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Investigation
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June 15, 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 Affirmative
Determination and Preliminary Negative Critical Circumstances
Determination in the Countervailing Duty Investigation of Certain
Vertical Shaft Engines Between 225cc and 999cc, and Parts
Thereof from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain vertical shaft engines between 225cc and 999cc, and parts thereof (VSE) from the People's Republic of China (China), as provided in section 703 of the Tariff Act of 1930, as amended (Act).

II. BACKGROUND

A. Initiation and Case History

On January 15, 2020, we received antidumping duty (AD) and countervailing duty (CVD) petitions concerning VSE from China, filed in proper form, on behalf of Coalition of American Vertical Engine Producers and its individual members (the petitioners).¹ Pursuant to section 702(b)(4)(A)(ii) of the Act, we invited representatives of the Government of China (GOC) for consultations with respect to the Petition; however, the GOC did not request consultations.² We describe the supplements to the Petition in the *Initiation Notice* and accompanying CVD

¹ See Petitioners' Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China," dated January 15, 2020 (Petition).

² See Commerce's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Invitation for Consultation to Discuss the Countervailing Duty Petition," dated January 15, 2020.

Initiation Checklist.³ On February 18, 2020, we published the initiation of the CVD investigation of VSE from China.⁴

On February 3, 2020, we released the U.S. Customs and Border Protection (CBP) entry data under Administrative Protective Order and requested comments regarding the data and respondent selection.⁵ We stated in the *Initiation Notice* that, if appropriate, we intended to base the selection of mandatory respondents on CBP entry data for the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁶ The petitioners, Loncin Motor Co. (Loncin), and Chongqing Zongshen General Power Machine Co., Ltd. (Zongshen) submitted comments on the CBP data and companies shown therein.⁷

On March 2, 2020, pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2), we selected Chongqing Zong Shen Motorcycle Corp.⁸ and Loncin, as mandatory respondents.⁹ We issued our CVD questionnaire to the GOC, with instructions to forward the questionnaire to the mandatory respondents.¹⁰

The petitioners filed new subsidy allegations (NSAs) on May 19, 2020.¹¹ On May 28, 2020, Commerce requested that the petitioners provide additional information to support the NSAs.¹²

³ See *Certain Vertical Shaft Engines Between 223cc and 999cc, and Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 85 FR 8835 (February 18, 2020) (*Initiation Notice*), and accompanying CVD Initiation Checklist.

⁴ See *Initiation Notice*.

⁵ See Memorandum, "Certain Vertical Shaft Engines between 225cc and 999cc, and Parts Thereof from the People's Republic of China Countervailing Duty Petition: Release of U.S. Customs and Border Protection Data," dated February 3, 2020.

⁶ See *Initiation Notice*, 85 FR at 8838.

⁷ See Petitioners' Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc from the People's Republic of China: Comments on U.S. Customs and Border Protection Data," dated February 18, 2020; see also Loncin's Letter "Loncin Motor Comments on CBP Data: Countervailing Duty Investigation of Certain Vertical Shaft Engines between 225cc and 999cc, and Parts Thereof from the People's Republic of China," dated February 21, 2020; and Zongshen's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Chongqing Zongshen Comments on CBP Data," dated February 24, 2020.

⁸ See "Attribution of Subsidies" section below.

⁹ See Memorandum, "Countervailing Duty Investigation of Certain Vertical Shaft Engines between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Selection of Respondents for Individual Examination," dated March 2, 2020. Zongshen clarified that its shipments to the United States were actually made under its own name, not the name of its affiliate Chongqing Zong Shen Motorcycle Corp., and provided entry documentation to support its claim.

¹⁰ See Commerce's Letter, "Countervailing Duty Investigation of Certain Vertical Shaft Engines between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Countervailing Duty Questionnaire," dated March 11, 2020.

¹¹ See Petitioners' Letter, "Certain Vertical Shaft Engines Between 223cc and 999cc, and Parts Thereof from the People's Republic of China: New Subsidy Allegations," dated May 19, 2020.

¹² See Commerce's Letter, "Countervailing Duty Investigation of Certain Vertical Shaft Engines from China: Questionnaire Concerning New Subsidy Allegation," dated May 28, 2020.

The respondents and the petitioners timely submitted data for Commerce to consider using as benchmarks in the less than adequate remuneration (LTAR) programs subsidy rate calculations.¹³ On May 26, 2020, the petitioners filed rebuttal factual information.¹⁴

B. Postponement of Preliminary Determination

On March 26, 2020, based on a request from the petitioners,¹⁵ Commerce postponed the deadline for the preliminary determination until June 15, 2020, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(e).¹⁶ As a result, the revised deadline for the preliminary determination in this investigation was set for June 15, 2020.¹⁷

C. Period of Investigation

The period of investigation (POI) is January 1, 2019 through December 31, 2019. This period corresponds to the most recently completed calendar year in accordance with 19 CFR 351.204(b)(2).

III. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,¹⁸ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, the scope) of VSE.¹⁹

Commerce received comments regarding product coverage from The Toro Company and Toro Purchasing Company and the petitioners.²⁰ Commerce addressed these comments in its

¹³ See Petitioners' Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Submission of Other Factual Information and Benchmark Information," dated May 20, 2020 (Petitioners' Benchmark Submission); Zongshen's Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China; CVD Investigation; Chongqing Zongshen Benchmark Submission," dated May 20, 2020; and Loncin's Letter, "Loncin Benchmark Submission in the Countervailing Duty Investigation on Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof from the People's Republic of China (C-570-120)," dated May 20, 2020.

¹⁴ See Petitioners' Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Factual Information to Rebut, Clarify, or Correct Loncin Motor Co., Ltd. Initial Questionnaire Response," dated May 26, 2020.

¹⁵ See Petitioners' Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc from the People's Republic of China: Request to Postpone Preliminary Determination," dated March 13, 2020.

¹⁶ See *Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 85 FR 17042 (March 26, 2020).

¹⁷ In this case, the extended deadline falls on a weekend. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

¹⁸ See *Antidumping Duties: Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹⁹ See *Initiation Notice*, 85 FR at 8836.

²⁰ See Toro's Letter, "Certain Vertical Shaft Engines from the People's Republic of China: Comments on the Proposed Scope of the Investigations," dated February 24, 2020; see also Petitioners' Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc from the People's Republic of China: Rebuttal Comments on Toro's Proposed Scope of the Investigations," dated March 5, 2020.

Preliminary Scope Determination Memorandum.²¹ We have not changed the scope of the investigation.

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, primarily for riding lawn mowers and zero-turn radius lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment such as, including but not limited to, tow-behind brush mowers, grinders, and vertical shaft generators. The subject engines are spark ignition, single or multiple cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 225 cubic centimeters (cc) and a maximum displacement of 999cc. Typically, engines with displacements of this size generate gross power of between 6.7 kilowatts (kw) to 42 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of this proceeding. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of this proceeding.

For purposes of this investigation, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as an oil pan, manifold, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of this investigation. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (*e.g.*, ignition modules, ignition coils) for synchronizing with the motor to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

The engines subject to this investigation are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 8407.90.1020, 8407.90.1060, and 8407.90.1080. The engine subassemblies that are subject to this investigation enter under HTSUS 8409.91.9990. Engines subject to this investigation may also enter under HTSUS 8407.90.9060 and 8407.90.9080. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

²¹ See Memorandum, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from China: Preliminary Scope Decision Memorandum," dated June 4, 2020.

V. INJURY TEST

Because China is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry. On March 6, 2020, the ITC determined that there is reasonable indication that an industry in the United States is materially injured by reason of imports of VSE from China.²²

VI. PRELIMINARY NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

The Petition included an allegation that critical circumstances exist with respect to imports of the subject merchandise within the meaning of section 703(e)(1) of the Act. The petitioners alleged, based on trade statistics, that there is a reasonable basis to believe or suspect that critical circumstances exist with regard to imports of VSE.²³

Section 703(e)(1) of the Act provides that if a petitioner alleges critical circumstances, Commerce will find that such circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect: (A) that “the alleged countervailable subsidy” is inconsistent with the Agreement on Subsidies and Countervailing Measures (SCM Agreement) of the World Trade Organization, and (B) that “there have been massive imports of the subject merchandise over a relatively short period.” Section 351.206(h)(2) of Commerce’s regulations provides that, generally, imports must increase by at least 15 percent during the “relatively short period” to be considered “massive,” and section 351.206(i) defines a “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed),²⁴ and ending at least three months later.²⁵ The regulations also provide, however, that, if Commerce “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” Commerce “may consider a period of not less than three months from that earlier time.”²⁶

The petitioners assert that there have been massive imports of VSE over a relatively short period. The petitioners do not, however, rely on the standard comparison period beginning on the date the proceeding began. Instead, the petitioners compare the period June 2019 through November 2019 against the same period in calendar year 2018.²⁷ The petitioners state that they chose these base and comparison periods in order to account for seasonality and the unusual circumstances caused by the imposition of 25 percent Section 301 duties, in accordance with 19 CFR 351.206(h)(1)(ii). Commerce disagrees that these alternative periods are appropriate. The purpose of the analysis is to determine whether there was a surge in shipments in anticipation of the imposition of provisional measures. Thus, the comparison period must consist of a time after importers, exporters, or producers became aware of the possibility that cash deposits might be

²² See *Vertical Shaft Engines from China*, 85 FR 13184 (ITC March 6, 2020).

