific provinces or municipalities.”¹¹¹ Article 2 of Notice 3169 provides that, when the “thermal coal price is fluctuated for more than {Renminbi (RMB)} 30 Yuan (inclusive) comparing with benchmark coal price during the cycle,” then an adjustment must be made pursuant to a “tiered regressive linkage for {the} excess portion” using a “linkage coefficient” which is also defined in Article 2.¹¹² Article 3 stipulates that “{b}enchmark on-grid electricity price of coal-fired machine unit should be strictly measured and determined by coal-electricity price linkage mechanism” using a specific formula defined in Appendix 1 of Notice 3169.¹¹³ Article 3 further stipulates that the “industrial and commercial electricity price should be correspondingly adjusted; adjustment level should be determined by on-grid electric quantity of coal-fired machine unit, on-grid electric quantity of other power sources, outsourced electric quantity condition, energy-saving and eco-friendly electricity price and other factors” using a specific formula defined in Appendix 1 of Notice 3169.¹¹⁴ Thus, Notice 3169 indicates that the adjustments to provincial electricity prices are closely regulated and monitored pursuant to the calculation guidelines.

In our initial and supplemental questionnaires, we requested that the GOC explain, for Shanghai City and the provinces of Jiangsu and Gansu, how increases and decreases in cost elements led to retail price increases and decreases in January 2018, how these price adjustments are derived, how the cost increases and decreases were calculated, and how cost increases and decreases impacted the final price. In the GOC IQR, the GOC did not provide the requested information, stating that the question was not applicable and that “the prices for fuel and coal, which are the main inputs to power generation, are determined by the market (including international market forces).”¹¹⁵ In its supplemental response, the GOC replied that it did not have cost information for electricity.¹¹⁶ This statement conflicts with the strict calculation requirements presented in Notice 3169 and the GOC’s explanation that the NDRC ensures that the provincial calculations follow the principles established in Notice 3169. Furthermore, when asked how the price of coal, a significant cost element, is established, the GOC replied that “the coal prices are based on market forces” but did not provide any documentation such as a coal price index to demonstrate this.¹¹⁷

¹¹⁰ See GOC IQR at 89 and Exhibit II.F.3-3.

¹¹¹ *Id.* at 89.

¹¹² *Id.* at Exhibit II.F.3-3.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 91.

¹¹⁶ See GOC April 24 SQR at 22.

¹¹⁷ *Id.* at 28.

As explained above, the GOC failed on multiple occasions to explain the roles of, and the nature of cooperation between, the NDRC and the provinces in deriving electricity price adjustments. Further, the GOC failed to explain both the derivation of the price reductions directed to the provinces by the NDRC and the derivation of prices by the provinces themselves. Consequently, we preliminarily determine, in accordance with section 776(a)(1)(A), that the GOC withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, Commerce must rely on facts available in making our preliminary determination.¹¹⁸

Moreover, we preliminarily determine, in accordance with section 776(b), that the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information. We also note that the GOC did not ask for additional time to gather and provide such information. Consequently, AFA is warranted.¹¹⁹ We find, based on AFA, that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. The GOC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and provincial governments. Therefore, we are also applying AFA in selecting the benchmark for determining the existence and amount of the benefit.¹²⁰ The benchmark rates we selected are derived from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* the "Provision of Electricity for LTAR" section.

G. Application of AFA: Export Buyer's Credits

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

In our initial CVD questionnaire, we requested that the GOC provide the information requested in the Standard Questions Appendix "with regard to all types of financing provided by the China ExIm under the Buyer Credit Facility."¹²¹ The Standard Questions Appendix requested information that Commerce requires in order to analyze the specificity and financial contribution of this program, including the following: translated copies of the laws and regulations pertaining to the program, identification of the agencies and types of records maintained for administration of the program, a description of the program, the application process, eligibility criteria, and the program usage data. Rather than responding to the questions in the Appendix, the GOC stated that it had confirmed that "none of the respondents' customers applied for, used, or benefitted

¹¹⁸ *See* section 776(a)(2)(A) of the Act.

¹¹⁹ *See* section 776(b) of the Act.

¹²⁰ *See* section 776(b)(2)(D) of the Act.

¹²¹ *See* Initial Questionnaire at II-5.

from the alleged program during the POI” and that, therefore, the Standard Questions Appendix was not applicable.¹²²

In its initial questionnaire response, the GOC provided the “Rules Governing Export Buyers’ Credit of the Export-Import Bank of China,” implemented in 2000. The rules state that the Export Import Bank of China (the China Ex-Im Bank) strictly limits the provision of Export Buyer’s Credits to business contracts exceeding USD 2 million.¹²³ In response to our request in the initial questionnaire that the GOC provide the documents pertaining to the 2013 program revision, contained in the 7th Supplemental Questionnaire Response in the Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People’s Republic of China (7th SQR), the GOC refused to provide this document, stating that the question is not applicable.¹²⁴ In prior CVD investigations, the GOC has placed a copy of the 7th SQR on the record, and Commerce has found that information in that document indicates that the GOC revised this program in 2013 to eliminate the USD 2 million minimum requirement.¹²⁵ In its initial questionnaire response, the GOC failed to provide the 2013 Revisions.¹²⁶ We, therefore, again requested that the GOC provide the 2013 Revisions.¹²⁷ In its supplemental questionnaire response, the GOC again refused to provide the requested documents.¹²⁸

Both the 2013 Revisions and the Standard Questions Appendix are necessary for Commerce to analyze how the program functions. By refusing to provide the requested information, the GOC impeded Commerce’s understanding of how this program operates and how it can be properly verified.

Additional information in the GOC’s initial questionnaire response also indicated that the China Ex-Im Bank may disburse Export Buyer’s Credits directly or through a third-party partner and/or correspondent banks.¹²⁹ Specifically, this record information indicates that customers can open loan accounts for disbursements through this program with other banks.¹³⁰ The funds are first sent from the China Ex-Im Bank to the importer’s account, which could be at the China Ex-Im Bank or other banks, and then these funds are sent to the exporter’s bank account.¹³¹ Given the complicated structure of loan disbursements for this program, Commerce’s complete understanding of how this program is administered is necessary. Thus, the GOC’s refusal to provide the most current 2013 Revisions, which provide internal guidelines for how this program is administered by the China Ex-Im Bank, significantly impeded Commerce’s ability to conduct its investigation of this program.

¹²² See GOC IQR at 28.

¹²³ See GOC IQR at Exhibit II.A.11.

¹²⁴ See GOC IQR at 29-30.

¹²⁵ See *Certain Glass Containers from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 85 FR 12256 (March 2, 2020) (*Glass Containers*) and accompanying PDM at 28-29.

¹²⁶ See GOC IQR at 29.

¹²⁷ See Commerce’s Letter, “Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People’s Republic of China: GOC Supplemental Questionnaire,” dated April 10, 2020 (GOC Supplemental Questionnaire) at 5-6.

¹²⁸ See GOC April 24 SQR at 8.

¹²⁹ See Additional Documents Memorandum.

¹³⁰ See GOC IQR at Exhibit II.A.12.

¹³¹ *Id.*

In a supplemental questionnaire, we also requested that the GOC provide a list of partner/correspondent banks involved in the program.¹³² The GOC reiterated its claim that none of the customers of the mandatory respondents used this program.¹³³ The GOC also stated that it does not have the right to access this information.¹³⁴ Thus, in its initial and supplemental questionnaire responses, the GOC refused to provide any information concerning the 2013 program revision and the partner or correspondent banks, which is necessary for Commerce to analyze how the program functions.

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.

In its response to the initial questionnaire regarding the steps it took to determine that no customers of mandatory respondents have used the program, the GOC asserted that “the exporter itself is the entity that actually receives the money directly from China ExIm Bank, while the importer with which the China ExIm Bank concludes the Export Buyer’s Credit loan contract, is the party responsible for repaying the loan” and that, therefore, “the Chinese exporter and the U.S. importer are involved and can directly verify usage.”¹³⁵ The GOC also referred Commerce to affidavits from the respondents’ customers stating that they have not used the program. In a supplemental questionnaire, we again requested that the GOC support its claim that none of the respondents’ customers applied for, used, or benefitted from this program during the POI. Specifically, we requested that the GOC identify the documents, databases, accounts, etc. that were examined to determine there was no usage of this program. The GOC responded that it obtained from the respondents their customer lists, checked if any listed importers obtained any Export Buyers Credits from the ExIm Bank, and checked with the respondents to ensure that they provided affidavits from their U.S. customers in their respective questionnaire responses.¹³⁶ Again, this response did not identify the specific records and databases that can be used to verify the respondents’ claim of non-use of the program. Thus, the GOC on multiple occasions refused to provide a detailed explanation of how it determined that none of the customers of the mandatory respondents benefitted from this program.

Pursuant to sections 776(a)(2)(A) and (a)(2)(C) of the Act, when an interested party withholds information requested by Commerce and/or significantly impedes a proceeding, Commerce uses facts otherwise available to reach a determination. Because the GOC withheld the requested information described above, thereby impeding this proceeding, we preliminarily determine that the use of facts available is appropriate.

¹³² See GOC Supplemental Questionnaire at 5-6.

¹³³ See GOC April 24 SQR at 9.

¹³⁴ *Id.* at 9.

¹³⁵ See GOC IQR at 32.

¹³⁶ See GOC April 24 SQR at 6-8.

Further, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of not providing this information to Commerce, failed to cooperate by not acting to the best of its ability. Accordingly, we find that the application of AFA is warranted. Specifically, the GOC has not provided complete information concerning the administration and operation of the program, including how loans are disbursed (*e.g.*, the 2013 Revisions), such as through intermediate or correspondent banks, the identities of which the GOC has withheld from Commerce, or whether the China ExIm Bank employs threshold criteria, such as minimum USD 2 million 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 respondents' 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."¹³⁷

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 and provided a benefit pursuant to section 771(5)(E) 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) demonstrate 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.¹³⁸ In addition, the program was alleged by the petitioner as a possible export subsidy.¹³⁹ Finally, Commerce has found this program to be an export subsidy in the past.¹⁴⁰ Thus, taking all such information into consideration indicates that the provision of export buyer's credits is contingent upon exports within the meaning of sections 771(5A)(A) and (B) of the Act.

Under section 776(d) of the Act, Commerce may use, as AFA, a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.¹⁴¹

Consistent with section 776(d) of the Act and our established practice, we selected the highest calculated rate for the same or similar program as AFA.¹⁴² For this program we are using an

¹³⁷ See *Nippon Steel*, 337 F. 3d at 1382.

¹³⁸ See GOC IQR at 31-32.

¹³⁹ See Initiation Checklist at 11-12.

¹⁴⁰ 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.

¹⁴¹ See section 776(d)(3) of the Act.

¹⁴² See, *e.g.*, *Shrimp from China* IDM at 13; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in the *Coated Paper from China Amended Final* proceeding, as the rate for the respondents.¹⁴³ 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 Credit program.

VII. 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.¹⁴⁴ In the Initial Questionnaire, we notified the respondents to this proceeding that the AUL period would be 15 years, pursuant to 19 CFR 351.524(d)(1) and the U.S. Internal Revenue Service Publication 946 (2018), "Appendix B - Table of Class Lives and Recovery Periods" (IRS Pub. 946).¹⁴⁵ The 15-year period corresponds to IRS Pub. 946 asset class, "33.4 "Manufacture of Primary Steel Mill Products." No party in this proceeding submitted comments challenging the proposed AUL period, and we therefore preliminarily determine that a 15-year period is appropriate to allocate benefits from non-recurring subsidies.

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 expensed to the year of receipt rather than allocated 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) provides 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 standard will normally "be met where there is a majority voting ownership interest between two corporations

¹⁴³ See *Coated Paper from China Amended Final* (revised rate for "Preferential Lending to the Coated Paper Industry" program).

¹⁴⁴ See 19 CFR 351.524(b).

¹⁴⁵ See U.S. Internal Revenue Service Publication 946 (2018), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

or through common ownership of two (or more) corporations.”¹⁴⁶ The preamble to Commerce’s regulations further clarifies Commerce’s cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.¹⁴⁷

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case to determine 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.¹⁴⁸

Nanjing Develop

Nanjing Develop identified itself as a privately-owned Chinese exporter of the subject merchandise.¹⁴⁹ In addition, Nanjing Develop identified a parent company, Nanjing Develop Industrial and Commercial Co., Ltd. (Nanjing Develop Industrial), as an investment company that does not have any production or other operations related to manufacturing but holds a significant percentage of shares in Nanjing Develop.¹⁵⁰ Therefore, we preliminarily determine that Nanjing Develop Industrial is cross-owned with Nanjing Develop.¹⁵¹ Accordingly, we are attributing subsidies received by Nanjing Develop Industrial to Nanjing Develop’s sales in accordance with 19 CFR 351.525(b)(6)(iii).