²³ See Petition Volume IV at 3-6.

²⁴ See 19 CFR 351.102(b)(40) (providing that a proceeding begins on the date of the filing of a petition).

²⁵ See 19 CFR 351.206(i).

²⁶ *Id.*

²⁷ See Petition Volume III at 11-59.

imposed in the near future. Such knowledge is imputed to importers, exporters, and producers by the filing of a petition or by some other event that indicates they “had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” pursuant to 19 CFR 351.206(i). The petitioners did not make such a claim in the Petition or in their comments submitted after initiation. Therefore, it is unclear how the alternative periods suggested by the petitioners (which cover periods of time entirely preceding the filing of the Petition) provide any indication that a surge in imports took place in anticipation of provisional measures. For this reason, Commerce relied on the “standard” comparison period, comparing January through April 2020 (the latest month for which data was available) with the base period of September through December 2019. Based on this calculation, and relying on monthly shipment data requested from the mandatory respondents, as well as publicly available aggregate trade data, we determined increases of less than 15 percent for each mandatory respondent and all other producers and exporters. Therefore, because there has not been a “massive surge,” Commerce is preliminarily reaching a negative determination of critical circumstances.

VII. NEW SUBSIDY ALLEGATION

The petitioners submitted new subsidy allegations, including an allegation that the respondents benefit from the provision of hot-rolled steel for LTAR.²⁸ The petitioners also requested that Commerce investigate several subsidies self-reported by the respondents. Subsequently, Commerce requested that the petitioners demonstrate that hot-rolled steel is likely used in the production of VSE. The petitioners did not respond to our request. Although the petitioners were unable to demonstrate that hot-rolled steel is used in the production of subject merchandise, we have determined in the past that materials provided at LTAR are not “tied” to any particular downstream product.²⁹ Thus, hot-rolled steel provided to the respondents in this investigation may still be countervailable even if not consumed in the production of VSE.

Description: The petitioners allege that extensive GOC intervention has led to overcapacity in the Chinese steel market, and that state-led efforts have guided the excess supply of steel into downstream production of higher value-added products such as VSE.³⁰

Financial Contribution: The petitioners state that the Chinese steel industry is dominated by hot-rolled steel producers that are authorities within the meaning of section 771(5)(B) of the Act.³¹

²⁸ See Petitioners’ Letter, “*Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People’s Republic of China: New Subsidy Allegations*,” May 19, 2020 (NSA Allegations).

²⁹ See, e.g., Final Results of Remand Redetermination, “*Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. and Borusan Istikbal Ticaret v. United States; Maverick Tube Corporation v. United States*,” Consol. Ct. No. 14-00229, 61 F. Supp. 3d 1306 and Slip Op. 15-59, at 20; and *Light-Walled Rectangular Pipe and Tube from People’s Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008), and accompanying Issues and Decision Memorandum (IDM) at Comment 8.

³⁰ NSA Allegations at 2.

³¹ *Id.* at 3-4.

Benefit: The petitioners state that world price data provides a reasonable basis to find that the GOC's provision of hot-rolled steel confers a benefit because it is for LTAR within the meaning of section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(2)(iii).³²

Specificity: The petitioners state that the provision of hot-rolled steel for LTAR is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the GOC provides the input only to steel consuming industries, which are limited in number.³³

Support: Commerce has examined the information included with the NSA Allegations and concludes that it reasonably supports the petitioners' statements above concerning the allegation.

Commerce finds that the petitioners have properly alleged the elements of a subsidy and adequately supported that allegation with reasonably available information. Commerce, therefore, is initiating an investigation of the provision of hot-rolled steel at LTAR. Commerce will issue questionnaires to the mandatory respondents and the GOC after the issuance of this preliminary determination, accordingly.

Finally, as explained below, Commerce is countervailing the respondents' self-reported subsidies based on the respondents' responses to our questionnaires, as well as adverse facts available (AFA) in lieu of the GOC's cooperation.

VIII. ALIGNMENT

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioners' request,³⁴ we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of VSE from China. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than October 26, 2020, unless postponed.

IX. DIVERSIFICATION OF CHINA'S ECONOMY

Concurrently with this decision memorandum, Commerce is placing the following excerpts from the *China Statistical Yearbook* from the National Bureau of Statistics of China on the record of this investigation: Index Page; Table 14-7: Main Indicators on Economic Benefit of State-owned and State-holding Industrial Enterprise by Industrial Sector; and Table 14-11: Main Indicators on Economic Benefit of Private Industrial Enterprise by Industrial Sector.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 the economy.

³² *Id.* at 5-6.

³³ *Id.* at 6.

³⁴ See Petitioners' Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination," dated June 5, 2020.

³⁵ See Memorandum, "China Statistical Yearbook Memorandum," dated concurrently with this memorandum.

X. 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.³⁶

Commerce finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service 946 (2016), “Appendix B – Table of Class Lives and Recovery Periods” (IRS Pub. 946).³⁷ Commerce notified the respondents of this 10-year AUL in the initial CVD questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

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

B. Attribution of Subsidies

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

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

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation.

³⁶ See 19 CFR 351.524(b).

³⁷ See U.S. Internal Revenue Service Publication 946 (2016), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

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.³⁸

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.³⁹

Zongshen

Zongshen identified itself as the producer and exporter of subject merchandise to the United States during the POI. Zongshen’s immediate parent company is Chongqing Zongshen Power Machinery Co., Ltd. (Zongshen Power). Zongshen Power owns 100 percent of Zongshen. Zongshen identified the holding companies Chongqing Zongshen High Speed Boat Development Co., Ltd. (Zongshen High Speed) and Zong Shen Industrial Group (Zongshen Group) as additional cross-owned affiliates. Zongshen High Speed owns 20 percent of Zongshen Power, and Zongshen Group owns 80 percent of Zongshen High Speed. In addition, Zongshen, Zongshen Power, Zongshen High Speed, and Zongshen Group have board members, including a Board Chair, and individual shareholders in common. Neither Zongshen Power, Zongshen High Speed, nor Zongshen Group produces subject merchandise. We preliminarily determine that cross-ownership exists between Zongshen, Zongshen Power, Zongshen High Speed, and Zongshen Group, and that subsidies received by the latter three companies are attributable to Zongshen under 19 CFR 351.525(b)(6)(iii).

Zongshen identified Chongqing Zongshen Automobile Air Intake System Manufacturing Co., Ltd. (Zongshen Air) as a cross-owned affiliate and supplier of inputs used in the production of VSE. Zongshen identified Chongqing Zong Shen Electrical Appliance Co., Ltd. (Zongshen Appliance) as another input supplier to Zongshen. Zongshen reported that, as of February 2019, Zongshen Appliance is no longer affiliated with Zongshen Group.⁴⁰ Zongshen provided a questionnaire response on behalf of Zongshen Appliance covering the AUL of the investigation up until its separation from the Zongshen Group in January 2019. Based on record information, we preliminarily determine that cross-ownership exists between Zongshen, Zongshen Air, and Zongshen Appliance, and that subsidies received by Zongshen Air and Zongshen Appliance are attributable to Zongshen under 19 CFR 351.525(b)(6)(iv).

Loncin

Loncin identified Loncin Group Co. Ltd. (Loncin Group) as its ultimate parent company, and Loncin Holdings Co. (Loncin Holdings) as its intermediate parent company (Loncin Holdings is owned by Loncin Group, and is the majority owner of Loncin). Neither Loncin Group, nor

³⁸ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

³⁹ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).

⁴⁰ See Zongshen April 6, 2020 Affiliation Response.

Loncin Holdings reported producing subject merchandise. Based on information on the record, we preliminarily determine that cross-ownership exists between Loncin, Loncin Group, and Loncin Holdings, and that subsidies received by the two holding companies are attributable to Loncin under 19 CFR 351.525(b)(6)(iii). Loncin identified Chongqing Loncin Casting Co., Ltd. (Loncin Casting), Chongqing Lightweight Automotive Components Co., Ltd. (Lightweight), Chongqing Saiyi Plastic Products Co., Ltd. (Saiyi), and Chongqing Loncin Engine Co., Ltd. (Loncin Engine) as affiliated input suppliers.⁴¹ Based on information on the record, we preliminarily determine that cross-ownership exists between Loncin, Loncin Casting, Lightweight, Saiyi, and Loncin Engine, and that subsidies received by the four input suppliers are attributable to Loncin under 19 CFR 351.525(b)(6)(iv).

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 (or the total combined sales of the cross-owned affiliates less intercompany sales) as the denominator, as described above. Where the program has been found to be contingent upon export activities, we used the recipient's total export sales as the denominator. All sales used in our net subsidy rate calculations are net of intra-company sales. For a detailed explanation of the denominators used, *see* the Preliminary Calculation Memoranda prepared for this preliminary determination.⁴²

XI. BENCHMARKS AND INTEREST RATES

Commerce is investigating loans received by Loncin, Zongshen, and their cross-owned affiliates from Chinese policy banks and state-owned commercial banks (SOCBs), as well as non-recurring, allocable subsidies.⁴³ The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

A. Short-Term and Long-Term Loan Renminbi (RMB)-Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, Commerce uses comparable commercial loans reported by the company as a benchmark.⁴⁴ If the

⁴¹ *See* Loncin April 6, 2020 Affiliation Response.

⁴² *See* Memorandum, "Preliminary Determination Calculations for Loncin," dated concurrently with this memorandum (Loncin Preliminary Calculation Memo); *see also* Memorandum, "Preliminary Determination Calculations for Zongshen," dated concurrently with this memorandum (Zongshen Preliminary Calculation Memo) (collectively, Preliminary Calculation Memoranda).

⁴³ *See* 19 CFR 351.524(b)(1).

⁴⁴ *See* 19 CFR 351.505(a)(3)(i).

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.”⁴⁵

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.⁴⁶ In an analysis memorandum dated July 21, 2017, Commerce conducted a re-assessment of the lending system in China.⁴⁷ Based on this re-assessment, Commerce 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.⁴⁸

In past proceedings involving imports from China, we calculated the external benchmark using the methodology first developed in *CFS from China* and more recently updated in *Thermal Paper from China*.⁴⁹ 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.⁵⁰ Beginning in 2010, however, China fell within the upper-middle income category and remained there from 2011 to 2017.⁵¹ Accordingly, as explained below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2003-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and

⁴⁵ See 19 CFR 351.505(a)(3)(ii).

⁴⁶ See *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from China*), and accompanying IDM at Comment 10.

⁴⁷ See “Review of China’s Financial System Memorandum,” under cover dated concurrently with this memorandum.

⁴⁸ See, e.g., *Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82 FR 46754 (October 6, 2017), and accompanying Preliminary Decision Memorandum (PDM) at 21, unchanged in *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018).

⁴⁹ See *CFS from China* IDM at Comment 10; see also *Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from China*), and accompanying IDM at 8-10.

⁵⁰ See World Bank Country Classification, <http://data.worldbank.org/about/country-and-lending-groups>; see also Memorandum “Interest Rate Benchmark Memorandum,” dated concurrently with this memorandum (Interest Rate Benchmark Memorandum).

⁵¹ *Id.*

discount rates for 2010-2017. This is consistent with Commerce's calculation of interest rates for recent CVD proceedings involving Chinese merchandise.⁵²

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

In each of the years from 2003-2009 and 2011-2017, the results of the regression analysis reflected the expected, common-sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.⁵³ For 2010, however, the regression does not yield that outcome for China's income group.⁵⁴ This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from China* to compute the benchmarks for the years from 2001-2009 and 2011-2017. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

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 2010-2017 and "lower middle income" for 2001-2009.⁵⁵ First, we did not include those economies that Commerce considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we remove any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Finally, for each year Commerce calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.⁵⁶ Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.⁵⁷

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

⁵² See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013), and accompanying PDM at "Benchmarks and Discount Rates," unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013).

⁵³ See Interest Rate Benchmark Memorandum; see also Preliminary Calculation Memoranda.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.⁵⁸

In *Citric Acid from China*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.⁵⁹ Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.⁶⁰

The resulting inflation-adjusted benchmark lending rates are provided in the Preliminary Calculation Memoranda.⁶¹

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.⁶² The interest rate benchmarks and discount rates used in our preliminary calculations are provided in Preliminary Calculation Memoranda.

C. Benchmarks for Government Provision of Primary Aluminum at Less Than Adequate Remuneration

1. Unwrought Aluminum for LTAR

The GOC reported 86 unwrought aluminum producers in operation during the POI, 49 of which it reported as being state-controlled.⁶³ According to data provided by the GOC, the producers in which the GOC maintains an ownership or management interest accounted for 44.37 percent of domestic unwrought aluminum production.⁶⁴ The data provided by the GOC show that the volume of imports as a percentage of domestic production and domestic consumption was 0.83 percent,⁶⁵ and that the vast majority of domestic production is consumed domestically. Moreover, the GOC maintained an export tariff of 30 percent on unwrought aluminum during the POI,⁶⁶ thus leading to a surplus for domestic purchasers of the input. Finally, the GOC has identified the aluminum industry for priority development in the Guidance Catalogue as an

⁵⁸ See, e.g., *Thermal Paper from China* IDM at 10.

⁵⁹ 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.

⁶⁰ See Interest Rate Benchmark Memorandum.

⁶¹ See Preliminary Calculation Memoranda.

⁶² *Id.*; see also Interest Rate Benchmark Memorandum.

⁶³ See GOC May 8, 2020 Initial Questionnaire Response (IQR) at 29.

⁶⁴ *Id.* at 31. The percentages for 2017 and 2018 are 39.7 and 42.5 percent, respectively.

⁶⁵ *Id.* at 29. Import share of both production and consumption in 2017, 2018, and 2019 was insignificant, remaining consistently at less than 0.1 percent throughout.

⁶⁶ See GOC May 8, 2020 IQR at 35 and Exhibit II.E1.10.

encouraged industry.⁶⁷ Decision 40 identifies the Guidance Catalogue as “the 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.*”⁶⁸ The GOC also has plans in place specifically for the aluminum industry, which outline the GOC’s control over the industry,⁶⁹ and various interventions,⁷⁰ as well as for non-ferrous metals in general.⁷¹ Given the substantial GOC-controlled production, the low level of imports, and the distortive effects of the GOC’s other interventions in the market, we preliminarily find the record evidence supports a conclusion that the market for unwrought aluminum is distorted. To measure the adequacy of remuneration for the provision unwrought aluminum, we are relying on world market prices that would be available to purchasers in the country under investigation as the Tier 2 benchmark provided for in 19 CFR 351.511(a)(2)(i).⁷²

We selected benchmarks for determining the benefit from the provision of primary aluminum at LTAR in accordance with 19 CFR 351.511. The basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR is set forth under 19 CFR 351.511(a)(2). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As discussed in the “Use of Facts Otherwise Available and Adverse Inferences” section, we are relying on “tier two” (world market) prices for the input benchmarks for these programs.

The petitioners and both respondents submitted aluminum world export data from U.N. Comtrade for HTS subheadings 7601.10 and 7601.20 as a potential benchmark for primary aluminum inputs. The petitioners placed ocean freight rates on the record. No other party placed ocean freight information on the record.

Regarding inland freight, Loncin and Zongshen reported that they do not incur inland freight. The respondents each provided estimates of inland freight to the nearest port. Zongshen provided average per metric ton freight expenses to Qinzhou Port during the POI based on a quotation from a freight forwarder.⁷³ Loncin reported monthly average freight expenses between its factory and Cuntan Port from two transportation companies.⁷⁴ The petitioners provided inland freight information for shipments from Shanghai and Tianjin to Chongqing from The World Bank’s *Doing Business in China: 2020*. For these preliminary results we used the respondents’ reported freight estimates since they appear to be tailored to the circumstances that would exist if the two companies actually imported unwrought aluminum.

⁶⁷ See GOC May 4, 2020 IQR at Exhibit II.B.3, Article VIII of the “encouraged” category (Non-Ferrous Metal).

⁶⁸ *Id.* at Exhibit II.B.6, Chapter III.

⁶⁹ See, *e.g.*, Petition Volume III at Exhibit III-3 (*Notice of Guidelines on Accelerating the Adjustment of Aluminum Industry Structure*).

⁷⁰ *Id.*

⁷¹ See, *e.g.*, Petition Volume III at Exhibit III-4 (*Nonferrous Metal Industry Development Plan (2016-2020)*).

⁷² See Calculation Memoranda.

⁷³ See Zongshen IQR at Volume II, page 30, and Exhibit II-17.

⁷⁴ See Loncin IQR at 32 at Exhibit P.E. 1.4

D. Benchmark for Government Provision of Land for Less Than Adequate Remuneration (LTAR)

As explained in detail in previous investigations, Commerce cannot rely on the use of the so-called “tier one” or “tier two” benchmarks described above to assess the benefits from the provision of land for LTAR in China. Specifically, in *Sacks from China*, Commerce determined that “Chinese land prices are distorted by the significant government role in the market,” and hence, no usable “tier one” benchmarks exist.⁷⁵ Furthermore, Commerce also found that “tier two” benchmarks (world market prices that would be available to purchasers in China) are not appropriate.⁷⁶

On October 2, 2018, Commerce completed a memorandum analyzing developments in China’s land market since 2007.⁷⁷ The Land Analysis Memorandum was prepared to assess the continued application of Commerce’s land for LTAR benchmark methodology, as established in 2007 in *Sacks from China*.⁷⁸ As discussed in the Land Analysis Memorandum, although reforms in China’s land markets have improved the use-rights of some landholders, such improvements have not been comprehensive, and reforms have been implemented on an *ad hoc* basis.⁷⁹ The reforms to date have not addressed the fundamental institutional factors that underlie the Chinese government’s monopoly control over land-use, which precludes landholders from putting their land to its best use and realizing the market value of their landholdings.⁸⁰ The GOC still owns all land in China, and exercises direct control over the sale of land-use rights and land pricing in the primary market and indirect control in the secondary market.⁸¹

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

⁷⁵ See, e.g., *Laminated Woven Sacks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67893, 67906-08 (December 3, 2007), unchanged in *Laminated Woven Sacks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Sacks from China*).