Nanjing Develop also reported having three subsidiaries and provided relevant information. However, Nanjing Develop stated that these companies were not in operation during the POI and the AUL.¹⁵² Therefore, we are making no attributions with regard to these companies under 19 CFR 351.525(b)(6). We are attributing subsidies received by Nanjing Develop to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

¹⁴⁶ See 19 CFR 351.525(b)(6)(vi).

¹⁴⁷ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

¹⁴⁸ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600 (Ct. Int’l Trade 2001).

¹⁴⁹ See Nanjing Develop AQR at Exhibit 1.

¹⁵⁰ *Id.* at 5.

¹⁵¹ See 19 CFR 351.525(b)(6)(ii)-(v).

¹⁵² See Nanjing Develop AQR at Exhibit 1.

Qinghe

Qinghe identified itself as a privately-owned Chinese exporter of the subject merchandise.¹⁵³ In addition, Qinghe identified one parent company, Haimo Technologies Group Corp. (Haimo Technologies), and one affiliated company, Lanzhou Chenglin Oil Drilling Equipment Co., Ltd. (Lanzhou Chenglin), that was involved in the production, export, and sale of subject merchandise in China.¹⁵⁴ Therefore, we preliminarily determine that Haimo Technologies and Lanzhou Chenglin are cross-owned with Qinghe.¹⁵⁵

We are attributing subsidies received by Haimo Technologies to the consolidated sales of Haimo Technologies and its subsidiaries, in accordance with 19 CFR 351.525(b)(6)(iii). With regard to subsidies received by Qinghe or Lanzhou Chenglin, which both produce subject merchandise, we are attributing the benefits to the combined sales of the two companies in accordance with 19 CFR 351.525(b)(6)(ii).

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. 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 preliminary calculation memoranda, dated concurrently with this memorandum.¹⁵⁶

VIII. BENCHMARKS AND INTEREST RATES

Commerce is investigating non-recurring, allocable subsidies received by Nanjing Develop and Qinghe.¹⁵⁷ The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

A. Short-Term and Long-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,

¹⁵³ *See* Qinghe AQR, at Exhibit I.1.

¹⁵⁴ *Id.* at 4.

¹⁵⁵ *See* 19 CFR 351.525(b)(6)(ii)-(v).

¹⁵⁶ *See* Memorandum, "Nanjing Develop Calculations for the Preliminary Determination," dated concurrently with this memorandum (Nanjing Develop Preliminary Calculation Memorandum); *see also* Memorandum, "Qinghe Calculations for the Preliminary Determination," dated concurrently with this memorandum (Qinghe Preliminary Calculation Memorandum).

¹⁵⁷ *See* 19 CFR 351.524(b)(1).

Commerce uses comparable commercial loans reported by the respondent as a benchmark.¹⁵⁸ 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.”¹⁵⁹

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.¹⁶⁰ In an analysis memorandum dated July 21, 2017, Commerce conducted a re-assessment of the lending system in China.¹⁶¹ Based on this re-assessment, Commerce has concluded that, despite reforms to date, the GOC’s role in the system continues to fundamentally distort lending practices in China in terms of risk pricing and resource allocation, precluding the use of interest rates in China for CVD benchmarking or discount rate purposes. Consequently, we preliminarily find that any loans received by the respondent from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, Commerce is selecting an external market-based benchmark interest rate.

The use of an external benchmark is consistent with Commerce’s practice. For example, in *Lumber from Canada*, Commerce used U.S. timber prices to measure the benefit for government-provided timber in Canada.¹⁶² 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*.¹⁶³ 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.¹⁶⁴ Beginning in 2010, however, China was classified in the upper-middle income category and remained there from 2011 to 2014.¹⁶⁵ Accordingly, as

¹⁵⁸ See 19 CFR 351.505(a)(3)(i).

¹⁵⁹ See 19 CFR 351.505(a)(3)(ii).

¹⁶⁰ See *CFS from China* IDM at Comment 10.

¹⁶¹ See Memorandum, “Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People’s Republic of China: Analysis of China’s Financial System,” dated February 4, 2020, at Attachment.

¹⁶² See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Lumber from Canada*), and accompanying IDM at “Analysis of Programs: Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

¹⁶³ See *CFS from China* IDM at Comment 10; see also *Lightweight Thermal Paper from the People’s Republic of China: Final*

Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*), and accompanying IDM (*Thermal Paper IDM*) at 8-10.

¹⁶⁴ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups> (World Bank Country Classification).

¹⁶⁵ See World Bank Country Classification.

explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2014. This is consistent with Commerce’s calculation of interest rates for recent CVD proceedings involving Chinese merchandise.¹⁶⁶

After Commerce identifies 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 of the years from 2003-2009 and 2011-2014, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.¹⁶⁷ For 2010, however, the regression does not yield that outcome for China’s income group.¹⁶⁸ 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 2011-2014. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank’s upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund (IMF), and they are included in that agency’s *International Financial Statistics (IFS)*. With the exceptions noted below, we used the interest and inflation rates reported in the *IFS* for the countries identified as “upper middle income” by the World Bank for 2010-2014 and “lower middle income” for 2001-2009.¹⁶⁹ First, we did not include those economies that Commerce considered to be NMEs for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to *IFS* for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year Commerce calculated a short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates

¹⁶⁶ See, e.g., *Polyester Textured Yarn from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 19040 (May 3, 2019), and accompanying PDM at “VIII. Subsidies Valuation: Benchmarks and Discount Rates” (unchanged in *Polyester Textured Yarn from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 84 FR 63845 (November 11, 2019)).

¹⁶⁷ See Memorandum, “Countervailing Duty Investigation of Forged Steel Fluid End Blocks from the People’s Republic of China: Loan Interest Rate Benchmarks,” dated February 4, 2020 (Interest Rate Benchmark Memorandum) at Attachments 1-6.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

for the year in question.¹⁷⁰ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.¹⁷¹

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.¹⁷²

In *Citric Acid from China*, 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.¹⁷³ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component. The resulting inflation-adjusted benchmark lending rates are provided in the Interest Rate Benchmark Memorandum.

B. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the GOC provided non-recurring subsidies. The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the preliminary calculation memoranda.¹⁷⁴

C. Input Benchmarks

We selected benchmarks for determining the benefit from the provision of steel ingot for LTAR in accordance with 19 CFR 351.511. Section 351.511(a)(2) sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided 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). With respect to steel ingots, as discussed in the section entitled “Use of Facts Otherwise Available and Adverse Inferences,” above, we preliminarily determine that domestic producers from whom respondents purchased the input are “authorities” that provided a financial contribution. Therefore, prices from these producers do not constitute market-determined prices. Moreover, as discussed below

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *See, e.g.*, Thermal Paper IDM at 10.

¹⁷³ *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.

¹⁷⁴ *See* Nanjing Develop Preliminary Calculation Memorandum; *see also* Qinghe Preliminary Calculation Memorandum.

in the “Provision of Steel Ingots for LTAR” section, because we are finding, as AFA, that the steel ingot market in China is distorted, we are relying on “tier two” (world market) prices for the input benchmark for this program.

The petitioners, respondent companies, and the GOC submitted 2018 ocean freight data for the calculation of benchmark transportation costs.¹⁷⁵ The petitioners provided Maersk 2018 data for 20-foot containers; the GOC and Nanjing Develop jointly provided Maersk 2018 data for 40-foot containers; and Qinghe

provided 2018 Descartes data.¹⁷⁶ In addition, the respondent companies and the GOC also provided steel ingot export price data from UN Comtrade, Steelguru, and Engineering Export Promotion Council (EEPC India).¹⁷⁷ Pursuant to 19 CFR 351.511(a)(2)(ii), where there is more than one commercially available world market price, Commerce will average the prices to the extent practicable. Therefore, we calculated monthly average benchmarks for ocean freight using all of the submitted data related to ocean freight costs. With respect to the steel ingots export price data, because the Steelguru and the EEPC India data submitted by Qinghe are derived solely from Indian market prices, we did not use them in the monthly average price benchmarks to avoid giving undue weight to data from one particular country. Instead, we relied on the GOC and Nanjing’s UN Comtrade data, which aggregate export price data from various countries, for steel ingot pricing information. Using these two benchmarks, we then derived an average of commercially available world market prices for the inputs that would be available to purchasers in China.

D. Provision of Electricity for LTAR

As discussed above in the section, “Use of Facts Otherwise Available and Adverse Inferences,” we are relying on AFA to select the highest electricity rates that are on the record of this investigation as our benchmark for measuring the adequacy of remuneration for electricity. These benchmarks are provided in the calculation memoranda.¹⁷⁸

IX. ANALYSIS OF PROGRAMS

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

¹⁷⁵ See Petitioners’ Benchmark Submission at Attachment 1; *see also* GOC and Nanjing Develop’s Benchmark Submission at Exhibit 2; *see also* Qinghe’s Benchmark Submission at Exhibit 5.

¹⁷⁶ See Petitioners’ Benchmark Submission at Attachment 1; *see also* GOC and Nanjing Develop’s Benchmark Submission at Exhibit 2; *see also* Qinghe’s Benchmark Submission at Exhibit 5.

¹⁷⁷ See GOC and Nanjing Develop’s Benchmark Submission at Exhibit 1; *see also* Qinghe’s Benchmark Submission at Exhibit 5.

¹⁷⁸ See Nanjing Develop Preliminary Calculation Memorandum; *see also* Qinghe Preliminary Calculation Memorandum.

A. Programs Preliminarily Determined to Be Countervailable

1. Policy Loans to the Fluid End Blocks Industry

The petitioners allege that policy banks and state-owned commercial banks (SOCBs) in China make loans to fluid end block producers on preferential terms as a matter of national level government policy. The petitioners state that the steel, iron, and non-ferrous metals industry is the subject of strategic industry planning at all levels of government¹⁷⁹ and has been designated as an “encouraged” industry for government support.¹⁸⁰ The petitioners state that the GOC has significant influence over local banks and uses this influence to ensure the country’s industrial plans and programs are effectuated.¹⁸¹

When examining a policy lending program, Commerce looks to whether the government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support such objectives or goals. Where such plans or policy directives exist, then it is our practice to find that a policy lending program exists that is *de jure* specific to the targeted industry (or producers that fall under that industry) within the meaning of section 771(5A)(D)(i) of the Act. Once that finding is made, we rely upon the analysis undertaken in *CFS from China* to further conclude that national and local government control over the state-owned commercial banks render the loans a government financial contribution.¹⁸²

Record information indicates the GOC placed great emphasis on targeting the steel industry, which includes the fluid end blocks sector, for development throughout recent years and that the fluid end blocks sector has benefitted from government-directed policy lending. For example, in the *National 11th Five-Year Plan for Economic and Social Development (2006-2010)* (11th FYP), the GOC promises to “{a}ccelerate the structural readjustment of superior industries such as iron and steel.”¹⁸³ In the *Twelfth Five-Year Outline of the Guidelines for National Economic and Social Development of the People’s Republic of China* (12th FYP), the GOC promises to “encourage enterprises to build up international sales channels to increase their ability to expand international market shares” and “actively develop emerging markets and promote the diversification of the export market.”¹⁸⁴ The 12th FYP also seeks to maintain “the current advantage in export markets” and “accelerate the nurturing of new advantages with technologies, branding, quality, and services as the core competitiveness.”¹⁸⁵ Furthermore, the 12th FYP seeks to optimize foreign trade structures by “improv{ing} policies and measures to promote the expansion of processing trade,” including the manufacturing of key components, “to extend the domestic value-added chain.”¹⁸⁶ The 12th FYP also seeks to create “a favorable

¹⁷⁹ See Volume III of the Petition at 15.

¹⁸⁰ *Id.* at 5-9; see also Exhibit CVD-PRC-2 (containing the *Catalogue of Major Industries, Products, and Technologies Encouraged for Development in China* (Guidance Catalogue), which identifies iron, steel, and nonferrous metals to be an encouraged sector).
etc.”).

¹⁸¹ *Id.* at 10 (citing *CFS from China*).

¹⁸² See *CFS from China* IDM at Comment 8.

¹⁸³ See GOC IQR at Exhibit II.A.5, Part 5 of the 11th FYP.