⁷⁶ *Id.*

⁷⁷ See Memorandum, “Land Analysis Memorandum,” dated concurrently with this memorandum (Land Memorandum) (containing a memorandum titled “Benchmark Analysis of the Government Provision of Land-Use Rights in China for Countervailing Duty Purposes,” dated October 2, 2018).

⁷⁸ *Id.* at 2.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

For this investigation, the petitioners submitted industrial land prices from “Asian Market view Reports” by CB Richard Ellis (CBRE) for Thailand for 2010, a source used by Commerce consistently in the past when valuing land in China. Zongshen submitted Malaysian Investment Development Authority data and CBRE world market data for 2015, 2016, and 2017.⁸² Commerce used “Asian Market view Reports” by CBRE for Thailand for 2010 as benchmark data in the CVD investigations of *Solar Cells from China* and *ITDCs from China*,⁸³ and more recently in *Steel Racks*.⁸⁴ We initially selected this information in the *Sacks from China* investigation after considering a number of factors, including national income levels, population density, and producers’ perceptions that Thailand is a reasonable alternative to China as a location for Asian production.⁸⁵ We find that these benchmarks are suitable for this preliminary determination, adjusted accordingly for inflation, to account for any countervailable land received by respondents during the AUL of this investigation.⁸⁶

Regarding the data submitted by Zongshen, Zongshen submitted no information regarding national income levels, population density, and producers’ perceptions that would allow Commerce to determine whether the Malaysian data represents prices for land that is comparable to that which is available to the respondents. Additionally, the CBRE world market data submitted by Zongshen is not appropriate because, as noted above, Commerce is not trying to determine a tier two world price for land. We are relying on a tier three analysis that involves attempting to measure the value of the input at issue (land in China), which, in this case, is obviously not a globally traded commodity.

XII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting

⁸² See Petitioners’ Benchmark Submission at Exhibit 13.

⁸³ See *Solar Cells from China* IDM at 6 and Comment 11; see also *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People’s Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016) (*ITDCs from China*), and accompanying IDM at 13.

⁸⁴ See *Certain Steel Racks from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 62297 (December 3, 2018) (*Steel Racks*), and accompanying PDM at 35-36.

⁸⁵ The complete history of our reliance on this benchmark is discussed in the above-referenced *Solar Cells from China* IDM. In that discussion, we reviewed our analysis from the *Sacks from China* investigation and concluded the CBRE data remained a valid land benchmark.

⁸⁶ See Preliminary Calculation Memoranda.

to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an AFA rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide {Commerce} with complete and accurate information in a timely manner."⁸⁷ 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."⁸⁸

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."⁸⁹ It is Commerce's practice to consider information to be corroborated if it has probative value.⁹⁰ In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.⁹¹ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.⁹²

Finally, 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 the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or 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.⁹³

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

⁸⁷ 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).

⁸⁸ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I (1994) (SAA) at 870.

⁸⁹ See, e.g., SAA at 870.

⁹⁰ See SAA at 870.

⁹¹ See, e.g., SAA at 869.

⁹² See SAA at 869-870.

⁹³ See section 776(d)(3) of the Act.

A. Application of AFA: Export Buyer's Credits

Commerce has determined that the use of AFA is warranted in determining the countervailability of the Export Buyer's Credit program because the GOC did not provide the requested information needed to allow Commerce to analyze this program fully. In its questionnaire responses, the GOC claimed that none of the U.S. customers of the respondent companies used export buyer's credits from the China Export-Import Bank (Ex-Im Bank) during the POR.⁹⁴ Information on the record indicates that the GOC revised this program in 2013.⁹⁵ In response to our request that it provide the 2013 program revisions, the GOC first ignored the request,⁹⁶ and then, in response to our second request, stated that "Based on the information available to the GOC at this stage, the GOC confirms that none of the Respondents' customers applied for, used, or benefited from the alleged program during the POI. Thus, this question is not a necessary one."⁹⁷

Information on the record also indicates that the Ex-Im Bank may disburse Export Buyer's Credits directly or through third-party partner and/or correspondent banks.⁹⁸ In a supplemental questionnaire, we requested that the GOC provide a list of partner/correspondent banks involved in the program. The GOC responded that "Based on the information available to the GOC at this stage, the GOC confirms that none of the Respondents' customers applied for, used, or benefited from the alleged program during the POI. Thus, a list of all partner/correspondent banks around the world that are involved in the disbursement of funds under this program is both an overly broad question and an unnecessary one."⁹⁹ Thus, in its initial and supplemental questionnaire responses, the GOC refused to provide the requested information or any information concerning the 2013 program revisions and the partner/correspondent banks, which is necessary for Commerce to understand how the program operates and which is thus also necessary for Commerce to be able to verify claims of non-usage. Absent this information, Commerce has no assurance of its ability to differentiate ordinary commercial lending from GOC-supported credit in the books and records of the respondents' U.S. customers, or to differentiate disbursements of funds to the respondents themselves pursuant to ordinary lending from disbursements pursuant to GOC-supported credit. Additionally, Commerce would have no guidance to follow in identifying which banks or loans to scrutinize in attempting to verify non-use. Attempting to verify non-use of the EBCP without knowing where to look, or what to look for, would be unlikely to yield accurate or meaningful results. Therefore, by withholding information concerning the operation of this program, the GOC has impeded not only Commerce's ability to determine whether the provision of the credits constitutes a financial contribution and whether such credits are specific, but also Commerce's ability to reach a verifiable conclusion regarding usage of the 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

⁹⁴ See GOC May 4, 2020 IQR at 25.

⁹⁵ See Additional Documents Memorandum.

⁹⁶ See GOC May 4, 2020 IQR at 27, question 5 (Commerce asks specifically for the "2013 internal guidelines," as well as other laws and regulations; the GOC provides the other documents, but not the 2013 internal guidelines).

⁹⁷ See GOC June 8, 2020 SQR at 3.

⁹⁸ See Additional Documents Memorandum.

⁹⁹ See GOC June 8, 2019 SQR at 3.

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. Furthermore, pursuant to section 776(b) of the Act, we find that the GOC, by virtue of its withholding information that was within its control, failed to cooperate by not acting to the best of its ability. Accordingly, the application of AFA is warranted. As AFA, we find that Loncin and Zongshen used and benefited from this program, despite their unsubstantiated claims of non-use.

Under section 776(d) of the Act, Commerce may use, as AFA, a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or 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.¹⁰⁰

Based on the AFA rate selection hierarchy described above, for this program we are using an AFA rate of 10.54 percent *ad valorem*, the highest rate determined for a similar program in the *Coated Paper from China Investigation Amended Final* proceeding, as the rate for these companies.¹⁰¹ Additionally, based on the methodology also described above for corroborating secondary information, we have corroborated the selected rate to the extent possible and find that the rate is reliable and relevant for use as an AFA rate for the Export Buyer’s Credits program.

B. Application of AFA: The Provision of Unwrought Aluminum for LTAR

Government of China – Whether Certain Unwrought Aluminum Producers Are “Authorities”

As discussed below under “Programs Found to Be Countervailable,” Commerce examined whether the GOC provided primary aluminum for LTAR to Loncin and Zongshen. We asked the GOC to provide information regarding the specific companies that produced unwrought aluminum which the respondents purchased during the POI. Specifically, we sought information from the GOC which would allow us to analyze whether the producers are “authorities” within the meaning of section 771(5)(B) of the Act.¹⁰² In prior CVD proceedings involving China, Commerce has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an “authority” within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input is for LTAR.¹⁰³

¹⁰⁰ See section 776(d)(3) of the Act.

¹⁰¹ See *Coated Paper from China Investigation Amended Final* (revised rate for “Preferential Lending to the Coated Paper Industry” program).

¹⁰² See Memorandum, “Public Bodies Memorandum,” dated concurrently with this memorandum (Public Bodies Memorandum).

¹⁰³ See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying IDM at “Hot-Rolled Steel for Less Than Adequate Remuneration;” *Kitchen*

In Commerce’s Initial CVD Questionnaire, we asked the GOC to respond to the Input Producer Appendix for each company that produced the primary aluminum purchased by the respondents.¹⁰⁴ With respect to the producers that the GOC identified as majority government-owned, Commerce requested that the GOC provide the articles of incorporation and capital verification reports.¹⁰⁵ Instead, the GOC provided partial information (*i.e.*, basic registration and shareholder structure). The GOC did not provide the articles of incorporation and capital verification reports for any of the majority government-owned enterprises.¹⁰⁶

As explained in the Public Bodies Memorandum,¹⁰⁷ record evidence demonstrates that producers in China that are majority-owned by the government possess, exercise, or are vested with, governmental authority.¹⁰⁸ Record evidence demonstrates that the GOC exercises meaningful control over such entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector.¹⁰⁹ Therefore, in light of our prior findings and the GOC’s failure to provide rebuttal information to the contrary, we determine that these enterprises are “authorities” within the meaning of section 771(5)(B) of the Act.

With respect to the producers that were reported as being non-majority government-owned, while the GOC provided basic ownership structure information, the GOC did not provide other relevant documentation requested by Commerce, including company by-laws, annual reports, tax registration documents, and articles of association.¹¹⁰ Moreover, the GOC responded to Commerce’s request for information concerning the involvement of the Chinese Communist Party (CCP) in the management and operation of the producers by stating that it could not obtain the requested information.¹¹¹

Such information is necessary to our determination of whether the input producers are authorities within the meaning of section 771(5)(B) of the Act. Therefore, we determine that necessary information is not available on the record, and that the GOC withheld information regarding the second group of producers.¹¹² Accordingly, Commerce must rely on “facts otherwise available” in reaching a determination. Furthermore, we find that the GOC failed to cooperate in complying with requests for information.¹¹³ Consequently, we find that an adverse inference is warranted in the application of facts available.¹¹⁴ As AFA, we preliminarily determine that the

Shelving and Racks from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009), and accompanying IDM at “Provision of Wire Rod for Less than Adequate Remuneration.”

¹⁰⁴ See Initial CVD Questionnaire, at Section II, “Provision of Primary Aluminum for LTAR.”

¹⁰⁵ *Id.*

¹⁰⁶ See GOC May 8, 2020 IQR at 11.

¹⁰⁷ See Public Bodies Memorandum.

¹⁰⁸ *Id.* at 35-36 and sources cited therein.

¹⁰⁹ *Id.*

¹¹⁰ See GOC May 8, 2020 IQR at 11, Exhibit II.E1.1, and Exhibit II.E1.2.

¹¹¹ *Id.* at 26-27.

¹¹² See sections 776(a)(1) and (a)(2)(A) of the Act.

¹¹³ See sections 776(a) and (b) of the Act.

¹¹⁴ See section 776(b) of the Act.

non-government-owned producers are “authorities” within the meaning of section 771(5)(B) of the Act.

Government of China – Whether the Provision of Primary Aluminum is Specific

Commerce asked the GOC to provide a list of industries in China that purchase primary aluminum:

Provide a list of the industries in China that purchase unwrought aluminum 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.¹¹⁵

Commerce requests such information for purposes of its *de facto* specificity analysis. The GOC responded simply that “[t]here are a vast number of users for unwrought aluminum and the type of consumers that purchase unwrought aluminum is highly varied within the economy.”¹¹⁶ The GOC provided no data or supporting documentation, indicating that “sales volumes by industrial sectors” are not collected by its statistical agency.¹¹⁷

Therefore, consistent with past proceedings,¹¹⁸ we preliminarily determine that necessary information is not available on the record and that the GOC has withheld information that was requested of it, and, thus, that Commerce must rely on “facts available” in making our preliminary determination, 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, an adverse inference is warranted in the application of facts available pursuant to section 776(b) of the Act. In drawing an adverse inference, we preliminarily find that the GOC’s provision of unwrought aluminum is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

E. 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

¹¹⁵ See Initial CVD Questionnaire at Section II.

¹¹⁶ See GOC May 8, 2020 IQR at 35.

¹¹⁷ *Id.*

¹¹⁸ See *Utility Scale Wind Towers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from China*), and accompanying IDM at Comment 13.

section 771(5)(E) of the Act, and whether such a provision was specific within the meaning of section 771(5A) of the Act.

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

In its initial questionnaire response, the GOC stated that, since January 1, 2016, “all of the provincial governments have been given authority to prepare and publish electricity tariff rates for their own jurisdictions.”¹¹⁹ Therefore, according to the GOC, Provincial Price Proposals no longer exist and did not exist during the POI.¹²⁰ Consequently, according to the GOC, the “NDRC’s role in regulating provincial electricity pricing is at the macro level; however, the NDRC no longer determines the specific electricity sales prices.”¹²¹

Commerce preliminarily determines that the record indicates the NDRC continues to play a significant and determinative role in setting electricity prices, and that the GOC’s failure to provide detailed information concerning the establishment of varying prices across provinces by the NDRC and the provinces constitutes a lack of cooperation. Because of this failure to cooperate fully, Commerce lacks information that would allow it to determine whether the varying provincial prices established under the NDRC-administered program are the result of market considerations or the result of a design to subsidize certain regions or industries. In particular, Notice 748 is based upon consultations between the NDRC and the “National Energy Administration” or “State Energy Bureau” (depending on translation).¹²² Article 1 contained therein stipulates a lowering of the coal-fired power grid benchmark price of “about 2 cents” per kilowatt hour.¹²³ Annex 1 of Notice 748 applies this adjustment in varying amounts to the

¹¹⁹ See GOC May 4, 2020 IQR at 65.

¹²⁰ *Id.* at 65-66.

¹²¹ *Id.* at 64.

¹²² *Id.* at Exhibit II E.3.13.

¹²³ *Id.*

provinces. Article 2 indicates that the reduction {shall} “mainly used for reducing the price of industrial and commercial electricity.”¹²⁴ Articles 3 and 4 specifically direct the reduction of the sales price of industrial and commercial electricity.¹²⁵ Article 6 requires that provincial pricing authorities “develop and issue specific adjustment plan of electricity price and sales price in accordance with the average price adjustment standards of Annex 1, and reported to our Commission for the record.”¹²⁶

NDRC Notice 3105, also based upon consultations between the NDRC and the National Energy Administration, directs additional price reductions, and stipulates at Article II that local price authorities shall implement the price reductions included in its appendix and report the resulting prices to the NDRC.¹²⁷ Consequently, both Notice 748 and Notice 3015 explicitly direct provinces to reduce prices and to report the enactment of such changes to the NDRC. Neither Notice 748 nor Notice 3105 stipulates that relevant provincial pricing authorities determine and issue electricity prices within their own jurisdictions, as the GOC claims.¹²⁸ Instead, both notices indicate that the NDRC continues to play a seminal role in setting and adjusting electricity prices by mandating price adjustment targets.

Notice 748 and Notice 3105, issued by the NDRC, direct provinces to reduce prices by amounts specific to provinces. They neither explicitly eliminate Provincial Price Proposals nor define distinctions in price-setting roles between national and provincial pricing authorities. The GOC failed to explain fully the roles of each level of government and the nature of the cooperation between the NDRC and the provinces in deriving electricity price adjustments. The information provided by the GOC indicates that despite its claim that the responsibility for setting prices within each province has moved from the NDRC to the provincial governments, the NDRC continues to play a major role in setting and adjusting prices. Furthermore, the GOC failed to explain both the derivation of price reductions required of the provinces by the NDRC and the derivation of the provincial prices themselves. Consequently, we preliminarily determine that the GOC withheld information that was requested of it for our analysis of financial contribution and specificity and, thus, Commerce must rely on “facts available” in making our preliminary determination.¹²⁹ 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. Thus, an adverse inference is warranted in the application of facts available.¹³⁰ In drawing an adverse inference, we find that the GOC’s provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. The GOC failed to provide certain requested information regarding the relationship (if any) between provincial tariff schedules and cost, as well as requested information regarding cooperation (if any) in price setting practices between the NDRC and the provincial governments. Therefore, we are also drawing an adverse inference in selecting the benchmark for determining the existence and amount of the benefit.¹³¹ The benchmark rates were selected

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at Exhibit E3.4.

¹²⁸ *Id.* at Exhibit E3.4.

¹²⁹ *See* section 776(a)(2)(A) of the Act.

¹³⁰ *See* section 776(b) of the Act.

¹³¹ *See* section 776(b)(4) of the Act.

from the record of this investigation and are the highest electricity rates on the record for the applicable rate and user categories. For details regarding the remainder of our analysis, *see* “Provision of Electricity for LTAR” section below.

F. Application of AFA: Provision of “Other Subsidies” as Specific

Government of China

While both Loncin and Zongshen self-reported receiving “Other Subsidies” in their questionnaire responses, the GOC stated that:

The Department has requested information on numerous programs in this investigation. The Respondents and the GOC have cooperated to the best of their ability to provide the information requested. The GOC further notes that Article 11.2 of the WTO Agreement on Subsidies and Countervailing Measures dictates that investigations may not be initiated on the basis of “simple assertion, unsubstantiated by relevant evidence.” Sufficient evidence with regard to the existence, amount, and nature of a subsidy must be presented for the Department to initiate the investigation of another program, consistent with Article 11.2(iii). The GOC believes, therefore, that an answer to this question is premature absent a more direct inquiry supported by credible evidence and the initiation of a discrete investigation by the Department.¹³²

Based upon the above, we preliminarily determine that information necessary to determine whether the reported “Other Subsidies” constitute a financial contribution and are specific is not available on the record, that the GOC withheld information, and, thus, that Commerce must rely on “facts available” in making a preliminary determination 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 in complying with our request for information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act. Drawing an adverse inference, we find that these “Other Subsidies” reported by Loncin and Zongshen constitute a financial contribution pursuant to section 771(5)(D) of the Act and are specific within the meaning of section 771(5A) of the Act. Where such subsidies appear to be contingent upon export performance, we have found these subsidies to be specific within the meaning of section 771(5A)(B) of the Act.

XIII. ANALYSIS OF PROGRAMS

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

¹³² *See* GOC May 4, 2020 IQR at 73.