¹⁸⁴ *Id.* at Exhibit II.A.5, Chapter 51 of the 12th FYP.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

environment to activate the development of SMEs” by “increas{ing} the size and percentage of lending to SMEs, and broaden{ing} channels of direct financing.”¹⁸⁷ Additionally, the 12th Five-Year Plan states that the industrial restructuring and reorganization should be undertaken to “transform and upgrade consumption goods industry, and promote the enlargement and enhancement of manufacturing industry.”¹⁸⁸

In the current *13th Five-Year Plan for Economic and Social Development of The People’s Republic of China (2016-2020)* (13th FYP), the GOC pledges to “set up a fund to provide rewards and subsidies for structural adjustments in industrial enterprises.”¹⁸⁹ The 13th FYP further encourages the “transform{ation} and improv{ement of} major manufacturing technologies and improv{ing} policies to support enterprises... thereby helping key manufacturing sectors move into the medium-high end” and “improv{ing} the supply of consumer goods.”¹⁹⁰ To achieve this goal, the 13th FYP states support for the development of “specialized small and medium enterprises,” such as downstream processors.¹⁹¹ The 13th FYP promotes the development of “a number of competitive, well-known brands” through improvements in both product quality and product supervision.¹⁹² Finally, the 13th FYP calls for lowering business costs by reducing taxes and fees, “maintain{ing} proper liquidity and interest rates,” and extending credit by creating a “national financing guaranty fund.”¹⁹³

Record evidence also indicates that, in furthering these policy goals, the government has targeted financial and other support toward certain encouraged industries, including the steel industry. In particular, the *Decision of the State Council on Promulgating the Interim Provisions on Promoting Industrial Structure Adjustment (Guo Fa {2005} No. 40)* (Decision 40) indicates that the “Catalogue for the Guidance of Industrial Structure Adjustment” (Guidance Catalogue) is an “important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc.”¹⁹⁴ Decision 40 further indicates that projects in “encouraged” industries shall be provided credit support in compliance with credit principles.¹⁹⁵ The Guidance Catalogue lists the iron and steel industries, generally, and “high-performance pipeline steel for oil and gas transmission,” specifically, as encouraged industries.¹⁹⁶

A key tool in the GOC’s economic development plans is preferential lending. The GOC uses preferential lending to pursue economic development goals through the 13th FYP, which sets a target of maintaining “proper liquidity and interest rates, creat{ing} new direct financing product suitable to the needs of enterprises and establishing a national financing guaranty fund.”¹⁹⁷

¹⁸⁷ *Id.* at Exhibit II.A.5, Chapter 9 of the 12th FYP

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at Exhibit II.A.5, Chapter 22 of the 13th FYP

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.* at Exhibit II.A.8, Chapter III.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at Exhibit II.A.9.

¹⁹⁷ *Id.* at Exhibit II.A.5, Chapter 22 of the 13th FYP.

Accordingly, given the policy and plans discussed above, we preliminarily determine that there is a program of preferential policy lending specific to producers of fluid steel end blocks within the meaning of section 771(5A)(D)(i) of the Act. Additionally, we preliminarily find that loans from SOCBs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act, because SOCBs are “authorities.”¹⁹⁸ The loans provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans pursuant to section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a).

Nanjing Develop and Qinghe reported loans from SOCBs on which they paid interest in the POI. To determine whether a benefit was conferred under section 771(5)(E)(ii) of the Act, we compared the amount of interest paid during the POI on these loans to the amount of interest that each respondent would have paid on comparable commercial loans.¹⁹⁹ In conducting this comparison, we used the interest rate benchmarks described above in the section “Benchmarks and Interest Rates.” On this basis, we preliminarily calculated a countervailable subsidy of 0.19 percent *ad valorem* for Nanjing Develop and 6.39 percent *ad valorem* for Qinghe.²⁰⁰

For the reasons explained in the “Application of AFA: Non-Responsive Companies” section, we determine on the basis of AFA that the non-responsive companies benefitted from this program during the POI within the meaning of section 771(5)(E)(ii) of the Act. Consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 6.39 percent *ad valorem* for the non-responsive companies, the highest rate calculated for an identical program in this investigation.

2. Export Seller’s Credits

Under this program, the China ExIm Bank provides loans to Chinese companies to finance their exports of manufactured vessels, equipment, general mechanical and electronic products, and high and new technology as well as agricultural products.²⁰¹ According to the GOC, the program is implemented pursuant to the Interim Rules for the Export Seller’s Credit of Export-Import Bank of China.²⁰² The China ExIm Bank grants these loans to companies that meet the following criteria: (1) the applicant should be an enterprise legally registered in China; (2) the value of the export contract should normally be higher than 300,000 USD; and (3) the payment made in spot exchange at sight must be at least 15% of the contract value.²⁰³ Qinghe and its parent company, Haimo Technologies, reported receipt of export seller’s credits from the China ExIm Bank during the POI.²⁰⁴

We find that the loans provided by the China ExIm Bank under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. The loans also provide a

¹⁹⁸ See, e.g., *CFS from China* IDM at Comment 8.

¹⁹⁹ See 19 CFR 351.505(a).

²⁰⁰ See Nanjing Develop Preliminary Calculation Memorandum; see also Qinghe Preliminary Calculation Memorandum.

²⁰¹ See GOC IQR at Exhibit II.A.10.

²⁰² *Id.* at 17 and at Exhibit II.A.10.

²⁰³ *Id.*

²⁰⁴ See Qinghe IQR at 12-13 and at Exhibit III.B.1.

benefit under section 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings, and, therefore, this program is specific under sections 771(5A)(A) and (B) of the Act.

To calculate the benefit under this program, we compared the amount of interest that Qinghe and Haimo Technologies paid on the outstanding loans to the amount of interest the companies would have paid on comparable commercial loans. In conducting this comparison, we used the interest rates described in the “Benchmarks and Interest Rates” section above. We divided the total benefit amount by the companies’ total export sales, as described in the “Subsidies Valuation” section above.

On this basis, we preliminarily determine a subsidy rate of 1.54 percent *ad valorem* for Qinghe.²⁰⁵

For the reasons explained in the “Application of AFA: Non-Responsive Companies” section, we determine on the basis of AFA that the non-responsive companies benefitted from this program during the POI within the meaning of section 771(5)(E)(ii) of the Act. Consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 1.54 percent *ad valorem* for the non-responsive companies, the highest rate calculated for an identical program in this investigation.

3. Export Buyer’s Credits

Through this program, the China Ex-Im Bank provides loans at preferential rates for the purchase of exported goods from China. For the reasons explained in the “Application of AFA: Export Buyer’s Credits” section above, for this investigation we preliminarily determine that the program constitutes a financial contribution within the meaning of section 771(5)(D) of the Act, pursuant to sections 776(a) and (b) and of the Act. We also preliminarily determine that the program is specific because the credits are contingent upon export performance under sections 771(5A)(A) and (B) of the Act.