A. Programs Preliminarily Determined to Be Countervailable

1. Policy Loans to the VSE Industry

Commerce is examining whether the GOC has encouraged the development of the VSE industry through financial support from SOCBs. Commerce has countervailed policy lending programs in previous investigations.¹³³

Loncin's cross-owned holding companies Loncin Group and Loncin Holdings, Zongshen's holding companies Zongshen Group and Zongshen Power, and Zongshen's supplier Zongshen Air reported having loans that were outstanding during the POI.¹³⁴ Commerce preliminarily finds that the loans provide countervailable subsidies under a policy lending program directed at the VSE industry.

When examining a policy lending program, Commerce looks to whether 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 SOCBs renders the loans government financial contributions.¹³⁵

Record evidence indicates financial support directed specifically toward certain encouraged industries listed in the GOC's Guidance Catalogue. The GOC has identified the aluminum industry for priority development in the Guidance Catalogue, and the development of production technology within it, as encouraged.¹³⁶ Moreover, the *Notice of Guidelines on Accelerating the Adjustment of the Aluminum Industry Structure* states that the GOC's aim is to "increase the proportion of high value added processed products" made of aluminum.¹³⁷ VSE are largely the product of aluminum components,¹³⁸ and the GOC admits that VSE fall within Article XIII, paragraph 1 of the "encouraged" category of the Guidance Catalog ("Systematic design and development of for automobile, motorcycle, engine and their key components and parts").¹³⁹ The GOC's Decision 40 identifies the Guidance Catalogue as "the 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."¹⁴⁰

¹³³ See, e.g., *Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 13017 (February 26, 2013) (*Steel Sinks from China*), and accompanying IDM at 24-25.

¹³⁴ See Loncin May 13, 2020 IQR at 16, and Exhibits P.B.1.1 and P.B.1.2.; see also Zongshen May 13, 2020 IQR at Volume I, page 20, Exhibit I-13, Volume II, page 14, Exhibit II-10, and Volume III, page 17, Exhibit III-12.

¹³⁵ See *CFS from China* IDM at Comment 8.

¹³⁶ See GOC May 4, 2020 IQR at Exhibit II.B.3, Article VIII of the "encouraged" category (Non-Ferrous Metal).

¹³⁷ See Petition Volume III at 4.

¹³⁸ *Id.* at 6.

¹³⁹ See GOC May 4, 2020 IQR at 14.

¹⁴⁰ *Id.* at Exhibit II.B.6, Chapter III, Article 12.

The 11th five-year plan (FYP) calls for strengthened support for industrial policy, especially for high tech industries: “Strengthen and improve industrial policy work, reinforce the unified planning for domestic industry development and for investment introduction, strengthen the cooperation of the policies in credit, land, environmental protection, safety and science and technology with the industrial policy and use economic means to promote the development of industries. Strengthen the support for the weak links of high-tech industries and equipment manufacturing industry, mainly support research and development and foster core competitive power.”¹⁴¹

Decision 40 also directs all local, provincial, and municipal governments under the Central Government’s control to cooperate closely and intensify the effectiveness of implementing industrial policies. Consistent with the central planning documents, the 11th FYP of Chongqing lists upgrading and strengthening the automobile and motorcycle industry as one of its goals.¹⁴² Respondents and their cross-owned companies are producers of automobile and motorcycle components in addition to VSE, and, moreover, as indicated above, the GOC appears to group VSE in the same industrial category as automobile and motorcycle parts. Moreover, the 13th FYP of Chongqing encourages the production of specific industries such as auto parts manufacturing and advanced manufacturing.¹⁴³

Thus, we preliminarily determine that a program exists to provide preferential lending to producers of VSE within the meaning of section 771(5A)(D)(i) of the Act. For Loncin, Zongshen, and their cross-owned affiliates, 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.¹⁴⁴ To calculate the benefit from this program, we used the benchmarks discussed above under the “Subsidy Valuation” section.¹⁴⁵ To calculate the net countervailable subsidy rate under this program we divided the benefit by the appropriate sales denominator, as described in the “Subsidies Valuation” section above. On this basis, we preliminarily determine subsidy rates of 0.51 percent *ad valorem* for Loncin and 10.22 percent *ad valorem* for Zongshen.

2. Export Sellers Credits

The petitioners allege the Ex-Im Bank provides support to exporters through a variety of means, including export seller’s credits.¹⁴⁶ The GOC provided the “Interim Rules for the Export Seller’s Credit of Export-Import Bank of China,” which states in Article 4 that “{t}he project loan of the seller’s credit on exports refers to the special policy-based loan issued by the Export-Import Bank of China to the exporters for supporting the export of the complete equipment, ships, airplanes, communications satellites and the spare parts.”¹⁴⁷ As part of the application requirements, enterprises must have “{a}pproval files for the import-export operation right.”¹⁴⁸

¹⁴¹ *Id.* at Exhibit II.B.I, Chapter 47.

¹⁴² *See* GOC May 4, 2020 IQR at Exhibit II.B.2

¹⁴³ *See* Petition Volume III at 23.

¹⁴⁴ *See* section 771(5)(E)(ii) of the Act; and 19 CFR 351.505(a).

¹⁴⁵ *See* 19 CFR 351.505(c).

¹⁴⁶ *See* Initiation Checklist at 11.

¹⁴⁷ *See* GOC May 4, 2020 IQR at Exhibit II.B.28.

¹⁴⁸ *Id.*

Loncin and Zongshen affiliate Zongshen Group reported having outstanding loans from the Ex-Im Bank during the POI, which were provided under this program. We find that the loans provided by the Ex-Im 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 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)-(B) of the Act.

To calculate the benefit under this program, we compared the amount of interest Loncin and Zongshen Group paid on the outstanding loans to the amount of interest the company would have paid on comparable commercial loans. In conducting this comparison, we used the interest rates described in the “Benchmarks and Discount Rates” section above. We divided the total benefit amount by the appropriate export sales denominators as described above.

On this basis, we preliminarily determine a subsidy rate of 1.69 percent *ad valorem* for Loncin and 9.92 percent *ad valorem* for Zongshen.

3. Export Buyer’s Credit

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, our preliminary determination regarding the GOC’s provision of export buyer’s credit is based on AFA. As AFA, we determine that the GOC’s provision of exporter buyer’s credit confers a financial contribution and is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. Furthermore, we determine on the basis of AFA that Loncin and Zongshen benefited from this program during the POI within the meaning of sections 771(5)(E) of the Act. Consistent with Commerce’s AFA rate selection methodology, we determine a countervailable subsidy rate for this program of 10.54 percent *ad valorem* for Loncin and Zongshen, a rate calculated for a similar program in another CVD proceeding involving imports from China.

4. Provision of Unwrought Aluminum for LTAR

Commerce is examining whether the GOC or other “authorities” within China provided Loncin, Zongshen, or their suppliers with unwrought aluminum for LTAR. Loncin affiliates Loncin Casting and Lightweight and Zongshen affiliate Zongshen Power reported that they purchased unwrought aluminum during the POI.

The GOC reported that certain producers of unwrought aluminum purchased by respondents are majority-owned by the government. As explained in the Public Bodies Memorandum, majority state-owned enterprises in China possess, exercise, or are vested with governmental authority.¹⁴⁹ As such, we find that the GOC exercises meaningful control over these entities and uses them to effectuate its goals of upholding the socialist market economy, allocating resources, and maintaining the predominant role of the state sector. Therefore, we preliminarily determine that

¹⁴⁹ See Memorandum, “Placing Information on the Record,” dated concurrently with this memorandum.

these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that the respondents received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.¹⁵⁰

As explained in the “Use of Facts Otherwise Available and Adverse Inferences” section of this memorandum above, for other producers of unwrought aluminum, the GOC failed to provide all information requested concerning their ownership and control. Therefore, based on AFA, we preliminarily determine that these entities constitute “authorities” within the meaning of section 771(5)(B) of the Act and that the respondents received a financial contribution from them in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act.¹⁵¹

Also, as explained in the “Use of Facts Otherwise Available and Adverse Inferences” section of this memorandum above, we preliminarily determine that the GOC is providing primary aluminum to a limited number of industries and enterprises, and, hence, that the subsidies under this program are specific pursuant to section 771(5A)(D)(iii) of the Act.

As discussed above, because Commerce is finding that the Chinese domestic market for unwrought aluminum was distorted by government involvement, we are selecting external benchmark prices, *i.e.*, “tier two” world market prices, consistent with 19 CFR 351.511(a)(2)(ii) and the *CVD Preamble*. Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under “tier two,” Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, to derive the benchmark prices, we included ocean freight and inland freight that would be incurred to deliver inputs to the respondents’ production facilities. We then added to the benchmark prices the appropriate import duties applicable to imports of primary aluminum into China, as provided by the GOC.¹⁵² Additionally, we added the appropriate value-added tax (VAT) of 17 percent to the benchmark prices.

We compared these monthly benchmark prices to Loncin and Zongshen’s affiliates’ reported purchase prices for individual domestic transactions, including VAT and delivery charges. Based on this comparison, we preliminarily determine that a benefit exists for Loncin and Zongshen in the amount of the difference between the benchmark prices and the prices their affiliates paid. We divided the total benefit by the appropriate consolidated sales denominator, as discussed in the “Subsidies Valuation Information” section.

¹⁵⁰ See *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009), and accompanying IDM at 6.

¹⁵¹ *Id.*

¹⁵² Consistent with *Citric Acid and Certain Citrate Salts from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014) (*Citric Acid from China; 2011 Review*), and accompanying IDM. We have utilized the Most Favored Nation import duty rate because it reflects the general tariff rate applicable to world trade. See *Citric Acid from China; 2011 Review* IDM at 90.

For the reasons discussed above, we have calculated a subsidy rate of 2.96 percent *ad valorem* for Loncin and 3.24 percent *ad valorem* for Zongshen for the provision of primary aluminum for LTAR.¹⁵³

5. Provision of Land-Use Rights for LTAR to Vertical Shaft Engine Producers

Commerce is examining whether the GOC has encouraged the development of the vertical shaft engine industry through the provision of land for LTAR, including land that may be located in industrial zones and parks. Loncin and Zongshen affiliates Zongshen Group and Zongshen High Speed reported purchasing land in industrial parks.¹⁵⁴ Additional tracts of land were purchased by members of the cross-owned group, but Commerce’s examination of the record indicates that such tracts were either first purchased from local land bureaus before the “cutoff” date for measuring subsidies provided in China (December 2001) or were resold to unaffiliated companies outside the group before the POI.¹⁵⁵

In examining this program, Commerce looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for preferential land pricing to support such objectives or goals. The GOC’s national five-year plans identify the provision of land and land financing as policy tools to direct economic development for key objectives. For example, the 13th national FYP states that, “Approval procedures related to the projects and initiatives included in this plan will be streamlined and priority will be given to them in site selection, land availability, and funding arrangements.”¹⁵⁶ Additionally, “the GOC’s Decision No. 40 instructs ‘people’s governments of all provinces, autonomous regions, and municipalities’ to formulate policies on land in order to implement industrial policies, including those aimed at buttressing China’s steel industries. Moreover, the 13th FYP of Chongqing encourages the production of specific industries such as auto parts manufacturing and advanced manufacturing and provides for “land” support to achieve the plan’s goals.”¹⁵⁷

The 12th FYP similarly identifies land management policies as development tools, referencing the importance of the Guidance Catalogue’s encouraged industries alongside implementing differential land management policy: “Modify and perfect the current industrial guidance catalogue, clarify the encouraged, limited and prohibited industrial for different principle function areas. Implement the differential land management policy, scientifically set the different land using scale, and carry out strict land use control.”¹⁵⁸

The 11th FYP calls for strengthened support for industrial policy, especially for high tech industries, alongside strengthened cooperation on land policies: “Strengthen and improve industrial policy work, reinforce the unified planning for domestic industry development and for investment introduction, strengthen the cooperation of the policies in credit, land, environmental

¹⁵³ See Calculation Memoranda at Attachment 2 for the underlying calculation.

¹⁵⁴ The tracts were later resold to other members of the group. Commerce, however, is basing its subsidy rate calculation on the amount paid by the affiliates in the original transaction with the local land bureau.

¹⁵⁵ See Zongshen May 13, 2020 IQR at Exhibit I-22.

¹⁵⁶ See GOC May 4, 2020 IQR at Exhibit II.B.1, Chapter 80, Section 2.

¹⁵⁷ See Petition Volume III at 23.

¹⁵⁸ See GOC May 4, 2020 IQR at Exhibit II.B.1, Chapter 19, Section 2.

protection, safety and science and technology with the industrial policy and use economic means to promote the development of industries. Strengthen the support for the weak links of high tech industries and equipment manufacturing industry, mainly support research and development and foster core competitive power.”¹⁵⁹

As noted above in our discussion of the unwrought aluminum industry, the GOC has identified the aluminum industry for priority development in the Guidance Catalogue, which includes aluminum, and the development of production technology within it, as encouraged.¹⁶⁰ Moreover, the *Notice of Guidelines on Accelerating the Adjustment of the Aluminum Industry Structure* states that the GOC’s aim is to “increase the proportion of high value added processed products” made of aluminum.¹⁶¹ VSE are largely the product of aluminum components,¹⁶² and the GOC admits that VSE fall within Article XIII, paragraph 1 of the “encouraged” category of the Guidance Catalog (“Systematic design and development of for automobile, motorcycle, engine and their key components and parts”).¹⁶³ Decision 40 identifies the Guidance Catalogue as “the 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.”¹⁶⁴ Decision 40 also directs all local, provincial, and municipal governments under the Central Government’s control to cooperate closely and intensify the effectiveness of implementing industrial policies. Consistent with the central planning documents, the 11th FYP of Chongqing lists upgrading and strengthening the automobile and motorcycle industry as one of its goals.¹⁶⁵

As detailed above, national and provincial level development plans provide for land supply and financing arrangements as a means of encouraging priority development projects. Thus, we preliminarily determine that a program exists to provide land for LTAR to producers of vertical shaft engine within the meaning of section 771(5A)(D)(i) of the Act. The tracts that Commerce is countervailing were purchased from local land bureaus, “authorities” within the meaning of section 771(5)(B) of the Act, and thus the respondents received a financial contribution in the form of the provision of a good, pursuant to section 771(5)(D)(iii) of the Act. Given the total government ownership of the land market, we preliminarily determine that the domestic market for land was distorted through the GOC’s ownership.

To determine the benefit pursuant to section 771(5)(E)(iv) of the Act, we first multiplied the Thailand industrial land benchmarks, discussed above under the “Benchmarks and Discount Rates” section, by the total area of the countervailable land. We then subtracted the net price actually paid for the land to derive the total unallocated benefit. We next conducted the “0.5 percent test” of 19 CFR 351.524(b)(2) for the year(s) of the relevant land-rights agreement by dividing the total benefit for the respective year(s) by the relevant sales. For those benefits that pass the 0.5 percent test, we allocated the total benefit amounts across the terms of the land use agreement, using the standard allocation formula of 19 CFR 351.524(d), and determined the

¹⁵⁹ *Id.* at Exhibit II.B.1, Chapter 47.

¹⁶⁰ *See* GOC May 4, 2020 IQR at Exhibit II.B.3, Article VIII of the “encouraged” category (Non-Ferrous Metal).

¹⁶¹ *See* Petition Volume III at 4.

¹⁶² *See* Petition Volume III at 6.

¹⁶³ *See* GOC May 4, 2020 IQR at 14.

¹⁶⁴ *Id.* at Exhibit II.B.6, Chapter III, Article 12.

¹⁶⁵ *Id.* at Exhibit II.B.2.

amount attributable to the POI. We then divided this amount by the appropriate total sales denominator, as discussed in the “Subsidies Valuation” section.

On this basis, we preliminarily determine subsidy rates of 0.79 percent *ad valorem* for Loncin and 0.14 percent *ad valorem* for Zongshen.

6. Provision of Electricity for LTAR

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

For determining the existence and amount of any benefit under this program, we selected the highest 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 respondent. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category.

Consistent with our approach in *Wind Towers from China*, 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.¹⁶⁶ Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by the respondent during the POI from the monthly benchmark variable electricity costs.

To measure whether Loncin, Zongshen and their affiliated suppliers or cross-owned companies received benefits with regard to their base rate (*i.e.*, maximum demand or transformer capacity charge), we first multiplied each company’s monthly base rates by their corresponding consumption quantities. Next, we calculated the benchmark base rate cost by multiplying each company’s consumption quantities by its corresponding highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the respective transformer capacity costs paid by each company during the POI from their corresponding benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from each company’s respective variable electricity payments and base rate payments.

To calculate the net subsidy rates attributable to each company, we divided each company’s benefit by the appropriate sales denominators, as described in the “Subsidies Valuation” section above. On this basis, we preliminarily determine that Loncin received a countervailable subsidy rate of 0.03 percent *ad valorem* and Zongshen received a countervailable subsidy rate of 1.12 percent *ad valorem*.

¹⁶⁶ See *Wind Towers from China* IDM at 21-22.

7. Income Tax Deductions for Research and Development 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 research and development (R&D) expenses incurred in the development of new technologies, products, or processes from their taxable income.¹⁶⁷ Article 95 of the *Implementing Regulations of the Enterprise Income Tax Law of China* (Decree 512 of the State Council, 2007) provides that, if eligible research expenditures do not “form part of the intangible assets value,” an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount.¹⁶⁸ Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets’ costs.¹⁶⁹

We preliminarily determine that this program constitutes a countervailable subsidy. This income tax deduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also 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 specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program, we treated the tax deduction as a recurring benefit, consistent with 19 CFR 351.524(c)(1).¹⁷⁰ 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 1.35 percent *ad valorem* for Loncin and 0.50 percent *ad valorem* for Zongshen.¹⁷¹

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

Circular 37 exempts FIEs and certain domestic enterprises from VAT and tariffs on imported equipment used in their production so long as the equipment does not fall into prescribed lists of non-eligible items, in order to encourage foreign investment and to introduce foreign advanced

¹⁶⁷ See GOC May 4, 2020 IQR at 44-45.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ These credits can be for either expensed or capitalized R&D expenditures. If a credit is for capitalized expenditures (*e.g.*, the expenditures were made toward developing an “intangible asset” or patent), however, the 50 percent deduction is amortized across the useful life of the developed asset. Therefore, even credits for capitalized expenditures would be allocated over tax returns filed during a number of years and would thus be recurring. See *e.g.*, *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 79 FR 33174 (June 10, 2014), and accompanying PDM at 34-35.