Applying AFA, we preliminarily determine that this program confers a benefit to the mandatory respondents pursuant to section 771(5)(E) of the Act. Furthermore, for the reasons explained in the “Application of AFA: Non-Responsive Companies” section, we determine on the basis of AFA that the non-responsive companies benefitted from this program during the POI within the meaning of section 771(5)(E)(ii) of the Act. Consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 10.54 percent *ad valorem*, a rate calculated for a similar program in another CVD proceeding involving imports from China.²⁰⁶

²⁰⁵ See Qinghe Preliminary Calculation Memorandum.

²⁰⁶ See *Coated Paper from China Amended Final*.

4. Income Tax Reduction for High and New Technology Enterprises (HNTEs)

This program was established according to Article 28 of the Enterprise Income Law of the {People’s Republic of China} (PRC) and Article 93 of the Implementing Regulations of the Enterprise Income Tax Law of the PRC, effective on January 1, 2008, to support and encourage development of high and new technology enterprises.²⁰⁷ Companies utilizing the program can benefit from a preferential income tax rate of 15 percent, rather than the standard 25 percent.²⁰⁸ Furthermore, the GOC states that this program is available to all companies that qualify as high or new technology companies.²⁰⁹ Nanjing Develop, Qinghe and Qinghe’s parent, Haimo Technologies, were all entitled to receive this assistance.²¹⁰ However, Nanjing Develop reported that it did not claim the benefit from this program in its tax year 2017 return filed in the POI.²¹¹

We preliminarily determine that the GOC’s provision of income tax reductions for HNTEs confers a financial contribution in the form of revenue forgone by the GOC within the meaning of section 771(5)(D)(ii) of the Act. We also preliminarily determine that the income tax reductions for HNTEs are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because they are limited as a matter of law to only certain enterprises designated as HNTEs.

To determine whether a benefit was conferred within the meaning of section 771(5)(E) of the Act and 19 CFR 351.509(a)(1), we calculated the difference between the tax amount due with the standard 25 percent tax rate and the tax amount due with the reduced 15 percent tax rate. We divided the resulting amount of the tax subsidy by the companies’ total sales, as described in the “Subsidies Valuation” section above.²¹² On this basis, we preliminarily calculated a countervailable subsidy of 1.99 percent *ad valorem* for Qinghe.²¹³

Furthermore, for the reasons explained in the “Application of AFA: Non-Responsive Companies” section, we determine on the basis of AFA that the non-responsive companies benefitted from this program during the POI pursuant to 19 CFR 351.509(a)(1). Consistent with Commerce’s AFA rate selection methodology for income tax programs, as discussed above, we are applying the 25 percent AFA rate for the non-responsive companies.

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

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.²¹⁴ Article 95 of the Implementing Regulations of the Enterprise Income Tax Law of China (Decree 512 of the State Council, 2007) provides that, if

²⁰⁷ See GOC IQR at 33 and Exhibits II.C.1-1 and II.C.1-2.

²⁰⁸ *Id.* at 33-34.

²⁰⁹ *Id.* at 33.

²¹⁰ See Nanjing Develop IQR at 16-21; *see also* Qinghe IQR at 15-20 and GOC IQR at 35.

²¹¹ See Nanjing Develop IQR at 16.

²¹² See 19 CFR 351.505(a).

²¹³ See Qinghe Preliminary Calculation Memorandum.

²¹⁴ See GOC IQR at 46 and Exhibit II.C.1-1.

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.²¹⁵ Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets’ costs.²¹⁶ Nanjing Develop and Qinghe reported using this program.²¹⁷

We preliminarily determine that this program constitutes a countervailable subsidy. This income tax deduction is a financial contribution in the form of revenue forgone 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)(E) 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.²¹⁸

To calculate the benefit from this program, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).²¹⁹ To compute the amount of the tax savings, we calculated the amount of tax the respondents 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 0.25 percent *ad valorem* for Nanjing Develop and 1.12 percent *ad valorem* for Qinghe.²²⁰

Furthermore, for the reasons explained in the “Application of AFA: Non-Responsive Companies” section, we determine on the basis of AFA that the non-responsive companies benefitted from this program during the POI pursuant to 19 CFR 351.509(a)(1). Consistent with Commerce’s AFA rate selection methodology for income tax programs, as discussed above, we are applying the 25 percent AFA rate for the non-responsive companies.

²¹⁵ *Id.* at 46-47 and Exhibit II.C.1-2.

²¹⁶ *Id.*

²¹⁷ See Nanjing Develop IQR at 21; see also Qinghe IQR at 20 and GOC IQR at 46.

²¹⁸ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012), and accompanying IDM at 17.

²¹⁹ 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).

²²⁰ See Nanjing Develop Preliminary Calculation Memorandum; see also Qinghe Preliminary Calculation Memorandum.

6. Import Tariff and Value Added Tax (VAT) Exemptions on Imported Equipment for Encouraged Industries

The Circular of the State Council on Adjusting Tax Policies on Imported Equipment (GUOFA {1997} No. 37) exempts foreign invested enterprises and certain domestic enterprises from VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into a prescribed list of non-eligible items (Catalogs on Non-Duty- Exemptible Articles of Importation), in order to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades.²²¹ As of January 1, 2009, the GOC discontinued VAT exemptions under this program, but companies can still receive import duty exemptions.²²² Nanjing Develop and Qinghe reported receiving VAT and tariff exemptions under this program over the AUL.²²³ Commerce has previously found the VAT (pre-2009) and tariff exemptions under this program to confer countervailable subsidies.²²⁴

We preliminarily determine that the tariff exemptions and the pre-2009 VAT exemptions on imported equipment confer a countervailable subsidy. The exemptions constitute a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipient in the amount of VAT and tariff savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the VAT and tariff exemptions afforded by the program are specific under section 771(5A)(D)(i) of the Act, because the program is limited to certain enterprises, *i.e.*, domestic enterprises involved in “encouraged” projects.

Because these exemptions are provided for, or tied to, the capital structure or capital assets of a firm, Commerce treated them as a non-recurring benefit and applied our standard methodology for non-recurring grants to calculate the subsidy rate.²²⁵ Specifically, where the benefits exceeded 0.5 percent of the relevant sales of that year, we allocated the amount of the VAT and/or tariff exemptions over the AUL.²²⁶ In the years that the benefits received by the respondents under this program did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described in the section “Subsidies Valuation” above to calculate the amount of the benefit allocable to the POI. Those benefits expensed or allocated to the POI were then used as the basis for calculating the net subsidy rates, which we calculated by dividing the total POI benefit by the total sales denominator.

On this basis, we preliminarily determine a countervailable subsidy rate of 0.04 percent *ad valorem* for Qinghe.²²⁷ The POI benefit to Nanjing Develop was less than 0.005 percent; thus,

²²¹ See GOC IQR, at 63-64.

²²² *Id.* at 64 and Exhibit II.D.1-4.

²²³ See Nanjing Develop IQR at 25 and Exhibit P.D1.b; see also Qinghe IQR at 24 and Exhibit III.D.1.b.

²²⁴ See, e.g., *Wire Decking from the People’s Republic of China: Final Affirmative Countervailing Duty Investigation*, 75 FR 39202 (June 10, 2010), and accompanying IDM at 25-27.

²²⁵ See 19 CFR.351.524(b).

²²⁶ See 19 CFR 351.524(c)(2)(iii) and (d)(2).

²²⁷ See Qinghe Preliminary Calculation Memorandum.

consistent with our practice, we preliminarily determine that it received a non-measurable benefit.²²⁸

For the reasons explained in the “Application of AFA: Non-Responsive Companies” section, we determine on the basis of AFA that the non-responsive companies benefitted from this program during the POI within the meaning of section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). Consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 0.04 percent *ad valorem* for the non-responsive companies, the highest rate calculated for an identical program in this investigation.

7. Provision of Electricity for LTAR

The petitioners allege that the NDRC establishes electricity rates for the provinces and that the NDRC employs preferential electricity rates as a policy tool to promote and encourage the development of China’s fluid end blocks industry.²²⁹ Commerce has countervailed this program in previous investigations.²³⁰ We preliminarily find that Nanjing Develop and Qinghe used this program during the POI, because they purchased electricity from provincial and municipal utilities.²³¹

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the GOC’s provision of electricity for LTAR, in part, on AFA. Therefore, we 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 sections 771(5A)(D)(iii)(I) and 771(5A)(D)(iv) 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) used by the respondents. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category.²³²

Consistent with our approach in *Tires from China*,²³³ we first calculated the respondents’ 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 by the respondent during each month of the POI.²³⁴ Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price

²²⁸ See Nanjing Develop Preliminary Calculation Memorandum.

²²⁹ See CVD Initiation Checklist, at 21.

²³⁰ See, *e.g.*, *Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008), and accompanying IDM at 29.

²³¹ See Nanjing Develop IQR at 33 and Exhibit P.F3.b; see also Qinghe IQR at 32 and Exhibit III.F.3.b.1.

²³² See Nanjing Develop Preliminary Calculation Memorandum; *see also* Qinghe Preliminary Calculation Memorandum.

²³³ See *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 IDM (*Tires from China*).

²³⁴ *Id.* at 31-32.

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 the respondent during the POI from the monthly benchmark variable electricity costs.

To measure whether the respondents 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 companies 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 the company 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 the respondents' variable electricity payments and base rate payments.²³⁵

To calculate the net countervailable subsidy rates, we divided the total benefits by the appropriate total sales denominator, as discussed in the "Subsidies Valuation" section. On this basis, we preliminarily determined a subsidy rate of 0.95 percent *ad valorem* for Nanjing Develop and 0.59 percent *ad valorem* for Qinghe.²³⁶

For the reasons explained in the "Application of AFA: Non-Responsive Companies" section, we determine on the basis of AFA that the non-responsive companies benefitted from this program during the POI within the meaning of section 771(5)(E)(iv) of the Act. Consistent with Commerce's AFA rate selection methodology, we determine a countervailable subsidy rate of 0.95 percent *ad valorem* for the non-responsive companies, the highest rate calculated for an identical program in this investigation.

8. Provision of Steel Ingots for Less Than Adequate Remuneration (LTAR)

The petitioners allege that the respondents receive countervailable subsidies in the form of the provision of steel ingots for LTAR.²³⁷ We requested information from the GOC regarding the specific companies that produced the steel ingots that Nanjing Develop and Qinghe purchased during the POI in order to determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act.²³⁸ The GOC provided information indicating the names of the producers, but only partially provided the data requested by Commerce.²³⁹

As described in the "Use of Facts Otherwise Available and Adverse Inferences" section, Commerce determines that the GOC failed to cooperate to the best of its ability in responding to our requests for information. Therefore, we preliminarily determine as AFA that the producers of steel ingot purchased by the respondents are "authorities" within the meaning of section 771(5)(B) of the Act and, as such, that they provided a financial contribution under section 771(5)(D)(iii) of the Act.

²³⁵ See Nanjing Develop Preliminary Calculation Memorandum; *see also* Qinghe Preliminary Calculation Memorandum.

²³⁶ *Id.*

²³⁷ See Initiation Checklist at 31-32.

²³⁸ See Initial Questionnaire, at II-13 to II-16.

²³⁹ See "Use of Facts Otherwise Available and Adverse Inferences" section above.

Additionally, as discussed in the “Application of AFA: Provision of Steel Ingots Is Specific” section, Commerce has determined as AFA that the steel ingots for LTAR program is specific in accordance with section 771(5A)(D)(iii)(I) of the Act.

As explained in the “Application of AFA: Whether the Steel Ingot Market is Distorted” section above, we preliminarily determine that the domestic market for steel ingot is distorted through the intervention of the GOC, and are relying on an external benchmark for determining the benefit from the provision of this input at LTAR. Commerce is, accordingly, selecting external benchmark prices, *i.e.*, “tier two” or world market prices, for our LTAR analysis consistent with Commerce’s regulations.²⁴⁰ The external benchmarks are derived through the method discussed in the “Input Benchmarks” section above.

As explained in the calculation memoranda, Commerce adjusted the benchmark price to include delivery charges, import duties, and VAT pursuant to 19 CFR 351.511(a)(2)(iv). Regarding delivery charges, we included ocean freight and inland freight charges that would be incurred to deliver steel ingot to the respondents’ production facilities. We added import duties as reported by the GOC, and the VAT applicable to imports of steel ingot into China, also as reported by the GOC.²⁴¹ In calculating VAT, we applied the applicable VAT rate to the benchmark after first adding in amounts for ocean freight and import duties. We compared these monthly benchmark prices to the respondents’ reported purchase prices for individual domestic transactions, including VAT and delivery charges.²⁴²

Based on this comparison, we preliminarily determine that steel ingot was provided for LTAR and that a benefit exists to the extent that the prices paid by the respondents were less than the benchmark prices.²⁴³ We divided the total benefits by the appropriate total sales denominator, as discussed in the “Subsidies Valuation” section.