¹⁷¹ See Preliminary Calculation Memoranda .

technology equipment and industry technology upgrades.¹⁷² As we noted at initiation, we were limiting our investigation of the VAT component to any pre-2009 exemptions because, as of January 1, 2009, the GOC discontinued VAT exemptions under this program, but companies can still receive import duty exemptions.¹⁷³ The record shows respondents received no VAT exemptions during the AUL. Over the AUL, Loncin input supplier Lightweight, Zongshen and Zongshen parent company Zongshen Power each reported receiving tariff exemptions under this program.¹⁷⁴ Commerce has previously found tariff exemptions under this program to confer countervailable subsidies.¹⁷⁵

Consistent with these earlier cases, we preliminarily determine that the tariff exemptions on imported equipment confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue foregone by the GOC and they provide a benefit to the recipient in the amount of the tariff savings, pursuant to 19 CFR 351.509(a)(1). We also preliminarily determine that the 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.*, FIEs and domestic enterprises involved in “encouraged” projects.

Since this indirect tax is provided for, or tied to, the capital structure or capital assets of a firm, as reported by the respondents, Commerce treated this tax as a non-recurring benefit and allocated the amount of the tariff exemptions, as applicable in the given year, over the AUL.¹⁷⁶ To calculate the countervailable subsidy, we used our standard methodology for non-recurring grants.¹⁷⁷ In the years that the benefits received by each company under this program did not exceed 0.5 percent of relevant sales for that year, we expensed those benefits in the years that they were received, pursuant to 19 CFR 351.524(b)(2). We used the discount rates described above in the section “Subsidies Valuation Information,” to calculate the amount of the benefit allocable to the POI. We then divided the benefit amount by the appropriate sales denominator.

On this basis, we determine a countervailable subsidy rate of 0.03 percent *ad valorem* for Loncin and 0.01 percent *ad valorem* for Zongshen under this program.

9. Subsidy Fund for Foreign Trade Development

Loncin reported receiving grants under this program during the POI and AUL¹⁷⁸ The GOC did not provide any information as to how the program operates.

As discussed above in the “Use of Facts Otherwise Available and Adverse Inferences” section, the GOC did not provide the required information. Absent information from the GOC, in accordance with sections 776(a) and (b) of the Act, as AFA, we find this grant to be contingent

¹⁷² See GOC May 4, 2020 IQR at 46 and Exhibit II.D.I.3.

¹⁷³ *Id.* at 46 and Exhibit II.D.1.4.

¹⁷⁴ See Loncin May 13 IQR at 26.

¹⁷⁵ See *Aluminum Extrusions Final Determination* IDM at VII.D; see also *Wire Decking from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32902 (June 10, 2010), and accompanying IDM at 25-27.

¹⁷⁶ See 19 CFR 351.524(c)(2)(iii); and 19 CFR 351.524(d)(2).

¹⁷⁷ See 19 CFR 351.524(b).

¹⁷⁸ See Loncin May 13, 2020 IQR at 13 and Exhibit P.J.1.1.

upon export performance and therefore specific within the meaning of section 771(5A)(B) of the Act. We determine that the funds provided constitute a financial contribution in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act and confer a benefit in the amount of the funds provided under 19 CFR 351.504.

Consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as non-recurring. To measure the benefit of the grants that is allocable to the POI, we first conducted the “0.5 percent test” for the grants. We divided the total amount approved by the relevant sales for that year. As a result, we found that each grant was greater than 0.5 percent of relevant sales and was properly allocated over the AUL. To calculate the countervailable subsidy rate, we added together the benefits attributed to the POI, and then divided the benefits by the appropriate sales denominator, as discussed in the “Subsidies Valuation” section.

On this basis, we preliminarily determine a net countervailable subsidy rate of 0.02 percent *ad valorem* for Loncin.¹⁷⁹ Zongshen reported not using this program.

10. Interest Payment Subsidies

Zongshen and its affiliate Zongshen Air reported using this program. Zongshen reported receiving non-recurring payments from the Chongqing Municipal Commission of Commerce under the program to offset interest expenses incurred.¹⁸⁰ It also reported that it would have to reapply to receive additional payments.¹⁸¹ Commerce’s evaluation of the record indicates that the payments were contingent upon export performance, pursuant to 19 CFR 351.514(a).¹⁸² Consistent with 19 CFR 351.524(c)(1), we are treating the payments received under this program as non-recurring grants. To measure the benefit of the grants allocable to the POI, we first conducted the “0.5 percent test.” We divided the total amount approved by export sales during the year of approval. As a result, we found that each grant was greater than 0.5 percent of relevant sales and was properly allocated over the AUL. To calculate the countervailable subsidy rate, we added together the benefits attributed to the POI, and then divided the benefits by the appropriate sales denominator, as discussed in the “Subsidies Valuation” section. On this basis, we preliminarily determine a net countervailable subsidy rate of 0.22 percent *ad valorem* for Zongshen.¹⁸³ Loncin reported not using this program.

11. Other Subsidies

Loncin, Zongshen and their cross-owned affiliates reported receiving various non-recurring grants from the GOC during the AUL period. As discussed above in the “Use of Facts Otherwise Available and Adverse Inferences” section, the GOC did not provide the required information about these programs, and, therefore, in accordance with sections 776(a) and (b) of the Act, we preliminarily determine that these grants constitute a financial contribution under section 771(5)(D)(i) of the Act, and that they are specific to Loncin and Zongshen under section

¹⁷⁹ See Loncin Preliminary Calculation Memorandum.

¹⁸⁰ See Zongshen May 13, 2020 IQR at 16-17.

¹⁸¹ *Id.*

¹⁸² *Id.* at 15.

¹⁸³ See Zongshen Preliminary Calculation Memo.

771(5A) of the Act. We further preliminarily determine that these grants each confer a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504(a).

Consistent with 19 CFR 351.524(c)(1), we are treating the grants received under these programs as non-recurring. To measure the benefit of the grants that are allocable to the POI, we first conducted the “0.5 percent test” for the grants. We divided the total amounts approved by the relevant sales for the relevant year. Where we found that the grant was greater than 0.5 percent of relevant sales, it was allocated over the AUL. To calculate the countervailable subsidy rate, we added together the benefits attributed to the POI, and then divided the benefits by the appropriate sales denominator, as discussed in the “Subsidies Valuation” section.

Based on the methodology outlined above, Commerce preliminarily determines cumulative *ad valorem* subsidy rates of 1.69 percent for Loncin and 1.84 for Zongshen.¹⁸⁴

B. Programs Preliminarily Determined Not to Be Used or Not to Incur a Measurable Benefit During the POI

1. Export Loans
2. Government Directed Debt Restructuring
3. Subsidies Under the State Capital Operating Budget
4. Provision of Pig Iron for LTAR
5. Provision of Steam coal for LTAR
6. Income Tax Reductions for High or New Technology Enterprises
7. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
8. Export Assistance Grants
9. State Key Technology Fund Grants
10. GOC and Sub-Central Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands
11. Grants for Retiring Outdated Capacity/Industrial Restructuring

XIV. CALCULATION OF THE ALL-OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act state that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the all-others rate by weight-averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. We calculated the all-others rate using a simple average of the

¹⁸⁴ See Preliminary Calculation Memoranda.

individual estimated subsidy rates calculated for the examined respondents.¹⁸⁵ Consequently, we are assigning 30.98 percent as the *ad valorem* all-others rate.

XV. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance. In accordance with section 705(b)(2) of the Act, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after Commerce makes its final affirmative determination.

XVI. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to Commerce's questionnaires.

XVII. DISCLOSURE AND PUBLIC COMMENT

We intend to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹⁸⁶ Case briefs or other written comments for all non-scope issues may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹⁸⁷ Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of this preliminary determination in the *Federal Register*, and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than seven days after the deadline for the case briefs. For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for the other concurrent AD investigations. Parties who submit case briefs or rebuttal

¹⁸⁵ With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010). Because complete publicly ranged sales data was not available, Commerce could not follow its normal methodology. Therefore, we used a simple average of the estimated subsidy rates calculated for the examined respondents.

¹⁸⁶ *See* 19 CFR 351.224(b).

¹⁸⁷ *See* 19 CFR 351.309(c)-(d); *see also* 19 CFR 351.303 (for general filing requirements).

briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁸⁸ This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.¹⁸⁹ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using Commerce's electronic records system, ACCESS.¹⁹⁰ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹⁹¹ on the due dates established above. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until July 17, 2020, unless extended.¹⁹²

XVIII. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

6/15/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

¹⁸⁸ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁸⁹ See 19 CFR 351.310(c).

¹⁹⁰ See 19 CFR 351.303(b)(2)(i).

¹⁹¹ See 19 CFR 351.303(b)(1).

¹⁹² See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 29615 (May 18, 2020).