On this basis, we preliminarily determine a subsidy rate for of 4.25 percent *ad valorem* for Nanjing Develop.²⁴⁴ The POI benefit to Qinghe was less than 0.005 percent; thus, consistent with our practice, we preliminarily determine that it received a non-measurable benefit.²⁴⁵

For the reasons explained in the “Application of AFA: Non-Responsive Companies” section, we determine on the basis of AFA that the non-responsive companies benefitted from this program during the POI within the meaning of section 771(5)(E)(iv) of the Act. Consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate of 4.25 percent *ad valorem* for the non-responsive companies, the highest rate calculated for an identical program in this investigation.

²⁴⁰ See 19 CFR 351.511.

²⁴¹ See GOC IQR, at 126.

²⁴² See Nanjing Develop Preliminary Calculation Memorandum; *see also* Qinghe Preliminary Calculation Memorandum.

²⁴³ See Nanjing Develop Preliminary Calculation Memorandum; *see also* Qinghe Preliminary Calculation Memorandum.

²⁴⁴ See Nanjing Develop Preliminary Calculation Memorandum

²⁴⁵ See Qinghe Preliminary Calculation Memorandum.

B. Programs Preliminarily Determined Not Used or Not to Have Conferred a Measurable Benefit during the POI

We preliminarily determine that Nanjing Develop and Qinghe did not apply for, or receive, benefits during the POI under the programs listed below:

1. Export Loans from Chinese State-Owned Banks
2. Preferential Loans for State-Owned Enterprises (SOEs)
3. Exemptions for SOEs from Distributing Dividends
4. Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization
5. Income Tax Deductions/Credits for Purchase of Special Equipment
6. Tax Incentives for Businesses in the China (Shanghai) Pilot Free Trade Zone
7. Value Added Tax (VAT) Rebates on Domestically Produced Equipment
8. Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring
9. GOC and Sub-Central Government Subsidies for the Development of Famous Brands and China World Top Brands
10. The State Key Technology Project Fund
11. Foreign Trade Development Fund Grants
12. Grants for Energy Conservation and Emission Reduction
13. Grants for the Retirement of Capacity
14. Provision of Land for Less Than Adequate Remuneration (LTAR) to SOEs
15. Provision of Land for LTAR in Economic Development Zones²⁴⁶
16. Provision of Steam Coal for LTAR

²⁴⁶ We preliminarily determine that Nanjing Develop did not use this program during the AUL. As discussed in the “Issues for Post-Preliminary Analysis” section above, we will seek further information as to whether Qinghe used and benefited from this program.

X. CONCLUSION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

5/18/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

APPENDIX

AFA Rate Calculation

Program Name	AFA Rate
Preferential Lending	
Policy Loans to the Fluid End Blocks Industry	6.39% ²⁴⁷
Export Loans from Chinese State-Owned Banks	10.54% ²⁴⁸
Preferential Loans for State-Owned Enterprises (SOEs)	10.54% ²⁴⁹
Export Seller's Credits	1.54% ²⁵⁰
Export Buyer's Credits	10.54% ²⁵¹
Debt-to-Equity Swaps, Equity Infusions, and Loan Forgiveness	
Exemptions for SOEs from Distribution of Dividends	10.54% ²⁵²
Direct Tax Subsidies	
Income Tax Reductions for High or New Technology Enterprises (HNTEs)	25.00% ²⁵³
Income Tax Deduction for Research and Development (R&D) Expenses under the Enterprise Income Tax Law	
Income Tax Concessions for Enterprises Engaged in Comprehensive Resource Utilization	
Income Tax Deductions/Credits for Purchase of Special Equipment	
Tax Incentives for Businesses in the China (Shanghai) Pilot Free Trade Zone	
Indirect Tax Subsidies	

²⁴⁷ See Qinghe Preliminary Calculation Memorandum.

²⁴⁸ 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*).

²⁴⁹ *Id.*

²⁵⁰ See Qinghe Preliminary Calculation Memorandum.

²⁵¹ *Id.*

²⁵² See *Coated Paper from China*.

²⁵³ The standard income tax rate for corporations in China during the POI was 25 percent. Thus, the highest possible benefit for all income tax reduction or exemption programs combined is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis (*i.e.*, finding that the six programs, combined, provide a 25 percent benefit).

Import Tariff and Value Added Tax (VAT) Exemptions on Imported Equipment for Encouraged Industries	0.04% ²⁵⁴
VAT Rebates on Domestically Produced Equipment	0.51% ²⁵⁵
Tax Incentives for Businesses in the China (Shanghai) Pilot Free Trade Zone	9.71% ²⁵⁶
Deed Tax Exemption for SOEs Undergoing Mergers or Restructuring	9.71% ²⁵⁷
Grants	
GOC and Sub-Central Government Subsidies for Development of Famous Brands and China World Top Brands	1.27% ²⁵⁸
The State Key Technology Project Fund	1.27%
Foreign Trade Development Fund Grants	1.27%
Grants for Energy Conservation and Emission Reduction	1.27%
Grants for the Retirement of Capacity	1.27%
Government Provision of Goods for Less Than Adequate Remuneration (LTAR)	
Provision of Land for LTAR to SOEs	13.36 % ²⁵⁹
Provision of Land for LTAR in Economic Development Zones	13.36% ²⁶⁰
Provision of Electricity for LTAR	0.95% ²⁶¹

²⁵⁴ See Qinghe Preliminary Calculation Memorandum.

²⁵⁵ See *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010).

²⁵⁶ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016).

²⁵⁷ *Id.*

²⁵⁸ For all grant programs, we assigned a rate of 1.27 percent. See *High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017*, 84 FR 71373 (December 27, 2019).

²⁵⁹ See *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).

²⁶⁰ *Id.*

²⁶¹ See Nanjing Develop Preliminary Calculation Memorandum.

Provision of Steam Coal for LTAR	5.20% ²⁶²
Provision of Steel Ingot for LTAR	4.25% ²⁶³
TOTAL AFA RATE	138.53%

²⁶² See Countervailing Duty Investigation of Common Alloy Aluminum Sheet "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination, 83 FR 57427 (November 15, 2018).

²⁶³ See Nanjing Develop Preliminary Calculation Memorandum.